

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 468 / 2023

M/s Prakash Mangu Pawar

Through Proprietor,,

Prakash Mangu Pawar

Age : 52 years, Occu: Contractor,

R/o. Vadhne Vasti, Ward No.7,

Shrirampur, Ahmednagar.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
(Jal Jivan Mission Scheme),
Mantralaya, Mumbai.

2. The Chief Executive Officer,
Zilla Parishad, Ahmednagar.

3. The Executive Engineer,
Rural Water Supply Zilla Parishad
Division, Z.P. Ahmednagar.

...Respondents

— — —
Mr. S. P. Kausalye, Advocate for the Petitioner.

Mr. S.B. Yawalkar, Addl.GP for Respondent No.1/State.

Mr. S. B. Parnere, Advocate for Respondent No.2 and 3.

— — —
**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 6 SEPTEMBER 2023.

FINAL ORDER [SHAILESH P. BRAHME, J.] :

. Heard both the sides finally at the admission stage.

2. The petitioner being successful bidder has approached this Court seeking direction to issue work order. Without any just reasons, the work order is withheld from the petitioner is the cause of action.

3. The respondent no.2 published an advertisement inviting the tenders by online process for village Bherdapur, Taluka Shrirampur Dist. Ahmednagar under the scheme Jal Jivan Mission Water Supply. The work of different places was also advertised. The petitioner participated in the tender process and submitted his bid with necessary documents for the work at village Bherdapur, Taluka Shrirampur. There were three bidders, who were qualified in the technical bid.

4. On 04.07.2022, the financial bids were opened and petitioner was found to be the lowest bidder which is evident from Exhibit-D. It is case of the petitioner that he furnished bond and security deposits of Rs.3,54,300/- and was expecting work order. After waiting for considerable period, on 27.12.2022 he made representation to the respondents with a request to issue work order. As there was no response, he has approached this Court by the present petition.

5. The learned Advocate for respondent no.2 and 3 has opposed the contentions and the prayers in the petition by filing affidavit in reply. It is stated by them that the petitioner was found to be lowest bidder for fifteen works including the work of Bherdapur. The respondents received complaint regarding bid capacity of the petitioner. After verification, it revealed that the petitioner was issued work orders for four places namely

village Ranjangaon, Jalgaon, Dimgaonkhairi, Umbhargaon. For work of remaining five places, the guidance was sought by referring the proposal to Finance Department.

6. The Finance Department verified the bid capacity of the petitioner and found that he had exceeded bid capacity in above referred four works. However, the work orders were issued for those places. For remaining five places, the work orders were not issued. For the work at place Padegaon, the petitioner was a sole bidder and it was decided to re-tender, amongst the remaining works of four places. For Bherdapur the bid capacity of the petitioner was found to be insufficient and the procedure contemplated by the Government Resolution dated 27.09.2018 and Circular dated 26.11.2018 was required to be followed for inviting the second lowest bidder for negotiations and allotment of the work.

7. The decision was received from the Finance Department. In view of the advice of the Finance Department the petitioner could not be issued work order. The petitioner was not ready to deposit the additional performance security deposit within eight days. Therefore procedure as contemplated by Government Resolution dated 26.11.2018, 30.11.2018 and Clause 142 of Maharashtra Zilla Parishad Panchayat Samiti Accounting Code was followed. The reference of orders passed in Writ Petition No.2708/2023 and Writ Petition No.2719/2023 was also made to submit that the petitions were not entertained by the High Court.

8. It is further stated that the petitioner was lacking capacity as on

30.06.2022 wherein he was L-1 in fifteen tenders and financial bid had been opened on 29.06.2022. The petitioner is stated to have suppressed the work in hand which he was bound to disclose in order to deduct the said allotted tender amount from the bid capacity. It is further stated that the petitioner was the lowest bidder in fifteen tenders opened on the same day i.e. 29.06.2022 hence other fourteen tenders could not be calculated for deducting the tender amount for evaluating the bid capacity of the petitioner. His tender capacity was verified and noticed thereafter. The work orders were not issued for four places for want of bid capacity of the petitioner. It is prayed to dismiss the petition.

9. The learned Counsel for the petitioner submits that the petitioner was the lowest bidder and he is entitled to receive the work order. He is eliminated arbitrarily giving unsustainable reason of want of bid capacity. The rejoinder is filed. It is stated that after 30.06.2022 work orders of village Nimgaonkhairi, Khirdi, Ranjangaon and Umbargaon was issued to the petitioner. It is further stated that the petitioner was not liable to deposit additional security deposit because he had quoted above the estimated cost of the tender.

10. The learned Counsel would submit that the respondents committed procedural impropriety in depriving the petitioner from the work order. He would rely upon the Government Resolution dated 12.05.2022 to contend that first three works of financial year are to be excluded from calculating the bid capacity and there was no need to disclose two work orders issued in the financial year 2022-23. He would urge that the work

order has not been issued to any other bidder for village Bherdapur and the same be issued to him.

11. We have considered the submissions of the parties. The learned Counsel for the respondents has relied upon the judgment of the Supreme Court in the matter of **M/S N.G. Projects Limited Vs. M/S. Vinod Kumar Jain & Ors., Reported in 2022 LiveLaw (SC) 302**. It is useful to refer to paragraph no.23 which is as under :

“23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”

12. It is useful to refer to **Tata Motors Limited Vs. The Brihan Mumbai Electric Supply & Transport Undertaking (BEST)** and

Ors., reported in AIR 2023 SC 2717. Paragraph No.53 is as follows :

"53. The law relating to award of contract by the State and public sector corporations was reviewed in [Air India Ltd. v. Cochin International Airport Ltd.](#), reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under [Article 226](#) with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere."

13. There are limitations for exercising writ jurisdiction in the tender matter which are well defined by the Supreme Court in the matters cited supra. The wisdom of the respondent-employer cannot be substituted or interfered with in writ jurisdiction. Only on the ground of the arbitrariness, mala fide and procedural impropriety, the interference in the tender matters is permissible.

14. The learned Counsel for the petitioners has submitted that the petitioner is lowest bidder and having adequate capacity to execute the work but still he is eliminated arbitrarily. We have gone through the Exhibit R-1 and R-2 annexed to the affidavit-in-reply of the respondent no.2 and 3. It is undisputed that the petitioner was lowest bidder at nine places. Out of that work orders for four places were issued. For

remaining five places, the matter was referred to the finance Department for the opinion. The Finance Department communicated the opinion that for four places the petitioner was not found to be having the bid capacity to execute the work. If a lowest bidder is found to be exceeding the bid capacity then the procedure contemplated is required to be followed. The second lowest bidder would be called upon to match the prices and he is to be allotted to the work.

15. The respondent no.2 and 3 have demonstrated the procedure adopted by them where the petitioner was found to be not within the bid capacity. They have made a reference to Government Resolution dated 27.09.2018, Circular dated 26.11.2018 and Clause 142 of Maharashtra Zilla Parishad Panchayat Samiti Accounting Code, 1968. We find that the due procedure was followed by the respondents in verifying the bid capacity of the petitioner for the work place in question. The respondents have exercised their wisdom in refusing to issue work order in favour of the petitioner. We do not find that this decision is arbitrary or suffers from any procedural impropriety.

16. We find that the respondent no.2 and 3 being employer is the best Judge to take decision regarding bid capacity of a tenderer to be selected and for whom work order is to be issued. We are not the experts and we cannot compel an employer to change the decision or to substitute the decision. Considering the restrictions for exercising tender jurisdiction, we find that no case is made out to interfere with the decision taken by the respondents for not issuing work order to the petitioner.

17. For the reasons stated above we do not find any merit in the petition. We, therefore, dismiss the petition.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

NAJEEB...