

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

WRIT PETITION NO.10449 OF 2022

Rashed s/o. Sartaj Sayyed
Versus
The State of Maharashtra and others.

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Mr. T.M. Venjane, Advocate for the petitioner;
Mr. A.S. Shinde, AGP for respondent No.1
Mr. Hanumant V. Patil, Advocate for respondent Nos. 2 to 5.

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**CORAM : MANGESH S. PATIL
& S.G. CHAPALGAONKAR, JJ.**

DATE : JANUARY 6, 2023.

ORDER :- [S.G. CHAPALGAONKAR,J] :-

1. The petitioner, a registered contractor has approached this Court under Article 226 of the Constitution of India with the following prayers :-

(B) By issuing writ of mandamus or any other writ in the like nature, be pleased to direct the respondents to issue work orders to the petitioner for the works of 1) proposed construction of B.S. drain at Ansar Nagar Chand Bagwan – Rafik Tailor to Shohel Shaikh, proposed construction of drain at different locations Hatte Nagar & Sale Galli, 2) proposed development of RCC drain and C.D. work at Gul-Market for M.C. Latur, at the earliest, preferably within a period of 15 days from passing order of this Hon'ble Court.

(C) By issuing writ of certiorati or any other writ in the like nature, be pleased to quash and set aside the E-tender notice No.42/2022-23 dated 28.09.2022 for the works of

1) proposed construction of B.S. drain at Ansar Nagar Chand Bagwan – Rafik Tailor to Shohel Shaikh, proposed construction of drain at different locations Hatte Nagar & Sale Galli, 2) proposed development of RCC drain and C.D. work at Gul-Market for M.C. Latur, at the earliest, preferably within a period of 15 days from passing order of this Hon'ble Court.

2. The respondent No.2 – Latur City Municipal Corporation (hereinafter referred to as “LCMC” for the sake of brevity) issued E-Tender Notice No. 99/2021-22 dated 04.03.2022 inviting B-1 Tender for the works from the Contractors registered with Government of Maharashtra.

3. The petitioner responded to said E-Tender notice and submitted his bid for the two works at Sr. No. 4 and 16 amongst in all 34 works enlisted in the E-Tender notice. The work No.4 is regarding construction of BS Drain at Ansar Nagar Chand Bagwan – Rafik Tailor to Shohel Shaikh. Proposed construction of drain at different locations Hatte Nagar & Sale Galli. The work No.16 is proposed development of RCC drain and CD Work at Gul Market for M.C. Latur.

4. On 04.05.2022, the Technical Bid of the petitioner and two others was accepted. The petitioner being the lowest bidder, was expecting allotment of work under the tender.

5. On 20.5.2022, the City Engineer, of LCMC issued a communication to the petitioner stating that the rates quoted by him are above the estimated rates. He was called upon to reduce the rates and make a written communication alongwith analysis of such reduction.

6. On 01.07.2022, the petitioner responded to the said communication and expressed his inability to reduce the rates quoted in his offer stating that rates quoted are below DS rates of the year 2019-2020 and requested to issue the work order as per his original bid.

7. Respondent No.2 – LCMC issued fresh E-tender notice No. 42 of 2022 dated 28.09.2022, thereby inviting fresh B-1 tenders for the subject works. It appears that the petitioner addressed a communication dated 29.09.2022 (dated 28.09.2022) to the City Engineer, LCMC showing his willingness to execute the subject works as per the estimated rates. He further requested to accept his improved offer and issue the work order. However, no action was taken by the LCMC.

8. Mr. T.M. Venjane, learned counsel appearing for the petitioner submits that the petitioner had responded to the E-tender notice issued by the respondent – LCMC. He was qualified in the technical bid and emerged as lowest bidder. Respondent – LCMC ought to have issued the work order in his favour. However, with intention to allot the work to a particular contractor, the fresh E-Tender notice has been issued. Mr. Venjane would further submit that there is no justifiable reason for issuing fresh E-Tender notice when the petitioner was found eligible to execute the work under the tender and found to be the lowest bidder amongst the participating contractors.

9. Mr. Hanumant Patil, learned counsel appearing for the respondent – LCMC would submit that the Tender notice itself contained the clause that the Corporation reserved the right to withdraw the tender. The petitioner has no right to seek the writ of *Mandamus* in such matters.

He would submit that the Tender Notice No. 99 of 2021 was issued based on District Schedule Rates of 2019-2020. The petitioner had quoted excessive rates. The petitioner was called upon to reduce his offer so that tender can be finalized. However, the petitioner refused to reduce the rates and justified his bid stating that his rates were less than the current DSR of 2022-2023. He would also submit that LCMC being a public body, has a right to get executed the work at minimum cost. He would also submit that many other works under the same tender notice are allotted to the contractors who agreed to execute the contracts as per the DSR rates of 2019-2020. He would submit that in the aforesaid background, the fresh E-Tender Notice No.42 of 2022 has been issued. He would also point out that the petitioner has indirectly participated in the fresh E-Tender process through his father-in-law. He justifies the decision of the LCMC stating that, it is in the interest of the public exchequer. To buttress his contentions, Mr. Patil invited our attention to the judgment of the Honourable Supreme Court of India in the matter of *M/s. N.J. Projects Limited Vs. Vinodkumar Jain (2022)6 SCC 127*.

10. At this stage, we remind ourselves of the parameters of jurisdiction to be exercised by a writ court in matters relating to contracts/tenders issued by the public bodies. The reference can be made to the observations of the Supreme Court in the matter of *Afcons Infrastructure limited vs. Nagpur Metro rail corporation limited and another (2016) 16 SCC 818*, particularly, in para Nos. 13, which read thus :-

“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.”

11. The decision of the LCMC, if viewed in the light of the aforesaid observations, would show that it has been taken in the interest of public exchequer. The petitioner had submitted his bid which was 20% above the estimated costs and even the DS Rates of 2019-2020. Though the petitioner was qualified in the Technical bid and also was found to be lowest bidder amongst the participating contractors, it was open for the LCMC to call upon the petitioner to reduce his rates for execution of work. Such exercise was justified, particularly when the other works under the same Tender Notice were agreed to be executed by the contractors as per the DS Rates of 2019-2020.

12. It appears that the petitioner was given opportunity under communication dated 20.5.2022 to submit his revised offer with reduced rates. He responded on 01.07.2022 and reiterated his request to issue work order as per the original rates quoted by him. It also appears that after issuance of fresh E-tender notice No.42 of 2022 dated 28.09.2022, the petitioner submitted communication on next day and offered to execute the work as per the estimated rates. Obviously, the petitioner has given the offer as an after-thought, on getting knowledge of issuance of fresh tender notice.

13. The petitioner alleges that the fresh Tender Notice is aimed to favour the other contractors. However, in the entire petition, there are no details of any such contractor. The pleadings in the petition are sans mala-fides. The omnibus statement alleging favoritism against the LCMC cannot be accepted.

14. We are convinced that the decision taken by the respondent No.2 – LCMC is in the interest of public exchequer. The petitioner has no vested right to seek a writ of *Mandamus* to accept his bid only because he was L-1 Bidder. In that view of the matter, we are not inclined to grant any relief to the petitioner in exercise of writ jurisdiction under Article 226 of the Constitution of India. The writ petition is dismissed with no orders as to costs.

[S.G. CHAPALGAONKAR]
JUDGE.

[MANGESH S. PATIL]
JUDGE.

grt/-