

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

WRIT PETITION NO. 8539 OF 2023

Mahesh Jagannath Sonwane,
Age 30 years, Occ. Engineer/Contractor,
R/o. Ashti, Tq. Ashti,
Dist. Beed.

....Petitioner

Versus

- 1) The State of Maharashtra,
Through its Principal Secretary,
Water Supply & Sanitation Department,
Mantralaya, Madam Kama Road, Mumbai-32.
- 2) The Chief Executive Officer,
Zilla Parishad, Beed.
- 3) The Executive Engineer,
Rural Water Supply Division,
Zilla Parishad, Beed.
- 4) Rani Shivaji Jadhav,
Age. 34 years, Occ. Govt. Contractor,
R/o. Gramsevak Colony, Nagar Road,
Beed, Tq. & Dist. Beed.

....Respondents

...
Advocate for the Petitioner : Mr. V.M. Chate
GP for Respondent No. 1 / State : Mr. D.R. Kale
Advocate for Respondent Nos. 2 & 3 : Mr. P.D. Suryawanshi
Advocate for Respondent No. 4 : Mr. A.N. Nagargoje
...

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

DATE : 09 OCTOBER 2023

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

1. Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties, this matter is heard finally.

2. The petitioner has filed this petition for following reliefs:
 - i. To recall order dated 12.06.2023 passed in Writ Petition No. 6134 of 2023 ;
 - ii. To quash work order dated 20.06.2023, issued in favour of respondent no. 4 ;
 - iii. To quash the disqualification of the petitioner from the technical bid ;
 - iv. To proceed with the tender process bearing E-tender notice no. 31/2023-2024.

3. The petitioner has sought leave to delete the first prayer of recalling order dated 12.06.2023, passed in Writ Petition No. 6134 of 2023. The matter is considered for remaining prayers.

4. The petitioner and other six tenderers participated in tender process bearing E-tender notice No. 24/2022-2023 for the work of Water Supply Scheme to the villages Gaikwadi and Bharatwadi, Taluka Patoda, District Beed. The petitioner was declared to be disqualified as per assessment conducted on 19.05.2023. The present respondent no. 4 and one Wasim Sayyad were declared to be qualified in the technical bid. Thereafter, in the financial bid the respondent no. 4 was declared to be successful because Wasim Sayyad tendered his consent in favour of the respondent no. 4. On 20.06.2023, work order was issued to the respondent no. 4.

5. The tender process was recalled by the respondent no.3. A fresh tender notice bearing no. 31/2023-2024 was floated on 18.05.2023, for the self same work. The petitioner and others participated in the same. The technical bid was to be opened on 09.06.2023. An order of recalling earlier tender process was questioned by the petitioner in Writ Petition No. 6134 of 2023. By order dated 12.06.2023, High Court quashed the order under challenge as it was non speaking and the subsequent tender notice was also quashed.

6. It is the case of the petitioner that his technical bid was found to be non responsive in the earlier tender process due to objection that there was no signature of the Competent Authority on the notarized document (affidavit of petitioner). The petitioner received a mail on 03.04.2023, from the respondent no. 3 raising objection to the affidavit and calling upon him to cure the defect within 24 hours. It was replied immediately by the petitioner, seeking some more time to cure the defect considering holidays. The grievance of the petitioner is that there was no further communication made to the petitioner. According to him, the objections are *ex-facie* wrong and it was designed to eliminate the petitioner.

7. Learned counsel for the petitioner would submit that respondent no. 3 was acting in collusion with the respondent no. 4.

The respondent no. 4 was favoured despite her disqualification and there was discrimination in selecting the respondent no. 4. He would submit that it has been surfaced in the affidavit-in-reply that a political pressure was exerted to favour the respondent no. 4. Learned counsel submits that no adequate time was granted to the petitioner to cure the defect and there is a violation of principles of natural justice.

8. Learned counsel for the petitioner submits that there are mala fides in disqualifying the petitioner and selecting the respondent no. 4. He would submit that though work order is issued, the work has not been progressed substantially. He would urge that the respondent no. 4 is disqualified considering her work capacity and the cost of the work. He would submit that the petitioner was kept in dark and clandestinely work order was issued on 20.06.2023 to the respondent no. 4. The financial evaluation summary details were uploaded on 28.06.2023. Before that the work order was issued on 20.06.2023, which exhibits arbitrariness.

9. The claim of the petitioner is contested by the respondent nos. 2 to 4 by filing distinct affidavit-in-reply. It is contended by the respondent nos. 2 and 3 that opportunity was given to the petitioner to cure the defect by sending mail. No curative steps were taken by him and the further steps are taken to by selecting respondent no. 4. It is stated that agreement was

executed by the respondent no. 4 and the formalities were completed. After the intervention of the High Court in Writ Petition No. 6134 of 2023, earlier process restored. The work order was issued on 20.06.2023, in favour of the respondent no. 4.

10. The respondent no. 4 justified the action of the respondent nos. 2 and 3. It is stated that the rates quoted by the respondent no. 4 and one Wasim Sayyad were identical in the earlier tender process. Due to no objection issued in writing by Wasim Sayyad, the respondent no. 4 was declared to be successful in the tender process. Learned counsel for the respondent no. 4 would submit that substantial work has been completed after issuance of the work order. A certificate to that effect is placed on record to disclose the progress of the work. According to him, the decision making process of the respondent nos. 2 and 3 is in accordance with the terms and conditions of the tender.

11. Both the learned counsels appearing for the respondents would submit that there are no mala fides, arbitrariness or procedural impropriety in selecting the respondent no. 4 or disqualifying the petitioner. The reliance is placed by them upon the judgment rendered by the Supreme Court in the matter of *M/s. N.G. Projects Limited Versus M/s. Vinod Kumar Jain and others*, **2022 (6) SCC 127**.

12. Before dealing with the merits of the matter, it is necessary to clarify that the subsequent tender process commenced vide tender notice no. 31/2023-2024, has been terminated by order dated 12.06.2023, passed by High Court in Writ Petition No. 6134 of 2023. The petitioner has already deleted the prayer for recalling the order dated 12.06.2023 passed in Writ Petition No. 6134 of 2023. The earlier tender process has been restored in which the petitioner was found to be non responsive in technical bid. The validity of the earlier tender process falls for our consideration in the present matter.

13. Having heard rival submissions of the parties, we propose to deal with the disqualification of the petitioner first. The assessment of the technical bid is placed on record which is at page no. 86. The reason assigned for disqualifying the petitioner is as follows :

“नोटारीवर सक्षम प्राधिकारी यांची स्वाक्षरी दिसून येत नाही.”

14. The affidavit which is uploaded by the petitioner along with his tender is produced on record which is at page no. 49. The respondent no. 3 raised objection to this document and called upon the petitioner to cure the defects.

15. The perusal of the affidavit at page no. 49 shows that there is no date, no verification, no registration number, no

signature of the notary. Only two signatures are appearing on the document one that of the petitioner and another of Ratnadeep B. Nikalje, Advocate and Notary as an attestation. This document does not reflect the details of affiant, the date when it was sworn and identification. The document appears to be incomplete and suspicious. The respondent nos. 2 and 3 have rightly raised objection for such absurd document. Our attention is invited to the terms and conditions of the tender notice. The clause no. 4 of manner of filling up the tender which is at page no. 23 contemplates submission of affidavit in a prescribed formats.

16. The petitioner was issued mail on 03.04.2023, calling upon him to cure the defect. The petitioner received the mail but no attempts are made to remove the defects. The petitioner has never submitted the affidavit in prescribed format. No such affidavit is produced on record along with this petition. Today also there is non compliance. As against that, we are shown the affidavit submitted by the respondent no. 4 which we find is in prescribed format. We do not find any fault in disqualifying the petitioner in the technical bid.

17. The grievance of the petitioner is that no opportunity was extended to him and the disqualification was strategic. It is submitted that after the reply by the petitioner given on 03.04.2023, there was no response by the respondent nos. 2 and 3.

We are not shown any provision to extend any opportunity of hearing to the petitioner. The petitioner could have uploaded the affidavit prepared in a prescribed format within the stipulated period. Surprisingly, till this date the petitioner does not possess affidavit in prescribed format. We, therefore, do not find any substance in the submissions of the petitioner.

18. Learned counsel for the petitioner has submitted that the impugned action is actuated by mala fides. We have already recorded that the petitioner was rightly disqualified. We fail to find any material to support the allegations of mala fides. The statements in the affidavit-in-reply at page no. 112 in paragraph no.4, regarding the tremendous political pressure from the supporters of the ruling parties are not sufficient to dispense with the burden to prove malafides. As the order of recalling the tender process is quashed by High Court, we need not examine the circumstances which prompted the decision of recalling the tender process.

19. Learned counsel for the petitioner has tried to persuade us by demonstrating that the conduct of the respondent nos. 2 and 3 is discriminatory. The respondent no. 4 should have been disqualified for the reasons which were assigned for disqualification of other bidders like Nilesh Sanjay Dongre and Popat Sakharam Abdar. The disqualified bidders Mr. Nilesh Dongre and Popat Abdar

have not challenged disqualification. We are of the considered view that the petitioner cannot espouse their cause in the present matter.

20. Learned counsel for the petitioner has drawn our attention to registration certificate of the respondent no. 4 which is at page no. 132. It is stated therein that the work capacity is of Rs. 50 Lakhs. Whereas, the cost of the work allotted to respondent no. 4 is more than Rs. 80 Lakhs. Hence, it is attempted to challenge the competency of respondent no. 4. There is no pleading or the grounds of objection raised in the petition memo by the petitioner. This submission is pressed into service for the first time during the course of the hearing. The respondents had no opportunity to counter the submissions. We are not prepared to entertain off the cuff submissions of the petitioner.

21. The submissions of learned counsel for the petitioner that the elimination of the petitioner was designed to favour the respondent no. 4 is not substantiated. We find that the petitioner has failed to make out a case for interfering in the decision making process of the respondent nos. 2 and 3. The petitioner has failed to satisfy the grounds of arbitrariness, mala fides, procedural impropriety which are *sine qua non* to exercise tender jurisdiction. The response have aptly relied upon paragraph no. 23 of judgment rendered by Supreme Court in the matter of *M/s. N.G. Project*

Limited (supra). Our jurisdiction is restricted in the tender matters by catena of judgment of the Supreme Court. We prefer to rely on paragraph no. 53 of judgment of the Supreme Court in the matter of *Tata Motors Ltd. Versus Brihan Mumbai Electric Supply and Transport Undertaking*, **AIR 2023 SC 2717**.

22. For the reasons stated above, we find that there is no merit in the petition. The petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

spc/