

Prajakta Vartak

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

WRIT PETITION NO. 11818 OF 2022

M/s. RKD SCPL (JV)

...Petitioner

Versus

Ministry of Road Transport and Highway & Anr. ...Respondents

Mr. Vishwajit Sawant, Senior Advocate with Mr. Sidhant Dwivedi
i/b. Mr. Prabhakar Jadhav, for the Petitioner.

Mr. Mohamedali M. Chunawala with Mr. Ashutosh Mishra i/b. A. A.
Ansari for Respondent No.1.

Mr. S. B. Kalel, AGP for Respondent-State.

**CORAM : S.V. GANGAPURWALA &
S.G. DIGE, JJ.**

DATE : 15 NOVEMBER 2022

PC:-

1. The respondents floated tender and invited bids for rehabilitation and augmentation of upgradation of existing highway to two lane with paved shoulders (Rigid Pavement) from Design Km 66+000 to Design Km. 82+440 (start of Kolhapur Municipal Corporation, near Phulewadi to Kale), Design Length-16.440 km, Section of Talere Gaganbawada-Kolhapur Road (NH-166G).

2. The estimated cost of the tender was Rs.141.23 Crores.

3. The petitioner submitted the bid. The bid offered by the petitioner was Rs.133.93. The Evaluation Committee considered the bid of the petitioner at Rs.133.93 and held that the lowest bid is 99.99% below the cost of work put to tender and considered the

petitioner as L1. Subsequently, the petitioner wrote a letter to the respondents clarifying that a bid quoted by the petitioner is at Rs.133.93 Crores. Inadvertently, the power of attorney/employee of the petitioner did not write the word “Crores”. The respondents thereafter under the impugned order held that the petitioner though was declared as L1, denied for further process in bidding as such, is debarred for a period of one year from participating/engagement in any future projects/bid of MORT&H projects in Maharashtra of/or to be taken by it either directly or indirectly, effective from the date of circular i.e. 17 March, 2022.

4. According to the learned counsel, the price quoted of Rs.133.93 was an error, it was Rs. 133.93 Crores and such a drastic action could not have been taken by the respondents.

5. We have heard learned counsel for the respondent No.1 and the learned AGP.

6. It is submitted by the respondents that the petitioner consciously quoted the rate as “133.93”. It was not open for him to deviate it subsequently. The consequences of the petitioner being L1 and not proceeding further is detailed in the tender document. The authorities have not committed any error in issuing impugned circular.

7. We have considered the circular impugned by the Petitioner.

8. In the tender, the estimated project cost is Rs.141.23 Crores. The bid of the petitioner referred to as Rs.133.93. The petitioner

immediately wrote a letter to the respondents that the word “Crores” is inadvertently left out and the petitioner had quoted the rate as Rs.133.93 Crores.

9. Perusal of the tender, the estimated cost, it would be reasonable to accept that no person would bid at Rs.133.93. The explanation of the petitioner appears to be probable that the bid was in fact, of Rs.133.93 Crores. The respondents could not have been so irrational not to accept explanation of the petitioner that the word “Crores” was inadvertently left out.

10. In the facts and circumstances of the case, a man of reasonable ordinary prudence would have accepted the explanation of the petitioner. The action taken against the petitioner pursuant to the impugned circular does not stand to reason. It may be that the petitioner is not awarded the contract, however, blacklisting the petitioner for one year for such inadvertent error would be too disproportionate.

11. The explanation of the petitioner is accepted. The impugned circular dated 17 March, 2022 thereby debarring the petitioner and its Director for a period of year from participating/engaging in any future project/bid for MORT&H Projects in Maharashtra of/or to be taken it either directly or indirectly, effective from the date of the circular, is quashed and set aside.

12. Writ petition is accordingly allowed. No costs.

(S.G. DIGE, J.)

(S.V. GANGAPURWALA, J.)