

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2271 OF 2020

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D. S. Madane,
Engineers and Contractors ... **Petitioner**
Versus
Executive Engineer (Civil)
Civil Construction Wing,
Pune & Ors. ... **Respondents**

Mr. Nachiket V. Khaladkar, Advocate for the Petitioner.

Mr. Parag A. Vyas a/w. Mr. Ashok Verma and Ms. Karuna
Yadav i/b. Mr. A. A. Ansari, Advocate for Respondent Nos.1
to 6.

**CORAM: S.V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATED : SEPTEMBER 8, 2022

P.C.

1. The petitioner seeks directions to recall and withdraw the tender notice issued by the Civil Construction Wing of Prasar Bharti for construction of Girls Hostel in FTII Law College Road, Pune. The petitioner further seeks declaration that the bids submitted by the respondent Nos.7 and 8 in respect of the subject tender notice are illegal and that they are disqualified from participating in the tender process with further directions to refloat the tender notice. By way of amendment, the relief is sought to set aside the work order issued in favour of respondents.

2. The learned Counsel for petitioner submits that

respondent Nos.7 and 8 were not qualified to bid in the tender process. The terms and conditions of the tender require the bidder to possess the valid Registration Certificate of any of the authorities enumerated in the tender document. The respondent Nos. 7 and 8 did not possess the said registration document. Even the respondents have admitted in their affidavit that these respondent Nos.7 and 8 did not possess the registration certificate. However, just to favour respondent Nos.7 and 8, the terms of the tender were relaxed after the bids were open. The learned Counsel submits that the rules of the game cannot be changed once the game is played. The respondent Authority could not, in the midst of the tender process, change or/or relax the terms and conditions. The act of the respondent Authority is illegal erroneous and was only to favour respondent Nos.7 and 8. The learned Counsel submits that the petitioner immediately had approached this Court upon finding the illegality, however, because of the Covid-19 pandemic, matter could not be heard. The petitioner was required to amend the petition and challenge the work order issued in favour of respondent Nos.7 and 8. The learned Counsel submits that the delay was not at the behest of the petitioner but due to the aforesaid circumstances.

3. We have heard learned Counsel for the respondents. The learned Counsel for the respondents submits that as on date 90% work is completed. The learned Counsel for the respondents submits that for work beyond Rs.1.5 Crore the necessity registration of certificate does not exist.

4. As per the terms and condition of the tender process, the work is to be completed within eighteen months. The work order, it appears, is issued in February 2020.

5. There cannot be any dispute with the proposition that the terms and conditions of the tender cannot be unilaterally changed during the midst of the process.

6. Some communication has taken place the Authorities about the registration certificate. It appears that the reply was given by the State Public Works Department that they have stopped issuing the registration certificate for certain works.

7. The work order is issued. 90% work is completed. It will not be possible to set the clock back. The position as on today of the work already carried out is irreversible. No fruitful purpose would be served by interfering in the decision of issuing work order to Respondent Nos.7 and 8. If irregularity is committed and the petitioner is put to loss or some damage has been sustained by the petitioner, it is for the petitioner to file a appropriate suit for damages.

8. In view of aforesaid premise, no further orders are necessary. The writ petition, as such, is disposed of. No costs.

(R. N. LADDHA, J.)

(S.V. GANGAPURWALA, J.)