

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

WRIT PETITION NO. 1892 OF 2023

M/s. Nilkantheswar Build Con
Through its Proprietor
Laxman S/o. Pralhadrao Munde
Age. 42 years, Occ. Contractor
R/o. Near Santoshi Mata Mandir
Conductor Colony, Parli V.
Dist. Beed.

....Petitioner

Versus

- 1) The State of Maharashtra
Through its Secretary
Rural Development Department,
Mantralaya, Mumbai.
- 2) The Chief Executive Officer,
Zilla Parishad, Beed.
- 3) The Project Director
(District Water Supply Scheme)
Zilla Parishad, Beed.
- 4) The Maharashtra Jeewan Pradhikaran
Beed.
Through its Engineer.

....Respondents

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Advocate for the Petitioner : Mr. S.R. Kedar
AGP for Respondent No. 1 : Mr. A.A. Jagatkar
Advocate for Respondent Nos. 2 to 4 : Mr. P.D. Suryawanshi

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

DATED : 17 OCTOBER 2023

JUDGMENT (PER : SHAILESH P. BRAHME, J.) :

1. Rule. Rule is made returnable forthwith with the consent of the parties. Heard both the sides finally.

2. The petitioner participated in the tender process and declared to be successful in technical bid and financial bid. Instead of awarding work order in his favour, the respondents – authorities abdicated the process and issued re-tender notice dated 02.02.2023, which is a cause of action to file present petition. The petitioner is seeking quashment of notice dated 02.02.2022-2023 and direction to comply the earlier tender process by issuing work order to it.

3. The respondent nos. 2 to 4 have contested petition by filing affidavit-in-reply. It is contended that after finding the petitioner as the lowest bidder, a complaint dated 11.01.2023, was received against the petitioner imputing eligibility. The petitioner also made a complaint dated 16.01.2023, against one of the participating party. An enquiry was conducted and hearing was given to the concerned parties. The respondent no. 2 – Chief Officer, preferred to terminate the earlier tender process and decided to go for re-tendering.

4. It is specifically averred in the reply that the petitioner was disqualified as the joint venture agreement was not uploaded online but it was submitted offline. Inadvertently, the petitioner was declared to be qualified in the technical bid. Thus the mistake is rectified by abandoning the tender process which is within the discretion of the tendering authority.

5. Learned counsel for the petitioner submits that the decision of re-tender is arbitrary, shocking and unreasonable. When the petitioner was found to be qualified in the technical bid and lowest offerer in the financial bid, he should have been allotted the work. The procedure adopted by the respondents - Authorities is unfair and suffers from the malafides. He would submit that the respondents - Authorities have resorted to the re-tendering to favour one of the bidders who was rejected in the earlier round. He would further submit that a grave hardship would be caused to the petitioner.

6. Learned counsel Mr. P.D. Suryawanshi, appearing for respondent nos. 2 to 4 have repelled the submissions of the petitioner. The tender conditions are referred to show that it was mandatory to upload joint venture online. The petitioner was not qualified which was disclosed after an enquiry. The tendering authority is a best judge to take decisions in the tender matters to safeguard the interest of the respondent no. 5. According to him, there is no arbitrariness, malafides or favouritism.

7. The parties are ad idem on certain factual aspects. There was e-tender notice issued on 20.12.2022, for allotting work of water supply to various villages in District Beed. There were five participants in the tender process including the petitioner. Except one, all of them were declared to be qualified technically. In the financial bid, the petitioner was found to be lowest bidder and

entitled to receive work order. However, a notice of re-tendering was issued on 02.02.2023 abandoning earlier process.

8. The financial bid was opened on 10.01.2023. The respondents have placed on record the complaint dated 11.01.2023, received by Smt. K.T. Munde. It is alleged against the petitioner that a copy of joint venture was submitted offline which is against the tender condition. He is liable to be disqualified. Simultaneously, the respondents - authorities received a complaint dated 16.01.2023, filed by the petitioner against one of the participating bidder Smt. K.T. Munde, alleging nepotism and disqualification. An enquiry was conducted by the respondent no. 2 - Chief Officer who found substance in allegations.

9. We have gone through the complaint dated 11.01.2023 and 16.01.2023, which are produced along with reply. The minutes of the hearing conducted by respondent no. 2 - Chief Officer, is placed on record. The representatives of the complaining tenderers were present for the hearing. The Chief Officer concluded on 23.01.2023, after hearing the concerned that petitioner was inadvertently, qualified because the agreement of joint venture was not uploaded online. Another tenderer Smt. K.T. Munde is also found to be disqualified. Hence, the tender process is terminated and re-tendering is proposed. We have gone through the memo of the petition. The petitioner has not disclosed the further events which occurred after opening of financial bid. The complaint dated

16.01.2023 was made by the petitioner. Hearing which was conducted on 23.01.2023, was within knowledge and the representative of the petitioner was present. The petitioner should have disclosed these facts. It has not come with clean hands.

10. Learned counsel Mr. P.D. Suryawanshi, has placed on record the entire tender documents across the bar. He would invite our attention to tender condition no. 14 which is as follows :

“14. Submission of tender

Bids must be accompanied with:

- a)
- b)
- c)
- d)
- e) Scanned copy of Joint Venture /Collaboration in prescribed format.
- f)

Bid shall be treated as invalid if scanned copies as mentioned above are not submitted online along with the bid.”

11. The joint venture agreement of the petitioner which is submitted offline is produced on record. The petitioner has not disputed the fact that agreement was not uploaded online. The tender conditions which is stated above clearly indicates that the qualifying documents if not uploaded then the tenderer would be liable for disqualification. The respondents – Authorities have rightly entertained the objection against the petitioner for disqualifying it.

12. We have noticed tender condition nos. 8 and 17 which are on page no. 18 and 19 of the compilation which would give

discretion to the tendering authority to cancel the tender process or to initiate fresh tender process. The respondents – Authorities have power to terminate earlier process and to go for re-tendering. Having objectively satisfied with the disqualification of the petitioner, a decision is taken to terminate the process which cannot be said to be arbitrary and malafide.

13. We have already dealt with the similar type of situation in respect of the tender process of Jal Jiwan Mission which is the subject matter of the present petition. In view of our orders passed in matter of *Mohiniraj Construction, through its proprietor Versus State of Maharashtra and others*, Writ Petition No. 1014 of 2023, judgment dated 12.10.2023. We propose to adopt the same course. We do not find that the petitioner has made out any case for interference.

14. The petition is dismissed. The Rule is discharged.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]