

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2442 OF 2023

1] M/s. Yashshri Construction Company
Through its Proprietor
Sampat S/o Vasant Lavhare,
Age : 40 years, Occu : Contractor,
R/o. Pattiwadgaon, Tq. Ambejogai,
Dist. Beed

2] M/s Yashshri Construction
Through its Partner,
Gajanan S/o Prabhakar Munde,
Age : 40 years, Occu. Contractor
R/o Nagdara Post Ghatnanddur,
Tq. Parali (Vai.), Dist. Beed
(Amended as per Court's order Dt. 2.3.2023)

.. Petitioners

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 Executive Engineer,
(Rural Water Supply),
Zilla Parishad, Beed

5] The Maharashtra Jeewan Pradhikaran
Beed, Through its Engineer

6] Yogesh S/o Ramrao Chavan,
Age : 38 years, Occ. : Contractor
R/o. Ambejogai, Tq. Ambejogai,
Dist. Beed (Amended as per Court's order Dt. 2.3.2023)

.. Respondents

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Advocate for the petitioner : Mr. S.R. Kedar
AGP for the respondent – State : Mr. S.V. Hange
Advocate for respondents 2 to 4 : Mr. P.D. Suryawanshi
Advocate for respondent no. 6 : Mr. S.A. Nagarsoge

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**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : 4 DECEMBER 2023

ORDER (MANGESH S. PATIL, J.) :

The learned advocate for the respondent no. 4 tenders across the bar additional affidavit in reply. It is taken on record.

2. Heard both sides.

3. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondent no. 1, Mr. Suryawanshi waives service for respondents no. 2 to 4 and Mr. Nagarsoge waives service for respondent no. 6.

4. At the joint request of the parties, the matter is heard finally at the stage of admission.

5. The petitioners are challenging the decision of the respondent no. 4 which had floated E-tender for implementation of water supply scheme under Jal Jivan Mission for village Varvati, Taluka – Ambejogai.

6. The learned advocate for the petitioner submits that apart from 10 other bidders, the petitioners as a joint venture, had submitted the bid. Petitioners and two other bidders were held to be technically not qualified. He would submit that the petitioners had complied with

all the requisite criteria. Nothing was intimated to them in spite of the government resolution which required the shortcomings to be communicated so that compliances can be made. The decision to disqualify was taken arbitrarily behind the back. The principles of natural justice were not followed. During pendency of the petition, the work order has been issued to the respondent no. 4 on 23-02-2023. The whole process has been undertaken without following the requisite government resolutions. There was no transparency and the contract has been awarded illegally.

7. The learned advocate for the respondent no. 4, referring to the affidavits in reply would submit that the entire tender process has been undertaken with utmost transparency. The petitioners were aware about the compliances to be made, still, were unable to do so. Particularly, though they were opting for a joint venture / collaboration, requisite documents were not tendered regarding experience of similar work, duly certified by the Executive Engineer. The certificates tendered in respect of previous experience for undertaking similar work did not contain any tender ID which was another requisite contemplated in clause 36 of the tender notice. There was no arbitrariness. The decision was taken strictly in terms of the conditions notified. The petitioners were wholly aware about it. Since they were found not eligible in the technical bid, were rightly disqualified.

8. The learned advocate Mr. Suryawanshi would submit that the government resolution dated 27-09-2018 being relied upon by the petitioner is not applicable to the tenders floated by the respondent no. 4 in its entirety. It is a resolution in respect of the Public Works Department (PWD). It is a matter being undertaken by the respondent no. 4 which is the mission headed by Executive Engineer of the Rural Water Supply department of Zilla Parishad, Beed. Lastly, Mr. Suryawanshi would submit that in the light of the decision in the matter of ***M/s. N.G. Projects Limited Vs. M/s. Vinod Kumar Jain; 2022 (6) SCC 127***, it is in the domain of the employer to take an objective decision as to if a tenderer is eligible or otherwise. This Court is not expected to undertake and adjudicate upon the decision but is only supposed to examine the manner in which the decision has been taken.

9. Having heard both the sides and having perused the record, it is abundantly clear that though a joint venture was permitted, it was expected that there should have been proof regarding the previous work in accordance with the government resolution of the Rural Water Supply Department dated 17-10-2022 and as per condition no. 30 of the tender notice. A copy of this communication dated 17-10-2022 is placed on record along with the additional affidavit in reply filed today. It expressly requires that if a contractor is registered with the Public Works Department, he would be eligible to be registered

with the respondent no. 5 – Maharashtra Jeevan Pradhikaran (MJP) if he had requisite experience and eligibility. The technical bid grading sheet (**Exhibit – B**) demonstrates that the petitioners' was a joint venture. Petitioner no. 1 was registered with PWD and petitioner no. 2 was registered with MJP, nothing is demonstrated to show that the petitioner was registered with MJP or, as indicated in the communication dated 17-10-2022, was eligible to be registered with MJP. No attempt has been made in the petition to demonstrate that the petitioners could derive the benefit of this communication.

10. Apart from this, as has been pointed out by the learned advocate for the respondents no. 2 to 4, the documents which were tendered by the petitioners in respect of the previous experience of petitioner no. 1 did not contain tender ID even when the tender notice expressly required tender ID to be intimated. It is not that the petitioner was oblivious of this fact. The experience certificates which were annexed of petitioner no. 2 expressly mentioned the tender ID but that was not the case in respect of former.

11. If this was the state of affair of petitioners' bid, when the decision has been taken objectively to disqualify then it cannot be said that the decision suffers from any arbitrariness as is being attributed by the petitioners.

12. Suffice for the purpose to observe that in exercise of the powers under Article 226 of the Constitution of India, this Court has limitations in undertaking scrutiny of the decision particularly when, as demonstrated herein-above, no fault can be found in the decision making process. If the petitioners were fulfilling the eligibility criterion, has been considered by the respondents objectively. We cannot substitute our view in the light of the decision in the matter of **M/s. N.G. Projects Limited** (supra), which has been rendered by taking stock of catena of earlier decisions operating in the field.

13. Over and above, there is no demur of the specific stand of the respondents substantiated by certification by an independent agency about almost 80 to 90 % of the work under the contract has already been executed.

14. There is no merit in the petition.

15. The petition is dismissed.

16. Rule stands discharged.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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