

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

WRIT PETITION NO. 112 OF 2022

Santosh Sakharam Chadre .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Devdatt P. Palodkar, Advocate for the Petitioner.

Shri P. K. Lakhotiya, A.G.P. for the Respondent No. 1.

Shri Jagdish G. Toshniwal, Advocate for the Respondent No. 2.

Shri S. S. Thombre, Advocate for the Respondent No. 3.

**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 15TH MARCH, 2023.

FINAL ORDER :

. Heard.

2. The petitioner has preferred the petition with following reliefs.

(B) The Hon'ble High Court may be pleased issue appropriate writ, order or direction in the nature of writ and thereby, quash and set aside the decision of the respondent No. 2 dated 28.10.2021 bearing No. Ja. Kra./Pra. Kra./055267/2021 whereby decision is taken to allot plot no. P-10/1 situated at Chikalthana MIDC, Aurangabad to the respondent no. 3 and further e pleased to quash and set aside consequent allotment order / building permission issued in favour of the respondent No. 3, if any.

(C) The Hon'ble High Court may be pleased issue appropriate writ, order or direction in the nature of writ and thereby quash and set aside the decision of the respondent No. 2 reject technical bid of the petitioner submitted in pursuance to E-tender notice dated 25.01.2019 i.r.o. Writ Plot No. P-19/1, MIDC Chikalthana, Aurangabad and further be pleased to allot the said plot to the petitioner if his financial bid is found to be highest one.

3. The subject matter of the petition is the rejection of the technical bid of the petitioner in the matter of e-auction of a plot of the respondent No. 2/Maharashtra Industrial Development Corporation (for short 'MIDC').

4. The petitioner's technical bid was rejected, which had promoted him to file a petition bearing Writ Petition No. 9190 of 2019. The said petition appears to have been withdrawn on August 08, 2019 as it was claimed by the petitioner that he was given an understanding that the respondent/MIDC had decided re-auction of the suit plot.

5. Thereafter, it appears that, the respondent/MIDC had stalled the tender process resulting into respondent No. 3 preferring Writ Petition No. 10638 of 2019, which was disposed of by this Court vide order dated 31st August, 2021, wherein it is observed by this Court that in case if tender process is to go ahead, same can be done with an intimation to the present petitioner.

6. In the aforesaid background, the contentions of the learned counsel for the petitioner are that the tender document contains a specific condition that the participant must put his digital signature certificate DSC (signing) (Encrypting or Decrypting) for login and submission of E-bid. Accordingly, Mr. Palodkar learned counsel appearing for the petitioner would invite attention of this Court to the terms and conditions of bid. The bidder has to submit two envelopes i. e. Technical Envelop-A and Commercial Envelop-B. According to him Envelop-A contains technical bid which is to be submitted in the form prescribed in Annexure 1. The instructions in the tender document are that submission of Annexure 1 which is in prescribed application form to be duly filled in and stamped as shown therein. In the Annexure 1 according to him, it contains a clause that signature of the applicant with rubber stamp needs to be affixed. According to Mr. Palodkar, the petitioner has submitted Annexure 1 complete in all respect and signed said document digitally. According to him once said document is complete in all respect and has signed same digitally, there is substantial compliance of the mandatory tender condition. He has submitted that on hyper technical ground the technical bid of the petitioner was rejected. He would urge that tender opening instructions if are perused, the same would reflect that the digital signature of the petitioner was available on the website of the respondent/MIDC. It is always open for the respondent/MIDC to verify the same. In addition to above his contentions are if the record which is placed on record from the office of the respondent/MIDC is perused, it is apparent that only

two tenderers have participated in the aforesaid tender process that is the petitioner and the respondent No. 3. According to him so as to have healthy competition once respondent No. 2 has decided to reject technical bid of the petitioner, a decision was taken to re-tender the entire tender. He has drawn support from the office noting of the respondent authorities so as to claim that the decision of re-tender was taken, which had promoted him to withdraw the Writ Petition No. 9190 of 2019 on 08th August, 2019. As such he would urge that the decision of the respondent/MIDC in backing out/not following its own decision of re-tendering is purely with an intention to favour the respondent No. 3 with a biased approach. Apart from above, he would specifically urge that directions given by the Division Bench of this Court while deciding Writ Petition No. 10638 of 2019 on August 31, 2021 were not taken to its logical end thereby intimating the petitioner of continuation of the tender process as the petitioner was only informed about the impugned decision of allotment of plot in question to the respondent No. 3.

7. While countering aforesaid submissions, learned counsel for the respondent No. 2/MIDC and Mr. Thombre, learned counsel appearing for the respondent No. 3/successful tenderer would urge that the tender process is maintained by the respondent No. 2 in complete transparent manner. According to them, envelop containing technical bid of the petitioner even though was submitted, the fact remains that the said document was neither signed, nor rubber stamped, which is a mandatory tender condition as reflected in Annexure 1. As such it is

claimed that the document was not complete in all respect. The authority was justified in rejecting the technical bid of the petitioner. So as to substantiate the aforesaid contentions Clause III of terms and conditions of allotment of plot by e-tender, so also contents of the Annexure 1 is sought to be relied upon. In addition to above, it is claimed that the allotment of plot by accepting tender of the respondent No. 3 is having regard to the fact that the respondent No. 3 has given reasonable offer, which was found to be over and above the upset price fixed by the MIDC. In addition, it is sought to be established from the noting in the file that it was never decided by the respondent authorities to cancel the existing tender process.

8. Mr. Thombre would urge that since there is concluded contract of allotment of plot in favour of the respondent No. 3 by the respondent No. 2, the only remedy to which the petitioner is entitled is of filing a suit and claim compensation/damages. This Court in writ jurisdiction cannot decide contractual rights of the petitioner. So as to substantiate his claim, he would urge that there is concluded contract in favour of the respondent No. 3 as the respondent No. 2 has already executed lease deed after the allotment was finalized by the respondent No. 2 in favour of the respondent No. 3. Apart from the above both the counsel for the respondents would urge that there was proper intimation given to the petitioner in the tender process and entire tender process was conducted in transparent manner. That is being so the petition is liable to be dismissed.

9. We have appreciated the aforesaid submissions.

10. Perusal of the documents which are submitted by the petitioner as are produced on record from page No. 34 onwards in categorical terms justify the claim of the respondents. Said document was neither digitally signed nor rubber stamped. The fact remains that Annexure 1 contains a specific term that “the terms and conditions mentioned in the tender are acceptable to me/us”. In the aforesaid background mandatory condition of accepting terms and conditions mentioned in tender document does not appear to have been accepted/signed and stamped by the petitioner. Since the technical bid envelop submitted by the petitioner does not contain signature of the petitioner, nor his rubber stamp, the respondent No. 2, in our opinion was justified in rejecting the technical bid of the petitioner. Apart from the above, the terms and conditions of the allotment of plot by e-tender process specifically provide about digital signature certificate to be uploaded on e-bidding site, which can be used for login and submission of e-bid. No doubt uploading of the digital signature is permitted to be one of the part of tender condition, however, such digital signature cannot be said to be part and parcel of Annexure 1, as Annexure 1 in categorical terms provides that digital signature with rubber stamp on the same be affixed which certifies that petitioner has accepted the tender condition which he has failed to.

11. Apart from above the tender opening instructions in categorical terms provide for rejection of technical bid, if it is

found that Annexure 1 does not contain the signature and rubber stamp of the person participating or submitting such offer during e-tender process.

12. That being so decision of the respondent No. 2 of rejecting technical bid/envelop of the petitioner cannot be faulted with.

13. This takes us to the next submission of Mr. Palodkar as regards the decision of the respondent No. 2 of cancellation of existing tender and to go for fresh tender. So as to substantiate his claim he has relied on the notings on the file of the respondent No. 2/MIDC. If we appreciate the aforesaid notings in the background of claim put forth by the petitioner, the petitioner in the prayer clauses C has specifically claimed that allotment of the respondent No. 3 be cancelled and the plot in question be allotted to the petitioner. However, it is not his prayer that there may be fresh tendering in the matter having regard to the noting sheet referred by him. In view of above, the contention put forth by Mr. Palodkar, learned counsel appearing for the petitioner that respondent No. 2 should have taken recourse to re-tender process afresh after cancelling existing tender will be of hardly any assistance to him as it is not his case to go for fresh e-tender process and he may be permitted to participate in the same.

14. As regards reliance placed by the petitioner on the order of this Court passed in Writ Petition No. 10638 of 2019 so as to substantiate his claim that he should have been intimated about

the recommencement of tender process, it worth to observe that petitioner has failed to demonstrate any prejudice while making out said point before this Court.

15. Apart from above petitioner is unable to demonstrate *mala fide* or biased act on the part of officials of the respondent No. 2/ MIDC in processing the tender. Said contentions of the petitioner are rejected.

16. The Apex Court in the matter of **M/s N. G. Projects Ltd. Vs. M/s Vonod Kumar Jain and others in Civil Appeal No. 1846 of 2022 decided on March 21, 2022** relying on another judgment in the matter of **Central Coalfields Limited and another Vs. SLL-SML (Joint Venture Consortium) and others** reported in ***(2016) 8 SCC 622*** has observed that a particular format if is prescribed to be complied with by bidder, it is expected of the bidder to stick to said format. Apart from above, in **Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and another** reported in ***(2016) 16 SCC 818***, the Apex Court has held that mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional court to interfere in the tender matters unless threshold of *mala fides*, intention to favour someone, arbitrariness, irrationality or perversity is demonstrated and established in the writ proceedings.

17. Apart from the above, the Court is required to be sensitive on the following issues :

- A. That the petitioner was given fair opportunity to participate in the tender process.
- B. The tender was allotted in favour of the respondent No. 3 by the respondent No. 2 at a price which is higher than the upset price.
- C. There is concluded contract interest between the respondent No. 3 and the respondent No. 2 as the lease deed in favour of the respondent No. 3 is already executed and as such vested right is created in favour of the respondent No. 3 by the respondent No. 2 in relation to the plot in question.

18. In the aforesaid background, this Court is of the view that in contractual matters referred to above, this Court needs to be extra cautious in causing interference in writ jurisdiction. Having regard to the contractual dispute, we do not see any reason to cause interference in exercise of writ jurisdiction in the aforesaid tender matter. Petition as such fails and stands dismissed.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE , J.]

bsb/March 23