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

923 WRIT PETITION NO.14156 OF 2021

JAI BHOLENATH CONSTRUCTION, THROUGH IT'S
PARTNER KRISHNA PUNJARAM JADHAV
VERSUS
THE CHIEF EXECUTIVE OFFICER AND OTHERS

...

Mr Sachin S. Deshmukh, Advocate for petitioner;
Mr S. B. Pulkundwar, Advocate for respondent Nos.1 to 3
Mr A. V. Patil, Advocate for respondent No.4

**CORAM : RAVINDRA V. GHUGE
AND
S. G. DIGE, JJ.**

DATE : 30th March, 2022

PER COURT:

1. By this petition, the petitioner has put forth prayer clauses (A), (B), (C) and (D) as under :

“(A) By issuance of appropriate writ or order in the like nature quash and set aside the impugned Corrigendum dated 24/11/2021 and the consequent communication dated 3/12/2021, issued by the tendering authority; and for that purpose issue necessary directions.

(B) By issuing a writ of mandamus or any other appropriate writ, order or direction in the like nature, the respondent authorities be directed to issue work order in favour of the petitioner on the strength of the document dated 15/9/2021, wherein the petitioner is declared as qualified lowest bidder in respect of the

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work of proposed construction of Staff Quarters at P.H.C., Ewaleshwar, Taluka Mahur, District Nanded; and for that purpose issue necessary directions.

(C) During the pendency and final disposal of this Writ Petition, forbear the respondent authorities from issuing the work order in favour of respondent No.4 in respect of the work of proposed construction of Staff Quarters at P.H.C., Ewaleshwar, Taluka Mahur, District Nanded; and for that purpose issue necessary directions.

(D) During the pendency and final disposal of this Writ Petition, the respondent authorities be directed to issue work order in favour of the petitioner forthwith in respect of the work of proposed construction of Staff Quarters at P.H.C., Ewaleshwar, Taluka Mahur, District Nanded.”

2. On 15/12/2021, an order was passed by the Court as under :

“ . The learned counsel for the petitioner submits that technical bids were opened on 15.09.2021. The respondent No. 4 was held to be disqualified. The petitioner was the lowest bidder. The petitioner pursuant to the communication issued by the authority, submitted FDR of Rs. 1,00,000/- (Rs. One Lakh only) as a security deposit. Subsequently, on 24.11.2021 corrigendum is issued, whereby behind back of the petitioner and other tenderers, respondent No. 4 is held to be qualified. According to the learned counsel, the same has been done in a clandestine manner. The petitioner apprehends the work order would be issued to respondent No. 4 though it was disqualified earlier.

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2. *Issue notice to the respondents, returnable on 22.12.2021. Humdast allowed.*

3. *Till the next date, work order pursuant to the tender in question and the corrigendum dated 24.11.2021 (page no. 102) may not be issued to any party.”*

3. The brief facts of the case are as under :-

(a) 17/08/2021, a tender with regard to the construction of the staff quarters of the Primary Health Center, Ewaleshwar, Tq. Mahur, Dist. Nanded, was floated.

(b) The petitioner as well as respondent No.4 have participated in the tender process and have submitted their bids.

(c) On 15/09/2021, there were 4 bidders and the tenders of the 4 bidders were opened. The petitioner was found to be the lowest bidder.

(d) The bidding was done online and the documents that were necessary for qualifying as an eligible bidder, were also uploaded online.

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(e) Since respondent No.4 was found to be not eligible as the document pertaining to his registration as a Contractor was not found by the authorities, that the bid tendered by respondent No.4 was not opened.

(f) It is the case of the Zilla Parishad as well as respondent No.4 that, respondent No.4 personally met the officers of the Zilla Parishad and brought it to their notice that the document regarding his registration as a Contractor was uploaded.

(g) The Zilla Parishad, therefore, opened the bid tendered by respondent No.4 on 1/11/2021, 78 days after the bids of the other contractors were opened and their rates were exposed.

(h) On 24/11/2021, the Additional Chief Executive Officer, Chief Audit and Finance Officer, Zilla Parishad and the Executive Engineer, Zilla Parishad, Construction Division, Bhokar, issued a Corrigendum, declaring respondent No.4 as being the lowest bidder.

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(i) There is no dispute that such tender was opened behind the petitioner as well as in the absence of the other three bidders.

(j) As per the Zilla Parishad's contentions, though respondent No.4 met the three authorities, who issued the Corrigendum, his bid was opened online. The Corrigendum was also issued online.

4. We have considered the affidavit-in-reply filed on behalf of the Zilla Parishad, through Shri. Sagar Satish Tayade, Executive Engineer (Works), Zilla Parishad, Nanded, dated 15/02/2022. In nutshell, he has averred that, in all five bids were received online. Necessary documents were uploaded within time by the bidders, online. After the bidding period was over, the Portal was automatically locked by the NIC and no alteration/modification or addition could be made in the Web Portal. Subsequently, it was noticed that the contractor's registration certificate was available in one PDF uploaded file by the 4th respondent. The concerned Clerk did not notice the said file, due to which, respondent No.4 was disqualified. As the 4th respondent made a request on 01/11/2021, the tender committee scrutinized his documents and

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noticed a human error. Considering the human mistake and the Government Resolution dated 27/09/2018, which mandates fair opportunity to the bidders to provide requisite documents, it was decided by the impugned Corrigendum dated 24/11/2021, to revoke the tender issued in favour of the petitioner. This was done at the technical stage and as respondent No.4 was found to be the lowest bidder, he was granted the tender.

5. We do not find even a whisper from the affidavit on behalf of the Zilla Parishad, as to who unlocked the Portal and how was the entire online process reopened and the clock was reversed. The tender allotted to the petitioner was cancelled and the same was granted instantly to respondent No.4. Though the petitioner was found to be eligible as on 15/09/2021, he was not granted the work order and after issuing the Corrigendum on 24/11/2021, the contract was swiftly granted to respondent No.4.

6. It is undisputed even by the Zilla Parishad that, once the bids were opened and the process was concluded, in the light of the tender rules and the Government Resolution dated 27/09/2018, the Portal through which the bids were opened, was locked after the process was concluded on 15/09/2021. It is

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unexplained in the affidavit-in-reply of the Zilla Parishad, as to who instructed the NIC to unlock the Portal and grant access to the three members, who issued the Corrigendum, so as to lay their hands on the online bid of respondent No.4 and open the same, purportedly online.

7. We, therefore, do find several disputed issues involved in this case, inasmuch as, a thick cloud of suspicion hovering over the Zilla Parishad, clearly indicating the role of the three members issuing the Corrigendum, to be quite doubtful.

8. The learned Advocate representing respondent No.4 – contractor, has relied upon a recent order passed by the coordinate Bench of this Court, dated 24/03/2022, delivered in Writ Petition No.1274/2022, filed by M/s Bhagwati Construction Vs. Zilla Parishad, Nanded and anr. with connected writ petitions, wherein, the learned Division Bench declined to interfere in the writ petitions in the light of a recent judgment delivered by the Hon'ble Supreme Court on 21/03/2022 in the matter of **M/s N. G. Projects Ltd. Vs. M/s Vinod Kumar Jain and others, 2022 LiveLaw (SC) 302**. The coordinate Bench of this Court dismissed the petitions.

9. We find it appropriate to refer to paragraph 26 and 27 of the judgment in M/s N. G. Projects Ltd., which read as under :

“26. A word of caution ought to be mentioned herein that any contract of public service should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good. The grant of interim injunction by the learned Single Bench of the High Court has helped no-one except a contractor who lost a contract bid and has only caused loss to the State with no corresponding gain to anyone.

27. We also find that multiple layers of exercise of jurisdiction also delay the final adjudication challenging the grant of tender. Therefore, it would be open to the High Courts or the Hon’ble Chief Justice to entrust these petitions to a Division Bench of the High Court, which would avoid at least hearing by one of the forums.”

10. Considering the above, this petition is dismissed.

11. The learned Advocate for the petitioner submits that the ad interim protection granted on 15/12/2021, owing to which, the work order pursuant to the tender has not yet been issued in favour of respondent No.4. He further submits that the Zilla Parishad has put forth the reason of urgency, which is a pretense,

since though the petitioner was noticed to be the lowest bidder on 15/09/2021, the Zilla Parishad did not issue the work order and after issuing the Corrigendum on 24/11/2021, they were about to issue the work order, when the petitioner approached this Court on 13/12/2021 and convinced the Court to restrain the Zilla Parishad from issuing the work order on 15/12/2021.

12. The learned Advocates representing respondent No.4/ contractor and the Zilla Parishad submit that the law laid down in M/s N. G. Project Ltd. has to be followed and even if, there is total arbitrariness in selecting respondent No.4/ contractor, this Court should refrain from granting any relief, and, hence, the ad interim protection be vacated forthwith.

13. Since we noticed that the Competent Authority has not issued the work order from 15/09/2021 till this Court passed an order on 15/12/2021 and as the petitioner desires to approach the Hon'ble Supreme Court, we continue the ad interim relief until 30/04/2022.

(S. G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)