

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 199 OF 2022

Shri. Khushal S/o Ramkrishna Bansod,
..VS..
State of Maharashtra & Ors.,

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S. Y. Deopujari, Advocate for petitioner.
Smt. K. S. Joshi, Government Pleader for respondent Nos.1 to 3.

CORAM : SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.

DATED : 13.01.2022

1. Heard.
2. According to the learned counsel for the petitioner, the impugned order is completely against the spirit of the directions issued by this Court in the first round of litigation which was Writ Petition No.1975 of 2021. He submits that by the order passed on 16.06.2021 in Writ Petition No.1975 of 2021, this Court granted liberty to the petitioner to make a representation to the competent authority for reconsideration of the whole issue and had also granted further liberty to raise all the contentions in the representation if it was made.
3. He further submits that one of the contentions which was made before this Court was giving of an opportunity to the petitioner to submit offline the Labour

Welfare Certificate, which admittedly the petitioner could not upload due to some error in scanning. Learned counsel for the petitioner submits that respondent No.4 did not consider the contentions of the petitioner which were permitted to be raised by this Court and illegally rejected the representation of the petitioner. Learned counsel for the petitioner further submits that as per Government Resolution (GR) dated 17th September, 2019, such opportunity of submitting additional documents and certificates, etc. has been given to a tenderer but, same has been denied to the petitioner.

4. We have gone through the GR dated 17th September, 2019, conditions stipulated in the tender notice and the impugned order. Upon over all consideration of the matter, we find that there is no merit in the submissions made before us on behalf of the petitioner.

5. It is true that the GR dated 17th September, 2019 issued by the Public Works Department, Mumbai makes a provision for affording of an opportunity to a tenderer to give his explanation and submit certificates and additional documents. It is also true that this GR directs that just because the information given by a tenderer along with his bid is incomplete and some documents are not enclosed therewith, a tenderer must not be disqualified at the technical round and further opportunity must be given to such a tenderer to rectify the deficiency or submit additional documents.

6. Now, if the said provision made in the GR is considered against the background of the tender conditions in particular Clause-27 of the tender conditions, we would at once find that the provision is contradictory to what is stipulated in Clause-27. Clause-27 clearly lays down that a tenderer must submit all the documents along with the bid by online mode and that offline submission of the documents would not be permitted. This condition further directs that on failure of a tenderer to submit online any document, such tenderer would be disqualified in technical evaluation. The provisions made in the GR dated 17th September, 2019, give an opportunity to a tenderer to submit offline additional documents and certificates and some explanation, if required on the one hand, the provisions made in Clause-27, however do not give any such opportunity on the other. Thus, Clause-27 of the tender condition is contradictory to the provisions made in the said GR. The legality or otherwise of Clause-27 has not been challenged by the petitioner in this case. It was also not challenged in the earlier round of litigation. Besides, the petitioner has already taken part in the tender process and, therefore, now he cannot be permitted to take a U-turn.

7. Thus, we are of the view that there is no merit in this petition. We make it clear here that while rejecting this petition, we have not made any observations regarding applicability of the GR dated 17th September,

2019, issued by Public Works Department to the tenders invited by a Municipal Council or Nagar Panchayat working under the control of Urban Development Department of the State of Maharashtra, or otherwise.

8. The Writ Petition stands summarily **dismissed**. No costs.

JUDGE

JUDGE

Kirtak