

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

WRIT PETITION NO.364 OF 2023

M/s Rachna Electricals,
Through its Proprietor -
Mohammad Ayyub Mohammad Abdul Gani
Age: 65 years, Occu: Business,
R/o M. Phule Complex, Shop No.25, 26,
Opp. M.S.E.D.L. Circle Office,
Jintur Road, Parbhani

... Petitioner

Versus

1. The Chief Executive Officer,
Maharashtra State Wakf Board,
Aurangabad

2. Imperial Constructions,
Plot No.24, Dargha Road, Galib Nagar,
Parbhani
Through its Proprietor

3. District Wakf Officer
Parbhani

... Respondents

...

Mr. S. S. Deshmukh, Advocate for the Petitioner
Mr. Y. B. Pathan, Advocate for Respondent Nos.1 & 3
Mr. G. R. Syed, Advocate for Respondent No.2

...

**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : 13.01.2023

ORDER: [PER S. G. CHAPALGAONKAR, J.]

1. By way of present writ petition, the petitioner seeks to challenge the work order dated 04.01.2023 issued by Chief Executive Officer, Maharashtra State Wakf Board / respondent no.1 in favour of Imperial Constructions /

respondent no.2 in pursuance of the Tender Notice inviting bids from the contractors for providing temporary electrification, decoration and further supply of electricity to the police camp.

2. The petitioner has articulated relevant prayer clause – (B), which reads as under :-

“(B) By issuance of appropriate writ or order in the like nature quash and set aside the impugned work order dtd.4/1/2023 issued by the respondent no.1 in favour of the respondent no.2 and further forbear the respondent no.3 from accepting the amount from the respondent no.2; and for that purpose issue necessary directions.”

3. The respondent no.1 / Chief Executive Officer, Maharashtra State Wakf Board, Aurangabad floated a tender notice inviting bids from the contractors. The description of the work for which the tender is floated reads as under :-

“tender inviting the bids from the bidders for providing temporary electrification and decoration VIP tent and further supply of electricity to the police camp.”

4. The schedule under tender notice provides for the sale of tender from 21.12.2022 to 30.12.2022. The date fixed for submission and opening the bids was 02.01.2023. In response to the said tender notice, contractors submitted respective tenders in two envelopes. The petitioner as well as respondent no.2 were qualified in technical bid. The respondent no.1 accepted the tender of respondent no.2 and issued the impugned work order dated 04.01.2023.

5. Mr. Sachin Deshmukh, the learned advocate appearing for the petitioner would submit that respondent no.1 ought to have scrutinized the bid submitted by respondent no.2 in terms of the conditions stipulated in the tender notice.

He would submit that in absence of work done experience certificate, the bid of respondent no.2 could not have been accepted. He would further submit that the notice inviting tender specifically provides that the bidder is required to have work experience certificate. However, ignoring the said condition, the work order is issued to respondent no.2. According to the petitioner, ***“Hazrat Turabul Haq Dargah”***, Parbhani, is under the administrative and supervisory control of respondent no.1. The huge gathering of 8 to 10 lakh people is expected during the “Urs” at the Dargah. As a part of said annual fair, small tin shops, entertainment zones and eateries are established. The work under tender is solicited for the purpose of temporary electrification and decoration for the festive season. For the purpose of ensuring the safety of large gathering during festive season, the condition of work experience assumes significance.

6. Mr. Sachin Deshmukh, the learned advocate for the petitioner would submit that respondent no.2 is non-compliant of mandatory condition stipulated in tender notice. The work executed by respondent no.2 under contract with Maharashtra State Electricity Distribution Co. Ltd (for short “MSEDCL”) is not comparable with the work experience that is expected under the subject tender notice. However, respondent no.1 has erroneously accepted work experience of respondent no.2 while qualifying him in the present tender.

7. Mr. Y. B. Pathan, the learned advocate appearing for respondent nos.1 & 3, while repelling contention of petitioner, would submit that the tender process is conducted in fair manner. The respondent no.2 possesses requisite experience of execution of the work under the tender issued by MSEDCL. He complies the requisite condition under the tender.

8. Mr. G. R. Syed, the learned advocate appearing for respondent no.2 would submit that respondent no.2 is having experience of the works of greater magnitude. He would submit that respondent no.2 has successfully executed larger works under MSEDCL. He would point out that the works executed by respondent No. 2 includes testing, commissioning of Dist. T/F, H.T./L.T. and new service connection works under Hatta Section, Basmath. He invited our attention to the work order dated 29.12.2018 issued by MSEDCL. in favour of M/s Imperial Constructions / respondent no.2. The particulars of the works that had been assigned by MSEDCL to respondent no.2 states as under:-

“Contract for – supply, Transport, Construction Erection, Testing, Commissioning of Dist. T/F, H.T./L.T. and new service connection works etc. Under Hatta Section, Basmath S/Dn. in Hingoli Circle on Full Turnkey Basis “Saubhagya Infra”

Mr. G. R. Syed urged that in fact, respondent no.2 is having better experience than any other bidder. He would submit that the tender condition merely requires work done certificate of temporary electrification. The respondent no.2 has experience of commissioning the works which require better technical skills and equipment as compared to the requirements under the present tender.

9. We have heard the learned advocates appearing for the respective parties. The petitioner is assailing the work order issued in favour of respondent no.2 on the ground that respondent no.2 does not fulfill the requisite criteria of experience for providing temporary electrification and decoration. It is the contention of the petitioner that the condition under tender requires the bidder to submit the certificate of temporary electrification of the

government. However, respondent no.2 does not comply the said requirement. We have perused the documents relied upon by respondent no.2 to satisfy the aforesaid condition. It can be observed that respondent no.2 was allotted the work order for Supply, Transport, Construction Erection, Testing, Commissioning of Dist. T/F, H.T./L.T. and new service connection works under Hatta Section, Basmath in Hingoli Circle. Similarly, respondent no.2 was allotted another work as per work order dated 29.12.2018 under Kurunda-I & II Section, Basmath in Hingoli Circle. The respondent no.1 being satisfied with experience of respondent No.2 indicated in aforesaid documents, accepted his technical bid and issued the impugned work order. It is difficult for us to accept the contention of the petitioner that respondent no.2 is non-compliant regarding the tender condition of work experience.

10. The learned advocate appearing for the petitioner placed his reliance on the judgment of Supreme Court of India in the matter of **Ramana Dayaram Shetty Vs. International Airport Authority of Indian & Others** reported in **1979(2) SCWR 210**, to contend that the in case of non-compliance of mandatory requirements regarding experience, the action of respondent no.1 in accepting the tender of respondent no.2 was discriminatory and violative of equality clause, which is now accepted as rule of administrative law.

11. The petitioner has also relied upon the judgment of the Supreme Court of India in the matter of **Michigan Rubber (India) Limited Vs. State of Karnataka and Others** reported in **(2012) 8 SCC 2016**, to contend that if the process adopted or decision made by the authority is malafide or intended to favour someone, the Constitutional Court is bound to set right such mischief.

12. The petitioner has further relied upon the judgment of Supreme Court of India in the matter of **Jai Bholenath Construction Vs. The Chief Executive Engineer and Others** in Civil Appeal No.4140/2022, to contend that if the technical bid of the respondent has been accepted though he was disqualified, the action of the authority will have to be branded as arbitrary and will have to be set aside by this Court. The learned advocates appearing for the respondents, however, contended that there cannot be dispute about the proposition of law emerging from the aforesaid judgments. However, in the facts of the case, it has no application.

13. The Supreme Court of India in the matter of the **Tata Cellular Vs. Union of India** reported in **(1994) 6 SCC 651** laid down guiding principles which stipulates that, the tendering authority is the best judge to interpret the terms and conditions of the tender and they must be given the requisite latitude for that purpose. It is trite that the Court does not sit as a Court of Appeal but merely reviews the manner in which the decision is made by the authority. Even the Court does not have expertise to correct the administrative decisions or substitute its own decision without necessary expertise which itself may be fallible. A fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. The Courts are also required to keep in mind that quashing of decisions may impose heavy administrative burden on the administration and lead to increase in expenditure.

14. Applying the aforesaid guidelines in the facts before us, it is difficult to accept the contention of the petitioner that respondent no.2 is sans requisite experience or he is non-compliant of the condition regarding the work experience carved in the tender notice. In fact, respondent no.2 appears to have experience of

execution of the works of greater magnitude and the skills while providing service connection works for H.T and L.T lines under the tender issued by the MSEDCL. In absence of *mala fides* or arbitrariness on part of tendering authority the decision of respondent No 1 need not be interfered.

15. In view of the aforesaid discussion, we are not inclined to entertain the writ petition in exercise of the extraordinary jurisdiction under Art 226 of Constitution of India. Hence, the writ petition is dismissed with no order as to costs.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

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