

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15556 OF 2022

Nand kumar Constructions

..... Petitioner

Vs.

The Superintendent Engineer,
P.W.Circle, Kolhapur & Ors.

..... Respondents

Mr. Yuvraj Narvankar for the Petitioner

Mr. P. P. Kakade, GP a/w. Mrs. Nisha Mehra, AGP for the State

**CORAM: S.V.GANGAPURWALA, ACJ &
S.G.CHAPALGAONKAR, J.**

DATED : DECEMBER 21, 2022

P.C.

1 The Petitioner had filled-in the tender pursuant to the tender notice issued by the Respondents for improvements to road Kolhapur Kalambe Ispurli Shelewadi to join SH 189 road SH 196 Km.No.16/200 to 21/500 Tq. Karveer Dist, Kolhapur. The technical bid of the Petitioner is rejected on the ground that *“the drum mix plant is located at Nagewadi Limkhind Satara nearly 150 km away from the work site while going through the work done certificates. The Ongoing works Costing 455.23 lakhs near to existing plant site location. It is deficult to shift the running plant and other machinery also, to proposed work for execution. As per IRC the laying temperature of BM/BC required shall be more than 110 C*

which is not possible to maintain for such long distance from existing plant. Hence treated as Non-Responsive.”

2 The learned Counsel for the Petitioner submits that as per the Government Resolution dated 26th May 2014, if the hot mix plant of a tenderer is situated at far distance then an opportunity is to be given to such a person to shift the plant at nearby distance after the work order is issued. The Petitioner has given an undertaking and explanation to the Respondents that he is ready to shift the hot mix plant of the Petitioner at the site. The learned Counsel for the Petitioner further relies upon the Circular dated 7th March 2019 and submits that if the contractor has done similar work earlier, then the tender should not be rejected on technical ground such as PTC/Machinery.

3 The learned AGP submits that the work concerned is regarding the improvement of road. The hot mix plant is required to be situated at nearby vicinity of the work to be carried out. The plant of the Petitioner is situated at the distance of 150 km from the site. It is difficult to shift the running plant and other machinery also to the proposed work for execution. As per IRC laying temperature of BM/BC required shall be more than 110 C which is not possible to maintain for such long distance from existing plant. The learned

AGP submits that, on the said ground the Petitioner's bid is held to be non responsive.

4 Upon considering the submissions of the parties, it appears that the Respondents have not considered the Government Resolution dated 26th May 2014 and as per the said Government Resolution, whether it would be feasible for installation of the hot mix plant at the site.

5 We are aware, it is the sole prerogative and it is for the Authorities to consider the reasonableness of the conditions and whether the same would be permitted after the work order is issued.

6 The Respondents also rely upon the Government Resolution dated 26th May 2014. In view of Clause 3.1 of the said Government Resolution also, the said Government Resolution is required to be considered by the Authorities. While holding the tender of the Petitioner non responsive, it appears, has not been considered.

7 In light of the above, we pass the following order:

- a. The Respondents shall reconsider the Petitioner's explanation and also consider the Government Resolution dated 26th May 2014 and shall take fresh decision upon the technical bid of the Petitioner, on its own merits.

- b. Such decision shall be taken preferably within 7 days.
- c. The work order shall not be issued unless fresh decision is taken on the technical bid of the Petitioner.
- d. The Writ Petition is disposed of. No costs.

(S.G.CHAPALGAONKAR, J)

(ACTING CHIEF JUSTICE)