

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

WRIT PETITION NO. 1014 OF 2023

Mohiniraj Constructions
through its Pro.
Ganesh Haribhau Khande
Age – 41 years, Occu. : Contractor,
R/o Mohiniraj Constructions,
Navghan Plaza, jalna Road, Beed. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Water Supply and Sanitation
Department, Mantralaya,
Mumbai-32.
2. The Chief Executive Officer,
Zilla Parishad Office,
Beed, Tq. & Dist. Beed.
3. The Executive Engineer,
Rural Water Supply Department,
Zilla Parishad, Beed.
4. Nilesh Ramdas Bhawar,
Age : Major, Occu. : Business,
R/o At Post Kohini, Tq. Ashti,
Dist. Beed. .. Respondents

Shri Vishal B. Kadam, Advocate for the Petitioner.
Shri S. G. Sangale, A.G.P. for the Respondent No. 1.
Shri P. D. Suryawanshi, Advocate for the Respondent Nos. 2 & 3.
Shri Sayyed Tauseef Yaseen, Advocate for the Respondent No. 4.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 12 OCTOBER 2023.**

JUDGMENT (*Per Shailesh P. Brahme, J.*) :-

. Rule. Rule is made returnable forthwith. With the consent of parties taken up for final hearing at the admission stage.

2. Having participated in the tender process the petitioner is approaching this Court under Article 226 of the Constitution of India with prayers for quashing and setting aside order dated 07.12.2022, revoking the tender notice, for quashing and setting aside the Scrutiny report disqualifying the petitioner from the technical bid and for quashing and setting aside the work order issued in favour of the successful bidder i. e. respondent No. 4.

3. It is the case of the petitioner that under Jal Jivan Mission, the tenders for water supply scheme for 112 villages were floated vide tender notice bearing No. 06/2022-2023 dated 08.09.2022. The petitioner participated in the tender process by submitting bids for various places. Out of them the tender process to the extent of village Lukka Masala, Tq. Georai, Dist. Beed is under consideration in the present matter. For the said place total four bids were received including that of the petitioner. On 05.12.2022, the petitioner and the respondent No. 4 were found to be technically qualified as per the assessment made by the Committee of the respondent Nos. 2 and 3.

4. The financial bids were opened on the same day and the petitioner was declared to be lowest one. He was expecting to receive the work order, however, was surprised to receive letter

dated 07.12.2022 intimating that for the technical reasons the tender process for Lukka Masala was revoked. Thereafter, the respondent Nos. 2 and 3 reopened financial bids on 15.12.2022 and recorded that the petitioner was disqualified. Simultaneously, the respondent No. 4 was declared to be qualified in technical bid which was followed by opening of financial bid. The respondent No. 4 was declared to be lowest/successful bidder.

5. The learned counsel Mr. Kadam for the petitioner submits that the revocation order dated 07.12.2022 is patently illegal and *de hors* the procedure prescribed by the terms and conditions as well as Government Resolution dated 17.09.2018. The respondent Nos. 2 and 3 are estopped from reconsidering the technical and financial bids of the parties and declaring the respondent No. 4 as successful bidder. The learned counsel would submit that instead of resorting to the fresh tender process, the respondent authorities revived the earlier process. He would submit that the decision making process is non transparent.

6. The learned counsel submits that there is violation of principles of natural justice. Without informing any reasons the petitioner was disqualified when on earlier occasion it was declared to be qualified in the technical as well as financial bids. The order of revocation dated 07.12.2022 is non speaking and, therefore, unsustainable. The disqualification of the petitioner is stated to be discriminatory. The petitioner was held to be

eligible and was issued work orders for other places in the same tender process.

7. The respondent No. 2 and 3 have filed affidavit in reply to oppose the pleadings and the prayers of the petitioner. Additional affidavit in reply was also filed to clarify certain aspects of the earlier reply. It is contended that by order dated 07.12.2022 there was no revocation of entire tender process for the village concerned. As there were complaints against the petitioner and to rectify certain mistakes temporarily the process was suspended. The impugned action of the respondents was in consonance with the terms and conditions. The respondent No. 2 and 3 received objection regarding bid capacity of the petitioner after opening of technical and financial bids. The petitioner was called upon to submit the documents to disclose the bid capacity. No steps were taken by the petitioner, hence he was disqualified on 15.12.2022.

8. It is contended that the petitioner was lacking bid capacity. It failed to provide requisite documents. The hearing was conducted on 07.12.2022 and the representative of the petitioner was present. On 15.12.2022 the petitioner was disqualified in the technical bid. Simultaneously, the respondent No. 4 was declared to be qualified. The representation of the petitioner was considered and further enquiry was conducted on 05.01.2023. On 09.01.2023, the final order was passed overruling the objections of the petitioner. On 20.01.2023, the work order was issued to the respondent No. 4. It is contended that there is no

arbitrariness or *mala fides* or procedural impropriety.

9. The learned counsel for the respondent No. 4 adopts the contentions and the submissions of the respondent Nos. 2 and 3. Additionally he points out that the work order was issued on 20.01.2023. The duration of the execution of work is eighteen months. The work has progressed substantially. A letter dated 10.10.2023 issued by Taluka Engineer of WAPCOS Limited is produced on record. It is submitted that there is no merit in the petition and the same is liable to be dismissed.

10. We have considered rival submissions of the parties. We have also gone through the affidavit in reply.

11. The petitioner and the respondent No. 4 were declared to be qualified in the technical bid opened on 05.12.2022. The petitioner was lowest bidder in financial bid assessment. On 07.12.2022 there was written communication of revoking the tender of the place in question. On 15.12.2022 there was reassessment of the technical bids of the parties. The petitioner was declared to be disqualified. The respondent No. 4 was declared as successful bidder and was selected.

12. The learned counsel for the petitioner has invited our attention to the tender condition stipulated in the tender notice, especially condition No. 3 to make out a case that information regarding disqualification was not uploaded on the web portal. It amounts to violation of procedure. He has also invited our

attention to clause No. 4.1 of the G. R. dated 27.09.2018 to submit that due procedure was not followed for disqualifying him. He would also urge that no opportunity was given before disqualifying him.

13. The petitioner has challenged the order of revocation dated 07.12.2022. It appears from the record that after receiving the bids from the parties on 05.12.2022, the respondent Nos. 2 and 3 received complaints against the petitioner in respect of bid capacity. The petitioner did not upload the relevant information which is reflected from the assessment of technical bid arrived at on 05.12.2022. The assessment sheet is placed on record at page No. 45. Though the petitioner was declared to be qualified in the column of bid capacity, there was a remark, "all work in hand not submitted."

14. The petitioner was called upon to submit the documents by sending mail. He did not respond to the mail. No steps were taken to satisfy the bid capacity. It reveals from record that a hearing was conducted on 07.12.2022 by the respondent No. 3. The representative of the petitioner Mr. Khande was present for hearing, but did not submit the relevant documents to overcome the objection to bid capacity. The minutes of the hearing are placed on record at page No. 48 along with the reply. Under these circumstances on 07.12.2022 a communication stating revocation of the bid was addressed by the respondent No. 3. The decision of revocation of the tender though was not properly worded, cannot be said to be arbitrary and illegal.

15. The learned counsel for the respondent Nos. 2 and 3 has tried to justify the order of revocation to be construed as an order of suspension and not revocation of entire tender process. We find that the respondent Nos. 2 and 3 have invoked the powers stipulated by condition Nos. 9 and 18. The condition Nos. 9 and 18 are in Marathi and its translation is as follows :

"9. If at any stage of the tender process or after the approval of the tender, or after issuing work order, if any objections regarding the validity of the document is raised and if the same is proved, the tender of the said tenderer shall be rejected and a lawful criminal action shall be initiated in this regard."

"18. The tender committee/undersigned reserves the right to reject, cancel, reserve or re-tendering any or all of the tenders such received at any stage without assigning any reason and no contractor tenderer can seek any explanation in this regards."

16. The decision of suspension of the tender process cannot be said to be arbitrary and without power. The decision was taken within the wisdom and discretion by the respondent Nos. 2 and 3. We find that the petitioner was given opportunity to cure the defect regarding bid capacity. We therefore do not find any procedural flaw or violation of principles of natural justice in issuing the impugned communication dated 07.12.2022.

17. The next submission of the learned counsel for the petitioner is that the respondents were estopped from reopening the technical and financial bid after revocation of tender process.

We have recorded that on 07.12.2022 there was no revocation of tender process, but it was suspension because of the objections raised to the eligibility of the petitioner. It was taken in tune with the tender conditions. We are of the considered view that the same tender process continued. The petitioner was extended opportunity to cure the defect, but he failed to avail it.

18. The respondent No. 1 raised objection to the eligibility of the petitioner. His bid capacity was reported to be doubtful. The respondent Nos. 2 and 3 have produced on record the documents to show that hearing was also scheduled on 12.12.2022. The representative of the petitioner was present. He was again given an opportunity to repel the allegations or to cure the defect or to satisfy the authorities regarding bid capacity. The minutes of the meeting dated 12.12.2022 records that the representative of the petitioner made no endeavour to satisfy the authorities. Thereafter on 15.12.2022, the petitioner was declared to be disqualified.

19. The respondent authorities being employer have every right to consider the eligibility of the bidders to ensure smooth execution of the work. Despite repeated opportunities, the petitioner failed to overcome the objections in respect of its eligibility. The respondent Nos. 2 and 3 are justified in disqualifying the petitioner in the technical bid. The submissions of the petitioner regarding violation of principles of natural justice cannot be approved.

20. It is a matter of record that on 23.12.2022 the complaint was made by the petitioner against the action of disqualification. That was also enquired into by the respondent Nos. 2 and 3. A hearing was conducted on 26.12.2022. Thereafter, it was postponed to 30.12.2022. On 26.12.2022, the representative of the petitioner was present. On 30.12.2022 nobody was present for the petitioner. On 09.01.2023, it was concluded. On 09.01.2023 an order was passed holding that the petitioner failed to submit the requisite document to qualify bid capacity and the action of his disqualification was declared to be legal and proper. Thus, there is sufficient compliance of principles of natural justice.

21. We have already recorded that before disqualifying the petitioner on 15.12.2022, the petitioner had opportunity to satisfy the authorities. He was apprised of the objections. No endeavour was made to satisfy the authorities. In this scenario only inference which can be drawn is that the petitioner was ineligible and had no requisite capacity.

22. As is pointed out by the respondent No. 4, the execution of the work is under way. The duration of the execution of the work is of eighteen months. Work order was issued on 20.01.2023. At this juncture, we do not think it proper to grant any relief to the petitioner.

23. The petitioner has failed to make out a case of arbitrariness, *mala fides* or procedural impropriety. The learned

counsel for the respondent Nos. 2 and 3 has relied upon the judgment of this Court in the matter of **Khilari Infrastructure Pvt. Ltd. Vs. State of Maharashtra** reported in **2022 (4) BCR 596** and para No. 23 of the judgment of the Supreme Court in the matter of **M/s N. G. Projects Limited Vs. M/s Vinod Kumar Jain** reported in **(2022) 6 SCC 127**. We are bound by the law laid down by the Supreme Court stated above.

24. For the reasons recorded above, we are not inclined to grant any relief to the petitioner. The writ petition is devoid of merits. Same is dismissed. There shall be no order as to costs. Rule is discharged.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/Oct. 23