



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

WRIT PETITION NO. 11284 OF 2023

M/s. Pruthviraj Construction,
Through its Proprietor
Vitthalrao s/o Dnyanoba Mule,
Age : 60 years, Occu. Contractor,
R/o. Dawangaon, Tq. Udgir,
Dist. Latur.

....Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Sub-Divisional Officer,
Udgir, Tq. Udgir, Dist. Latur.
3. The Chief Officer,
Municipal Council, Udgir,
Tq. Udgir, Dist. Latur.
4. Ashish Gopalrao Hangarge,
Age : 35 years, Occu. Contractor,
R/o. Nayi Abadi, Near Brahmakumari Temple,
Udgir, Tq. Udgir, Dist. Latur.

....Respondents

AND

WRIT PETITION NO. 11289 OF 2023

M/s. Priyadarshini Construction,
Through its Proprietor
Taher Husain s/o Mainoddin Sayyed,
Age : 50 years, Occu. Contractor,
R/o. Nanded Road, Musa Nagar,
Behind Sanskar School,
Udgir. Tq. Udgir, Dist. Latur.

....Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.

2. The Sub-Divisional Officer,
Udgir, Tq. Udgir, Dist. Latur.
3. The Chief Officer,
Municipal Council, Udgir,
Tq. Udgir, Dist. Latur.
4. Ashish Gopalrao Hangarge,
Age : 35 years, Occu. Contractor,
R/o. Nayi Abadi, Near Brahmakumari Temple,
Udgir, Tq. Udgir, Dist. Latur.**Respondents**

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In both petitions :

Mr. T. M. Venjane – Advocaet for the Petitioner

Mr. S. V. Hange – AGP for respondent nos. 1 and 2

Mr. Parag V. Barde – Advocate for respondent no. 3

Mr. D. P. Palodkar h/f Mr. U.L. Momale – Advocate for respondent no. 4

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

**RESERVED ON : 13 DECEMBER 2023
PRONOUNCED ON : 19 DECEMBER 2023**

JUDGMENT [Per : Neeraj P. Dhote, J.] :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at the stage of admission. Perused the papers.

2. Since the issue involved in both the petitions being similar, both of them are heard together and are being decided by this common judgment.

3. Respondent No. 3 – Municipal Council, Udgir (hereinafter referred to as 'Municipal Council') floated two (2) e-tender notices dated 28.07.2023 for construction of cement concrete roads, nullah and different developmental works under 'Lokshahir Annabhau Sathe Nagri Anusuchit Jati and Navbodhdha Vasti Sudhar Yojana' and 'Vaishyashtyapurna Yojana', respectively. The Petitioners are the proprietary concerns in the field of construction, responded to the said e-tender notice. Following is the brief description of the works.

Sr. No.	Scheme	Estimated cost (in lakh)
1.	Lokshahir Annabhau Sathe Nagri Anusuchit Jati and Navbodhdha Vasti Sudhar Yojana (W.P. No. 11284/2023)	Rs. 09,34,702/-
2.	Vaishyashtyapurna Yojana (W.P. No. 11289/2023)	Rs. 1,22,17,675/-

4. The Petitioners submitted their offers in both these tenders. The Municipal Council carried out further proceeding in the tender notice as per schedule. The Petitioners received the message on their mobile phone that the bid was not qualified. Feeling aggrieved, the Petitioner has approached this Court by filing the present petitions under Article 226 of the Constitution of India, seeking directions to the Municipal Council, Udgir, to qualify them in the technical bid and further permit them to participate in the financial bid for the works. During pendency of these petitions, the Petitioners were permitted to amend the petitions to add the successful bidder as respondent no. 4 and to amend the prayer clause for cancelling the work order issued by the Municipal Council in his favour.

5. It is submitted by the learned advocate for the Petitioners that the Municipal Council has not given any notice to the Petitioners as specified in Government Resolutions dated 29.01.2019, 07.03.2019 and 17.09.2019 which provide that, in case of any doubt, explanation be called from the Contractor and in case of incomplete information, same be called from the Contractor within the specified period. It is submitted that the proposals of the Petitioners came to be turned down only to favour some Contractors. It is submitted that the Petitioners proposal was complete in all respect and clause no. 20 of the e-tender notice provides the window, in case of any difficulty during the technical evaluation for the Contractor to respond to the communication within the specified time or else he will be disqualified from the process. He submitted that in this view of the matter, the petitions be allowed.

6. Respondent no. 3 - Municipal Council filed affidavit-in-reply opposing the petitions. It is contended that during the process of the said e-tender notice, bids were opened on 18.08.2023 and after the scrutiny, it was uploaded. It is contended that the petitioners were technically found unfit for the tenders and therefore the bids of other three tenderers were considered who had offered the lowest costs. It is further contended that the work order has been issued in favour of the successful bidder after executing the contract. It is contended that having lost the contract, the Petitioners have come up

with an afterthought contentions. It is further contended that after 18.08.2023 i.e. from the opening of the tenders, the Petitioners never contacted. The other contentions of the Petitioners are denied. It is submitted by the advocate for the respondent – Municipal Council that the Petitions have no merits and be dismissed.

7. It is submitted by the learned advocate for respondent no. 4, who is a successful bidder, that respondent no. 4 has been awarded the contracts after following the due procedure and since the Petitioners did not qualify for the same, they have challenged the e-tender notices.

8. The law in respect of Judicial review in the tender matters is well settled by catena of judgments. From the respondents side, reference is made to the recent judgment of the Hon'ble Supreme Court in the case of **Tata Motors Limited Versus Brihan Mumbai Electric Supply and Transport Undertaking (BEST) and others** reported in 2023 AIR (SC) 2717; 2023 DGLS(SC) 598. Perusal of the judgment would show that it was in respect of a tender floated by BEST for supply, operation and maintenance of the electric buses. It is held *"this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness*

or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry."

8.1. It is further observed, *"the courts must realise their limitations and the havoc which needless interference in commercial matters can cause. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer."*

8.2. It is also observed *"ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest".*

8.3. It is further observed, *"even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only*

in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere”.

8.4. By referring to the judgment in the case of **Jagdish Mandal v. State of Orissa and others**, reported in (2007) 14 SCC 517, it was further held “*while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters*” and further observed, “*if the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out*”.

9. Coming to the case in hand it is clear from the e-tender notice that all the necessary details were mentioned therein including the dates for submission and the date of opening etc. It also contains the terms and conditions of the process. No doubt, the Petitioner had responded to the respective tender notices and was intimated by a message that technical bids were opened and they were not qualified.

10. During hearing, the learned advocate for the Municipal Council placed on record a chart showing the deficiencies in the Petitioner's bid. It shows that in case of Petitioners E.P.F. registration certificate and challan of last six months, Jio tag photo and certificate were not enclosed. The advocate for the Petitioners tendered on record the copies of the documents i.e. declaration / authority letter for site visit and Jio tagging certificate with the contention that those documents were also submitted with the tender. Along with the reply, the Municipal Council has placed on record the copy of the technical bid evaluation sheets. Perusal of the same show that the Petitioner's bid was lacking E.P.F. registration certificate and challan of last six months, the document in respect of quantity executed and the annexures as mandated and, therefore, he could not qualify the technical evaluation.

11. The copies of documents, which according to the Petitioner have been submitted in the process, show that it is the declaration / authority letter for site visit and jio tagging certificate. Even accepting this for the sake of argument, the technical evaluation sheet shows the deficiency on more than one count.

12. In both the petitions, it is nowhere the case of the Petitioners that the technical bids were rejected to favour a particular person / contractor. A vague statement is made in ground no. iii of the Petitions that the Respondent – authorities only to

favour some contractors, rejected the same without assigning any reason. This general statement is nothing but a hollow contention without any supporting material.

13. It is only when the contract is awarded to successful bidder, the Respondent No. 4 came to be added in the petition being the person who is awarded the said contract. It becomes clear from the reply of the Municipal Council that as the respondent No. 4 was eligible and had offered lowest rates, the work orders were issued in his favour.

14. Taking the case as it is, we are of the considered view that the e-tender process in question does not warrant any interference at the hands of this Court under Article 226 of the Constitution of India, keeping in view the settled position of law in respect of matters relating to the tenders. Hence, we proceed to pass the following order :

ORDER

- [i] The Writ Petitions are dismissed with no order as to costs.
- [ii] Rule is discharged.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

1. After pronouncement of the judgment, the learned advocate for the Petitioners submits that since the interim order has been operating till today, it be extended for a reasonable time.

2. Considering the view we have taken coupled with the fact that the interim relief was only to the effect that any work carried out pursuant to the impugned tender process would be subject to the final outcome of the writ petitions, the request for extension of the interim relief is rejected.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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