IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8345 OF 2022

M/s.Jha P. & Co. ….. Petitioner

VERSUS

Bhiwandi Nizampur City Municipal Corporation & Ors. ….. Respondents

Mr.A.S.Rao for the Petitioner.

Mr.N.R.Bubna, a/w. Ms.Pooja Singh for the Respondent nos. 1 and 2.

Mr.A.A.Alaspurkar, A.G.P. for the Respondent no.8 – State.

Mr.Vikram Sathaye for the Respondent no.3.

CORAM: R. D. DHANUKA AND KAMAL KHATA, JJ.

DATE : 21ST JULY, 2022

P.C:-

By this petition filed under Article 226 of the Constitution of India, the petitioner seeks writ of certiorari for quashing and setting aside the action of rejecting the technical bid of the petitioner.

2. Pursuant to the invitation of bid by the respondent no.1 for additions and alterations in Meenatai Thakare Natyagruha issued by the respondent no.1, the petitioner and several other bidders including

respondent no.3 submitted bid. The bid was to be submitted between 11th April, 2022 and 5th May, 2022. The petitioner submitted various documents along with the bid. The technical bid of the bidders was opened. Insofar as the petitioner is concerned, the technical bid of the petitioner was rejected. The bid of another bidder Bubere and Associates also came to be rejected. The financial bid of the other three bidders were opened. The amount quoted by the other three bidders whose technical bids were found in order are reflected at page 213 of the petition.

3. The principle grievance raised by the petitioner is that there was no communication from the respondent before rejecting the technical bid of the petitioner pointing out deficiencies in the technical bid of the petitioner. Learned counsel for the petitioner placed reliance on the Government Resolution dated 12th April, 2017 and more particularly clause 4.2.

4. Mr.Bubna, learned counsel for the respondent no.1 on the other hand invited our attention to the 'Qualification Criteria' under clause 2.23.1. He submits that according to the said criteria, the bidder must

have achieved a minimum average annual financial turnover of Rs.793 lakhs during last five financial years ending 31st March, 2022 updated to current cost for civil engineering works only.

5. Mr.Bubna, learned counsel for the respondent no.1 invited our attention to Table 7 at page 68 of the petition and submitted that such certificate has to be certified by the Chartered Accountant in terms of clause 2.23.1(1). He also invited our attention to page 132 annexed to the petition i.e. income tax returns filed by the petitioner for assessment year 2017-18 and more particularly the ‘Sales Accounts Sales’ reflected in the profit and loss account for the financial year 1st April, 2016 to 31st March, 2017 and other such profit and loss account annexed to the petition having identical heads of so called turnover ‘Sales Accounts Sales’.

6. Learned counsel for the respondent no.1 invited our attention to the Chartered Accountant certificate annexed at page 154 of the petition certifying that the turnover mentioned in the certificate was in line with the turnover declared by the contractor in his income tax returns. He submits that the petitioner did not specify that the turnover

of Rs.793 lakhs was towards civil engineering work in the certificate issued by the Chartered Accountant.

7. Learned counsel for the respondent no.1 invited our attention to the Qualification Criteria 2.23.1(2) and submitted that the bidder was also required to submit experience in successfully completing similar works, each work value not less than Rs.846 lakhs updated to current cost, during the last five years. He invited our attention to Table 7, serial no.2 stating that the satisfactory completion of similar works as per section 2.23.2 has to be envisaged by experience certificate to be issued by the officer of the rank of executive engineer or above.

8. Learned counsel for the respondent no.1 invited our attention to the certificate submitted by the petitioner and submitted that the said certificate is not certified by the officer of the rank of executive engineer or above and thus was not in compliance with the bid requirement.

9. Insofar as Government Resolution dated 12th April, 2017 pressed in service by Mr.Rao, learned counsel for the petitioner is concerned, it

is submitted by the learned counsel that the said Government Resolution applies to the Public Works Department of the Government and not the Municipal Corporation.

10. In rejoinder arguments, Mr.Rao, learned counsel for the petitioner invited our attention to two more certificates issued by the Chartered Accountant in support of the submission that the said certificates would indicate the entire turnover of the petitioner.

11. A perusal of the tender document clearly indicates that under clause 2.23 read with Table 7 prescribing 'Qualification Criteria', the bidder was required to submit a certificate from the Chartered Accountant thereby certifying a minimum average annual financial turnover of Rs.793 lakhs during last five financial years ending 31st March, 2022 updated to current cost for civil engineering works only. The Chartered Accountant certificate produced by the petitioner along with the bid document does not certify that the turnover of the petitioner was for civil engineering works only.

12. The income tax returns along with profit and loss account

produced by the petitioner simplicitor indicates the figures of sales accounts. The sales account do not indicate whether the said pertains to civil engineering work as prescribed by the tender document. In our view, Mr.Bubna, learned counsel for the Corporation is right in his submission that the petitioner has not complied with the Qualification Criteria prescribed in clause 2.23.1 by submitting Chartered Accountant certificate as described in Table 7.

13. A perusal of clause 2.23.1 read with Table 7, Serial no. 2 indicates that the bidders were also required to submit the experience certificate certifying that the bidder had successfully completed similar works, each work value being not less than Rs.846 lacks updated to current cost during the last five years (2015-16 to 2019-20) which had to be issued by an officer not below the officer of the executive engineer. The certificate produced by the petitioner is not issued by the officer of the rank of executive engineer or above. In our view, the petitioner has not complied with the Qualification Criteria prescribed in clause 2.23.1(2) by not submitting experience certificate issued by the officer of the rank of executive engineer or above.

14. Insofar as submission of the learned counsel for the petitioner that the petitioner was not informed about the defect, if any, in the bid document submitted by the petitioner is concerned, a perusal of clause 3.4 of the tender bid clearly indicates that it is the discretion of the respondent no.1 to ask the bidders for any clarification of his bid to be obtained only in pre-historic information like bidders 'credentials'. We are thus not inclined to accept the submissions of Mr.Rao, learned counsel for the petitioner that even if there is any lacuna in bidders' bid relating to the compliance of the bidders' qualification criteria read with Table 7, the respondent was bound to seek such clarification from the petitioner.

15. A perusal of clause 3.6.1 at page 72 of the petition also clearly indicates that the respondent no.1 is required to examine and compare the various technical aspects of the bids on the basis of the information supplied by the bidders for overall completeness and compliance and deviation from the requirement of the respondent no.1 to the proposal/conditions. The bid that does not meet minimum acceptable standards of the completeness, consistency and detail will be categorized as non responsive and shall be liable for rejection.

16. In our view, the respondent no.1 has thus rightly rejected the technical bid of the petitioner not having found in conformity with the 'Qualification Criteria' described in clause 2.23.1 read with table 7. The respondent no.1 was not obliged to communicate the same as it was not in conformity with the tender document.

17. Insofar as Government resolution dated 12th April, 2017 pressed in service by the learned counsel for the petitioner is concerned, a perusal of the said Government Resolution clearly indicates that said Government Resolution is applicable to the Public Works Department of the State of Maharashtra and not the Municipal Corporation. Clause 4.2 will make the position clear that after scrutinizing all the documents in the envelop no.1, the finding regarding the eligibility disqualification of the contractor should be published on the tender website as well as on mahapwd.com. It is not the case of the petitioner that the outcome of the opening of the technical bid opened by the respondent no.1 Corporation ought to have been published on the website of the mahapwd.com which has nothing to do with the Corporation.

18. Writ petition is totally devoid of merits and is accordingly dismissed. No order as to costs.

[KAMAL KHATA, J.] **[R. D. DHANUKA, J.]**