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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13393 OF 2022

Shri Ganesh Infra Partnership Firm ...Petitioner
V/s.
Sawantwadi Municipal Council & Ors. ...Respondents

Mr.Kuldeep U. Nikam with Mr.Prasad Avhad and Mr.Om Latpate for
the Petitioner.

Mr.Harshad A. Sathe with Mr.Omkar Chitale and Mr.Shubham
Gangan i/b Mr.Saurabh D. Butala for the Respondent Nos.1 and 2.

Ms.Jeenal Upadhyay for the Respondent No.3.

Mr.Ravi P. Kadam, AGP for the State – Respondent No.6.

CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATE : 18TH NOVEMBER, 2022.

P.C. :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting aside the decision of the respondent no.1 Municipal Council holding the respondent no.3 qualified in the technical as well as commercial bid in respect of the subject tender and to declare the respondent no.3 ineligible to participate and obtain the said subject tender.

2. In pursuance of the invitation of tender by the respondent no.1 dated 24th August, 2021 for the development of the land reserved under reservation no.46, Shopping Centre as per revised development plan, four bidders submitted their bids, including the petitioner and the respondent no.3.

3. It is the case of the petitioner that though the technical bid of the respondent no.3 was not in compliance with the mandatory condition and more particularly condition no.9(1) i.e. concrete mixer with integral weigh batcher of minimum 8 cum capacity with computerized control with automated water depend arrangement with SCADA, the technical bid of the respondent no.3 was accepted by the respondent nos.1 and 2.

4. It is also the case of the petitioner that insofar as technical bid of the petitioner is concerned, the petitioner has complied with the said condition by submitting the agreement showing the purchase of such equipment on ownership basis. Mr.Nikam, learned counsel for the petitioner invited our attention to the documents submitted by the respondent no.3 and the documents submitted by his client and submitted that the financial bid of the respondent no.3 has been wrongly opened by the respondent no.2.

5. Learned counsel for the respondent nos.1 and 2 on the other hand heavily placed reliance on the Government Resolution

dated 7th March, 2019 stating that the bid shall not be rejected on the petty issues like PTC, Machinery, income tax etc. not having complied with a bidder. He submitted that after receipt of four bids by the respondent nos.1 and 2, the expert Committee found that in view of the said Government Resolution, the technical bid of none of the parties shall be rejected on the ground that the machinery was not owned by the bidder or that the same was not exactly in accordance with the tender condition prescribing such requirement. He submitted that after obtaining the said expert opinion on the technical bids, all four technical bids were held eligible and accordingly their financial bids were opened. He submitted that insofar as three bids are concerned the financial bid of the respondent no.3 was below the estimated price and thus the respondent nos.1 and 2 proposed to issue work order in favour of the respondent no.3.

6. Mr.Nikam, learned counsel for the petitioner, in his rejoinder argument submitted that the condition prescribed at page no.39 is not a condition, which could have been waived by relying upon the Government Resolution being an essential term of the tender, which could not have been relaxed.

7. A perusal of the Government Resolution pressed in service by the learned counsel for the respondent nos.1 and 2 indicates that the employer could not have rejected the tender bid for

noncompliance of some of the bid requirement as set out in the said Government Resolution including machinery. In our view, learned counsel for the respondent nos.1 and 2 is right in his submission that after obtaining the expert opinion on the issue and after considering the Government Resolution, the respondent nos.1 and 2 rightly took a decision to hold the technical bid of the four bidders as eligible and thereafter proceeded to open the financial bid. Admittedly, the final bid of the respondent no.3 being the lowest, the respondent nos.1 and 2 have rightly taken a decision to accept the financial bid of the respondent no.3. We do not find any malafides on the part of the respondent nos.1 and 2 in accepting the financial bid of the respondent no.3 and holding the technical bids of all four bidders as eligible.

8. The writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

(KAMAL KHATA, J.)

(R.D. DHANUKA, J.)