

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

WRIT PETITION NO. 3189 OF 2022

(Varsha w/o Ishwar Dhanjode 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 order

Shri A.M. Tirukh, Advocate for the petitioner.
 Ms. S.S. Jachak, Assistant Government Pleader for respondent Nos. 1 and 2/ State.
 Shri Amol Mardikar, Advocate for respondent No.3.
 Shri R.M. Bhangde, Advocate for respondent No.4.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.

DATE : DECEMBER 22, 2022.

Heard.

The challenge raised in this Writ Petition is to the tender notice dated 17/3/2022 as regards works at Sr. Nos. B1 and B2 issued by Nagar Panchayat, Kuhi, District – Nagpur. A further challenge is raised to the issuance of the work order to respondent No.4 in that regard.

It is the case of the petitioner that under the tender notice dated 17/3/2022, as per the works at Sr. Nos. B1 and B2, roads were to be laid down within the limits of the Nagar Panchayat. It was necessary for the Nagar Panchayat to have followed the directions in the Government Resolution dated 27/9/2018 and especially Clause 5.5(5) thereof. As per that Clause, for works up to Rs.1,50,00000/- that could be allotted to educated unemployed engineers, the ownership of the Hot Mix Plant/ Batch Mix Plant/ Machinery was not required to be insisted upon and the same could be taken on lease. Ignoring the said Clause 5.5(5), the tender notice had been issued and though the works at Sr. Nos. B1 and B2 were below Rs.1,50,00000/-, such relaxation as stipulated was not granted. The Nagar Panchayat had followed the directives of the said Government Resolution with regard to four other works but had not followed the same for the works in question. On this count, the aforesaid challenge has been raised.

According to the Nagar Panchayat, the petitioner is merely a ward member and is not a bidder who has responded to the tender notice. It is stated

that the works at Sr. Nos. B1 and B2 were taken together and therefore the valuation was shown to be worth more than Rs.1,50,00000/-. For the said reason, the Government Resolution dated 27/9/2018 was not applicable. It is further stated that in absence of any allegations of malafides and favouritism, no relief could be granted to the petitioner.

Respondent No.4 submits that the work order in question has been issued to it on 2/9/2022 and pursuant thereto, execution of the work has started on 27/9/2022. An amount of more than Rs.20,00,000/- has been spent in that regard. The locus of the petitioner is also sought to be challenged.

We have heard the learned Counsel for the parties and we have perused the documents placed on record. We find that the petitioner as a ward member has sought to challenge the tender notice dated 17/3/2022 especially with regard to the works at Sr. Nos. B1 and B2. The petitioner is neither a prospective bidder/ bidder nor is it her case that she could not participate in the tender process due to conditions therein. Nevertheless, keeping in view the decision of this Court in *Sau. Jyoti w/o Khomeshwar Chalphe & Ors. Vs. The State of Maharashtra & Ors. [2019(7) ALL MR 505]*, we have examined her contentions. According to the petitioner, the works in question ought to have been shown independently and when they are so shown separately, the value thereof is reduced to below Rs.1,50,00000/-. On the other hand, according to the Nagar Panchayat in its general meeting held on 14/6/2019 while sanctioning the aforesaid works they were taken together and hence they have been shown accordingly in the tender notice. It is seen that except this aspect that the works at Sr. Nos. B1 and B2 ought to be reckoned separately, there is no other reason for the petitioner to challenge the tender notice. The decision taken by the Nagar Panchayat to show both the works together is in view of its earlier resolution passed by the general body. The petitioner contends that she was not a member of the Nagar Panchayat when the said resolution was passed. That however cannot be a reason for her to now object to the course as followed especially when there are no allegations of malafides and favouritism. The works in question have now been issued to respondent No.4 who has also commenced the said works. We also note that the tender notice was published on 17/3/2022.

The petitioner was elected as ward member in March – 2022 after which the technical bids were opened on 28/4/2022 and were scrutinized on 19/5/2022. The financial bids were opened on 26/5/2022 and after the bid of respondent No.4 was found to be successful, this Writ Petition has been filed on 10/6/2022. We find that this aspect is also relevant and cannot be ignored while considering the challenge to the tender notice.

In absence of involvement of any public interest being indicated and the view taken by the Nagar Panchayat to club both the works together is based on its earlier resolution, there is no reason to interfere with the tender process. Interfering in the said process at the instance of the petitioner would result in stalling the work resulting in higher expenditure which is not at all warranted in the facts of the present case. We therefore do not find any reason to exercise extraordinary jurisdiction at the behest of the petitioner.

Thus, the Writ Petition stands dismissed with no order as to costs.

(ANIL L. PANSARE, J.)

(A. S. CHANDURKAR, J.)

SUMIT