

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

WRIT PETITION NO.6374 OF 2023

**M/S RAJ CONSTRUCTIONS COMPANY THROUGH ITS
PARTNER VANDANA TUKARAM WATANE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS**

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Advocate for the Petitioner : Shri S.S. Thombre
AGP for Respondents 1 and 4/State : Shri S.G. Karlekar
Advocate for Respondents 2 and 3 : Shri P.D. Suryawanshi

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**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 23rd June, 2023

Per Court :-

1. The Petitioner has put forth prayer clauses B, C, D
and E as under:-

“B) By issuing a writ of mandamus/certiorari, orders, directions or any other appropriate writ in the like nature, the impugned notice dated 3rd May, 2023 issued by the Respondents/authorities thereby again inviting e-tenders from the bidders to carry out the work of water supply scheme at villages Yousufwadgaon, Jawalban and Aanandgaon (Sa.), Tq. Kaij District Beed under Jal Jeewan Mission, (JJM) 2022-2023, may kindly be quashed and set aside.

- C) *By issuing a writ of mandamus/certiorari, orders, directions or any other appropriate writ in the like nature, the respondents/authorities may kindly be directed to issue work order in favour of the petitioner pursuant to acceptance of its E- tender for carrying out constructions of Water supply Scheme at villages Yousufwadgaon, Jawalban and Aanandgaon (Sa.), Tq. Kaij District Beed (under Jal Jeewan Mission 2022- 23);*
- D) *Pending hearing and final disposal of this writ petition, the respondents/authorities may kindly be directed to issue Work Order in favour of the petitioner pursuant to acceptance of its E-tender for carrying out constructions of Water supply Scheme at villages Yousufwadgaon, Jawalban and Aanandgaon (Sa.), Tq. Kaij District Beed (under Jal Jeewan Mission 2022-23), and for that purpose, issue necessary orders;*
- E) *Pending hearing and final disposal of this writ petition, the impugned E-tender notice dated 3rd May, 2023 issued by the Chief Executive Officer, Water Supply Scheme, ZP, Beed, may kindly be stayed, and for that purpose, issue necessary orders;”*

2. In this matter, it is undisputed that the Petitioner is L-1 bidder. He complied with all necessary requirements after being granted the tender vide the communication dated 28.02.2023 addressed to the Chief Engineer, Rural Water Supply Department, Zilla Parishad, Beed.

3. It is noteworthy that the State Government issued the Government Resolution dated 04.09.2020 in respect of

implementing the Jal Jeevan Mission scheme. As the tenders were called in response to the tender notice published on 27.02.2023, the Petitioner and many others put forth their bids, being registered contractors. The Petitioner was held to be L1 bidder with 11.16 lesser rates as quoted by other bidders. The FDR bond, security deposit as well as additional security deposit were tendered on 28.02.2023. Suddenly, the Zilla Parishad issued a fresh e-tender notice dated 03.05.2023 when the Petitioner was expecting the work order.

4. The affidavit in reply filed by Sunildatta Bhagwat Dhabekar, In-charge Executive Engineer, Rural Water Supply Department, Zilla Parishad, Beed, indicates that the only reason due to which the Petitioner's bid was recalled and the tender process was cancelled, was that he did not have an appropriate experience certificate. This deficiency was taken into account for cancellation of the tender.

5. The learned Advocate for the Zilla Parishad draws our attention to the communication dated 19.04.2023 addressed by the Chief Executive Officer, Zilla Parishad, Beed, to the District Collector, Beed and the Executive Engineer, Rural Water Supply Department. It makes a mention that the experience

certificate issued to the Petitioner by the Gramsevak, Gram Panchayat, Lahuri, Taluka Kaij, District Beed, is illegally issued and he had no reason or authority to indulge in issuance of such a certificate.

6. We have perused the tender document dated 03.05.2023, more particularly clause 3 under the caption “निविदा भरण्याची कार्यपद्धती :- (१ तांत्रिक लिफाफा)”, which reads as under:-

“शासकीय/ स्थानिक स्वराज्य संस्थेकडे काम केलेले असल्याच्या नोटीस मधील समाविष्ट कामानुसार सारख्या कामाच्या अनुभवाचा दाखला (Components in project, Experience required for प्रमाणे) अपलोड करावे लागेल. तसेच नगरपरिषद/ महानगरपालीका यांचे कडील अनुभव दाखले (Work Done Certificate) मुख्याधिकारी यांची सही असली तरी कार्यकारी अभियंतायांची प्रति स्वाक्षरी असल्याशिवाय ग्राह्य धरण्यात येणार नाही.”

7. It is, thus, obvious that the first sentence is not connected with the second sentence. The first sentence mentions that those bidders/tenderers, who have performed such project work in the Government/local bodies, will have to upload an experience certificate. It is not mentioned as to who should issue such a certificate. The second sentence pertains to the Municipal Council/ Municipal Corporation tender work and it is mentioned

that the Chief Officer has to sign and issue the experience certificate along with the counter signature of the Executive Engineer so as to render credibility to the experience certificate.

8. The learned Advocate for the Petitioner raises an issue that if some contractors have performed work for the local bodies, the Chief Officer or the Executive Engineer would not issue them a experience certificate as they have not performed the work in the Municipal Council or the Municipal Corporation. Hence, a certificate from an officer connected with the local bodies will have to be procured only to indicate that the contractor has performed similar work. He further submits that the certificate is only meant for giving a proof of having performed such contractual work. Clause 3 does not make any mention with regard to those contractors, who have undertaken the Government contracts with local bodies, Village Panchayats or Gram Panchayats, as such contractors cannot get the certificates issued by the Chief Officer of the Municipal Council.

9. We are referring to the clause at dispute which is reproduced herein above. It contains two sentences. The second sentence indicates that those who have performed such contractual work with the Municipal Council or the Municipal

Corporation, should acquire an experience certificate signed by the Chief Officer and the counter signature shall be obtained from the Executive Engineer, naturally associated with the said Municipal Council or the Corporation. Admittedly, the first sentence is with regard to the similar contractual works performed by the contractors for the Government / Local bodies. There is neither a Chief Officer over such Local Bodies/ Gram Panchayats (local self Government) nor the Executive Engineer is associated with such Gram Panchayats. The language of clause-3 does not indicate that the first sentence is connected with the second sentence to mean that every contractor shall acquire an experience certificate from the Chief Officer with the counter signature of the Executive Engineer. The said clause is, therefore, ambiguous to the extent of the first sentence pertaining to the Government / local bodies (Gram Panchayat) works. Even the second sentence has a defect. The contractors, who have performed the works for the Municipal Corporation, cannot approach the Chief Officer of the Municipal Council. It should have been provided that they should approach the Deputy Commissioner or the Commissioner of the concerned Corporation and then obtain a counter signature from the

Executive Engineer associated with that Corporation. Insofar as the first sentence is concerned, there is no dispute before us that the Gramsevak in relation to the Gram Panchayat, could not have issued the experience certificate.

10. The learned Advocate representing the Zilla Parishad submits that, for all purposes, the Gram Panchayat is under the Zilla Parishad. However, he concedes that this clause 3 does not indicate that, in such a case, the Chief Executive Officer of the Zilla Parishad can issue an experience certificate.

11. In the light of the above, we find the following discrepancies with regard to clause 3:-

(a) It is unclear as to who should issue an experience certificate to those contractors who have worked on the projects associated with the local bodies/ Gram Panchayats.

(b) It is also ambiguous as to who would issue an experience certificate to those who have performed the contractual projects in relation to the Municipal Corporation as the Chief Officer will have no connection with, either the Zilla Parishad's contractual project work or of the Corporation.

(c) If the Chief Officer of the Municipal Council has to issue an experience certificate, to be counter signed by the

Executive Engineer, it is unclear as to whether, such Chief Officer would issue the certificates even to the contractors who have performed the work with the Municipal Corporation or the Gram Panchayat.

12. The Petitioner contends that, the impugned order dated 19.04.2023 issued by the Chief Executive Officer, Zilla Parishad, Beed, has not been conveyed to the Petitioner immediately after the said order was issued. Nevertheless, the decision cannot be faulted as it is nowhere provided in clause 3 that the Gram Sevak can issue an experience certificate. No doubt, the Petitioner's experience certificate has been countersigned by the Executive Engineer. Nevertheless, considering the discrepancies recorded by us herein above, on the one hand, clause 3 is rendered defective at least to the extent of the contractors, who have been performing the works with the Gram Panchayats and the Municipal Corporation and on the other hand, clause 3 does not authorise the Gramsevak to issue the certificate.

13. For these reasons, we would not interfere in the impugned order passed in this petition. But we find it appropriate

to direct Respondent Nos.1 and 2 to immediately carryout rectification in clause 3 and draft it properly so as to enable the contractors, who worked at different levels on public projects with the Gram Panchayats, Municipal Councils and Municipal Corporations, etc., to have clarity while seeking experience certificates from the particular authorities who are conversant with the works done by the these contractors.

14. We are informed that the impugned new tender document dated 03.05.2023 carries the same defective condition. This will lead to an anomaly and further complications as we find in this case. If the Petitioner's bid is accepted as L1 bidder and the work order is not granted and the tender is cancelled only because his experience certificate is said to be defective, we do not find any wisdom in clause 3 being repeated in the new tender, which is again going to cause hindrance to those contractors who have been undertaking contractual works with the Gram Panchayats.

15. In view of the above, with such deficiency, which has crept into clause 3, having been maintained by the authorities while issuing the new tender, we deem it appropriate to entertain this petition to the extent of quashing the new e-tender dated

03.05.2023 since it carries the same deficient clause 3.

16. **This Writ Petition is, therefore, partly allowed** only to the extent of quashing the new e-tender dated 03.05.2023. We grant liberty to the concerned authorities to ensure that clause 3 is properly drafted so as to remove all ambiguities and deficiencies and render clarity as to which contractor will have to take an experience certificate from which authority, keeping in view that the Executive Engineer either of the Municipal Council or the Municipal Corporation should also be clarified in the said clause. With such amendments being carried out, Respondent Nos.1 and 2 would be at liberty to advertise a fresh e-tender notice.

17. We leave it to the wisdom of Respondent No.1 to issue appropriate guidelines and remove the ambiguities as noticed above.

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(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)