

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

WRIT PETITION NO. 5880 OF 2023

Shivsakshi Developers
Through its Proprietor
Sanjay s/o Shivaji Shinde,
Age 44 years, Occ. Contractor,
R/o. Samrat Chowk, Latur,
Tq. & Dist. Latur.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Soil and Water Conservation Department,
Mantralaya, Mumbai-32.
- 2) The District Water Conservation Officer
Soil and Water Conservation Division
Old Collector Office, Shivaji Chowk
Latur Tq. & Dist. Latur.
- 3) M/s. Swastik Construction
Through its Proprietor
Vyankatrao s/o Shamrao Poul
Age 55 years, Occ. Contractor,
R/o. Plot No. 38, Swastik Industries
M.I.D.C. Latur.

... **Respondents**

...
Advocate for the Petitioner : Mr. Tukaram Maruti Venjane
A.G.P for the Respondent No. 1 & 2 : Mr. A.S. Shinde
Advocate for Respondent No. 3 : Mr. Balaji B. Yenge

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

DATE : **21.08.2023**

PER COURT :

Heard. Rule. Rule is made returnable forthwith. At the joint request of

the parties the matter is heard finally at the stage of admission.

2. The petitioner is challenging the decision of the respondent No. 2 who is the District Water Conservation Officer, Soil and Water Conservation Division, Collector Office Latur, rejecting his technical bid for the construction of Babhalgaon Percolation Canal for which tender was floated on 13.04.2023 for which the petitioner had submitted his offer.

3. Learned advocate Mr. Venjane for the petitioner submits that the petitioner's offer was compliant in all respects. There were no deficiencies. So far as the stipulation regarding completion of similar type of work also the petitioner had tendered a certificate issued by the Municipal Engineer of Udgir Municipal Council dated 08.05.2023. However, the respondent No. 2 by his communication dated 19.05.2023 again demanded certificate regarding similar type of work and directed the petitioner to submit it by 22.05.2023 till 6 p.m. Accordingly, the petitioner responded by sending mail on 22.05.2023 at 5.56 p.m. and forwarded two more certificates, one issued by the respondent No. 2 himself in respect of the construction of Pimpria CNB No. 1 and 2 Tq. Latur and one issued by the Executive Engineer of Zilla Parishad (W) Division Latur. Mr. Venjane would submit that in spite of such compliance, the respondent No. 2 has illegally rejected the technical bid on the ground that there was no certificate regarding similar type of work done by him. He submits that no explanation was called from the petitioner and the decision was taken behind his back. The petitioner is capable of performing the work and still his offer has been turned down illegally and instead has found the respondent No. 3 to be eligible.

4. The learned advocate Mr. Venjane places reliance on the following decisions :

(1)Montecarlo Limited Vs. National Thermal Power

Corporation Limited; 2016 AIR (SC) 4946.

2) Directorate of Education & Ors. Vs. Educomp Datamatics Ltd. & Ors; 2004 (SC) 1962.

3) N.G. Projects Limited Vs. Vinod Kumar Jain and others; (2022) 6 Supreme Court Cases 127.

5. The learned A.G.P. as also the learned advocate Mr. Yenge for the respondent no. 3 by referring to the affidavits in reply submit that the work in question was for construction of C. D. (Cross Drainage) work of Percolation Canal at Babhalgaon Tq. & Dist. Latur. One of the eligibility conditions for the offer was to submit certificate of similar type of work having been performed successfully. It was condition No. 6(ii). They would submit that by virtue of clause 7(b) such certificate of satisfactory completion of one similar work should have been issued by an officer not below the rank of Executive Engineer/District Water Conservation Officer. The documents furnished by the petitioner were not complying with these conditions. One certificate was issued by Municipal Engineer of Udgir Municipal Council. As regards the other two instances, the certificate issued by Executive Engineer was in respect of construction of 4 and 8 class rooms of school buildings. Whereas the certificate issued by the respondent No. 2 was in respect of construction of a Cement Nala Bund and not the work for construction of cross drainage work of percolation canal.

6. The learned A.G.P. would also submits that the work to be undertaken is of a cross drainage having more than 400 cusecs capacity. However, the petitioner could not produce a certificate of similar work and failed in the technical bid. The learned A.G.P. and the learned advocate Mr. Yenge for the respondent No. 3 would, therefore, pray to dismiss the petition.

7. The learned A.G.P. and the learned advocate for the respondent No. 3 also place reliance on the decisions in the matters of **Montecarlo Limited**

(supra) as well as N.G. Projects Limite (supra).

8. We have considered the rival submissions and perused the papers.

9. Except the eligibility criteria pertaining to certificate regarding successful completion of a similar work there is no dispute between the parties. Consequently, the dispute boils down to consideration of clause 6(ii) and clause 7(b) of the tender document. Both the sides have placed on record the tender document. Condition 6(1)(ii) and condition 7(b) read as under :

“6 Submission of documents :

i. Letter of transmittal and valid registration Certificate.

ii. The contractor/applicant/bidder shall have to submit online details of the works of similar type work and its magnitude carried out by him as per Appendix-A along with necessary certificate/s from competent authority.

Certificates should be certified by the officer, rank not below than Executive Engineer/District Water Conservation Officer.

7. Contractors registered with Public Works Departments with due validity for registered, shall furnish following scanned certificates along with the e-tender.

b) Certificate of satisfactory completion in respect of at least one similar work executed on contract in Government Organization issued by not lower than Executive Engineer/ District Water Conservation Officer (in charge of the work) e.g., Government of Maharashtra in Water Resources Department/Water Conservation Department/Zilla Parishad”

10. There cannot be a dispute about the fact that the work to be performed was construction of C.D. of percolation canal at Babhalgaon Tq.

& Dist. Latur. As regards the experience, the aforementioned conditions clearly expected the bidder to submit the details of the similar type of work and its magnitude further requiring the certificate regarding its satisfactory completion in Government organization issued by a person not below the rank of Executive Engineer/District Water Conservation Officer.

11. We have gone through all the three certificates produced by the petitioner one of which was annexed to the offer document and the other two subsequently furnished pursuant to the mail received from the respondent No. 2. As far as the certificate annexed to the bid document, it was issued by the Municipal Engineer and describes the work done by the petitioner in respect of construction of drainage, bridge and concrete roads whereas the certificate issued by the respondent No. 2 was in respect of construction of Cement Nala Bund and the third one was issued by the Executive Engineer, Zilla Parishad in respect of construction of class rooms. If based on such previous experience of the petitioner, the respondent No. 2 has now reached a subjective satisfaction that the works, the instances of which the petitioner was quoting were not similar works, we cannot substitute our own views in that respect. Suffice for the purpose to bear in mind the observations of the Supreme Court in the matter of **Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and another; 2016 AIR (SC) 4305** and particularly the observations in paragraph No. 13 which read thus :

“13. In other words, a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision.”

12. Pertinently, even the following observations from the matter of

Afcons Infrastructure Limited (supra) would be eloquent :

“We may add that the owner of the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional Courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given.”

13. Bearing in mind the aforementioned limitations for this Court, when the respondent No. 2 found the previous instances relied upon by the petitioner regarding the work performed by him being not similar work as is to be undertaken pursuant to the tender document, it would not be permissible for us to elaborate further. The subjective satisfaction of the respondent No. 2 would prevail.

14. Besides, the petitioner has not been attributing about the decision making process having been vitiated by some *mala fides* or arbitrariness with an ulterior motive to either keep him away from the work or to allot it to the respondent No. 3 for some extraneous considerations. These being the few other considerations as noted in the matter of **N.G. Projects Limited (supra)** in paragraph No. 22, the petition fails. Paragraph No. 22 reads thus :

“22. The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e. not satisfying

the tender conditions. The writ petitioner was one of them. It is not the case of the writ petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was mala fide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.”

15. In the light of the above, there is no merit in the petition. It is dismissed.

16. Rule is discharged.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-