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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

942 WRIT PETITION NO.13147 OF 2021

SHRI CONSULTANCY AND CONSTRUCTION THROUGH ITS
PROPRIETOR SHRI SOPAN PANDURANG SATDIVE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. D.P. Palodkar, Advocate for petitioner;
Mr. P.K. Lakhotiya, A.G.P. for respondent no.1;
Mr. Sudhir Bhalerao, Advocate for respondent no.5;
Mr. T.M. Tandale, Advocate for respondent no.6

**CORAM : A.S. GADKARI
AND
S. G. MEHARE, JJ.**

DATE : 5th January, 2022

P.C.

1. By the present petition, the petitioner has prayed for a writ of mandamus thereby directing respondent nos.4 & 5, i.e. the tendering Authorities that, their decisions dated 9.11.2021 and 15.11.2021 to reject bid of the petitioner, be set aside and the work order dated 12.11.2021 granted in favour of successful bidder i.e. respondent no.6 be also quashed and set aside. The petitioner has further prayed for a writ of mandamus, thereby directing the respondents to issue work order in favour of petitioner, as the petitioner is L1 bidder in B1 tender bearing Tender ID No.2021-722.

2. Heard Mr. Palodkar, learned counsel for the petitioner; Mr. Lakhotiya, learned A.G.P. for respondent no.1; Mr. Bhalerao, learned

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Advocate for respondent no.5 and Mr. Tandale, learned Advocate for respondent no.6. Perused entire record of petition.

3. Petitioner is the proprietor of Shri Consultancy and Construction. Respondent nos.2 to 4 had issued a B1 tender notice on 22.9.2021 for survey, hydraulic study and preparing estimates of suitable water retaining structures for Purna River and its tributaries in Sillod Taluka. The last date of submission of bids was 6.10.2021. The technical bids were opened on 1.11.2021 and technical summary was uploaded on the concerned website on 1.11.2021. The financial bids submitted by all the bidders were opened on 1.11.2021 itself. Petitioner was found to be a successful bidder having submitted lowest bid for the concerned tender work.

4. The tender document prescribes various terms and conditions to be performed by the bidders and/or successful bidders. On internal page no.60 of tender document (page 66 to petition), provisions for Performance security Deposit (for short "PSD") are prescribed. The relevant condition for considering present petition is reproduced below for the sake of convenience.

“(ii) (b) Performance security Deposit

(as per Govt. Circular No.महाराष्ट्र शासन जलसंपदा विभाग शासन निर्णय क्र. निविदा 0417/(प्र. क्र. 247/17)/मोप्र-1 दि.: 30. 11. 2018.)

(1) If Tenderer quotes his offer upto 10% below of the estimate cost of work mentioned in tender notice, the tenderer should submit

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D.D./FDR of Nationalized or Scheduled bank of amount of 1% of the estimated cost of work as a performance security deposit within 8 days from date of opening of tender." (underline emphasised)

5. It is thus clear that, the period prescribed for depositing PSD was within eight days from the date of opening of tender. As noted earlier, the technical bid so also financial bid was opened on 1.11.2021 and in view of clause (1) of the said tender document, it was expected from the petitioner to deposit the said necessary amount within a period of eight days therefrom, i.e. on or before the end of 8.11.2021.

6. In this background, it is to be noted here that, the petitioner submitted his PSD with respondent no.4 with a covering letter dated 15.11.2021, which is much beyond the period of limitation prescribed under said condition of the tender document.

The facts and chronology mentioned hereinabove are carved out from the pleadings of the parties and are admitted facts on record.

7. Mr. Palodkar, learned Counsel for the petitioner contended that in the intervening period due to the Diwali festival most of the financial institutions were not functioning and it caused delay in submitting the said necessary PSD with respondent no.4/respondent no.5. That while communicating rejection of his tender offer by impugned order dated 9.11.2021, the respondent no.5 has given a

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reason that, within two days from the date of opening of the financial bid the petitioner did not deposit PSD with the concerned authority and, therefore, the decision taken by the respondent no.4 and/or 5 is bad in law. He submitted that, as a consequence thereof, the subsequent communication dated 15.11.2021 also suffers from illegality and needs to be quashed and set aside. He submitted that, if the said communication/order dated 9.11.2021 is set aside by this Court, then the petitioner would be certainly eligible to get the tender from respondent nos.4 and 5, which has now been awarded to respondent no.6. He therefore prayed that, the impugned communications may be quashed and set aside by allowing the petition.

8. It is to be noted here that, the words used in tender document in clause No.(1) as reproduced hereinabove, i.e. "within eight days from the date of opening of tender" are self eloquent and need no interpretation for the same. As noted earlier, the technical and financial bids were opened on 1.11.2021 and the petitioner for the first time, submitted his PSD on 15.11.2021, i.e. much after the tender was allotted in favour of respondent no.6 by an order dated 12.11.2021. It is the contention of the petitioner that on 15.11.2021 he received a communication from the respondent nos.4 and 5 which was published on e-portal of Maharashtra Government and therefore he submitted the said PSD on 15.11.2021 cannot be accepted for the

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basic reason that, while participating in the tender process and subsequent thereto or even after opening of the technical and financial bids, petitioner was well aware of the fact that, he was supposed to deposit PSD within a period of eight days therefrom as per clause (1) of terms of tender document, noted hereinabove. The petitioner has clearly failed to deposit the necessary PSD within stipulated period as per clause (1) of the said condition of tender document and therefore now cannot be permitted to raise a spacious plea in that behalf.

9. In view of the above, we find that there are no merits in the petition. Petition is accordingly dismissed.

(S. G. MEHARE, J.)

(A.S. GADKARI, J.)

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