

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13995 OF 2023

Vishwambhar S/o Pandurang Tayade,
Age : 42 years, Occu. : Business,
R/o. Shraddha Nagar, Ghirni Road,
Malkapur, Tq. Malkapur,
Dist. Buldhana

.. Petitioner

Versus

- 1] The State of Maharashtra
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
 - 2] The District Collector,
Jalgaon, Dist. Jalgaon
 - 3] The Chief Officer / Administrator,
Municipal Council, Erandol,
Tq. Erandol, Dist. Jalgaon
- Respondents

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Advocate for petitioner : Mr. T.M. Venjane and Mr. Bhushan Mahajan
AGP for the respondent – State : Mr. A.S. Shinde
Advocate for respondent no. 3 : Mr. D.B. Thoke
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**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : 6 NOVEMBER 2023

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is aggrieved by the conduct of the respondent no. 3 in refusing to complete the tender process initiated on 25-09-2023 and instead resorting to a fresh tender process by publishing a Notice Inviting Tender (**NIT**) on 31-10-2023 for the selfsame work.

3. The learned advocate Mr. Venjane submits that pursuant to the NIT published by the respondent no. 3 on 25-09-2023, he had submitted his bid. Technical as well as financial bids were opened. He was found to be the lowest bidder and entitled to have the contract for carrying out the construction. He was called upon to deposit the security money which he did. However, the authorities started insisting for a certificate of registration under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (**EPF Act**). He tried to demonstrate that since there were less than 20 employees in his establishment, it was not necessary for him to have the registration under the EPF Act. However, abruptly the respondent no. 3 abandoned the process and has issued a fresh NIT on 31-10-2023. The decision to abruptly abandon the process, is arbitrary. He was not given any opportunity of being heard. Though the respondent no. 3 has been pointing out that communications were addressed to him, it was never received by him. Those were issued on a wrong E-mail ID. Even otherwise,

pursuant to the Government circular dated 17-09-2019, the petitioner ought to have been extended an opportunity of complying with the deficiency and the petition be allowed. He may be granted some time to comply with the deficiency and furnish the EPF registration certificate.

4. The learned advocate for the respondent no. 3 tenders across the bar affidavit in reply. Referring to the affidavit-in-reply, he would submit that the respondent no. 3 had stipulated a condition of furnishing EPF registration certificate. Instead of complying with that stipulation in the NIT, he merely submitted a declaration that he was not liable to have a registration under that EPF Act. He was called upon to comply by issuing notice to him on 25-10-2023 and 27-10-2023. Since there was no response and since it was a matter of public work, the respondent no. 3 decided to undertake a fresh tender process and published the NIT on 31-10-2023.

5. He would submit that since the petitioner is invoking the jurisdiction of this Court in tender matters, the powers of this Court of undertaking a judicial review are very limited. There are no mala fides and the decision to abandon the first process and to go for a fresh tender is based on the judgment of the respondent no. 3. The petitioner can very well apply again in the fresh tender process and even if the period for submission of the bids in the fresh tender is to

expire by tomorrow, the respondent no. 3 is ready to extend it by a week so that even now the petitioner can participate.

6. Obviously, the scope for judicial review in the tender matters is circumscribed by several decisions of the Supreme Court. It is only in matters, where the decision making process is vitiated being arbitrary or prompted by mala fides that the High Courts are expected to invoke the powers under Article 226 of the Constitution. Suffice for the purpose to bear in mind the decisions in the matters of :

- 1) *Tata Motors Ltd. Vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST)*; 2023 SCC OnLine SC 671**
- 2) *N.G. Project Ltd. V. Vinod Kumar Jain*; (2022) 6 SCC 127**
- 3) *Slippi Construction Contractors V. Union of India*; (2020) 16 SCC 489**
- 4) *Afcon Infra Ltd. V. Nagpur Metro Rail Corp. Ltd.*; (2016) 16 SCC 818**
- 5) *Jagdish Mandal V. State of Orissa*; (2007) 14 SCC 517**

7. As far as the stipulations in the tender document of providing for specific terms are concerned, it is for the author of the tender document to use his understanding and the discretion. This Court cannot examine propriety or otherwise of a specific stipulation in the tender document, like the present one, where there is stipulation of EPF registration certificate. In this respect, one can place reliance on the decisions in the matter of ***Michigan Rubber***

(India) Limited Vs. The State of Karnataka and others; (2012) 8 SCC 216 and M/s. Galaxy Transport Agencies Vs. M/s. New J.K. Roadways; (2020) SCC OnLine SC 1035.

8. Bearing in mind the afore-mentioned aspects at the outset, it is necessary to note that it is not the case of the petitioner that the stipulation regarding providing for furnishing EPF registration certificate was incorporated designedly to favour someone or to deprive him from participation in the tender process. Whether in law, the petitioner is liable to have such EPF registration certificate, cannot be scrutinized while considering his bid. The fact remains that he was supposed to submit EPF registration certification but had failed to do so.

9. True it is that in the light of the Government resolution dated 17-09-2019, opportunity is expected to be extended to the bidders to comply with the deficiencies after opening of the technical bids. However, when even now, the petitioner does not possess the EPF registration certificate, one wonders as to how even if we are inclined to give him an opportunity to do so, his request can be considered to ignore it and still direct the respondent no. 2 to issue him the work order.

10. Interestingly, in spite of the stand of the respondent no. 3 to extend the period for submission of the fresh tender by a reasonable time so that the petitioner can participate, the learned advocate for the petitioner, on instructions, submits that he is not ready to take that chance and insists for decision of the petition on its own merits.

11. Once having seen that it was mandatory stipulation of furnishing the EPF registration certificate, when admittedly, the petitioner does not possess it, when no mala fides are attributable to the respondent no. 3, in our considered view, this Court cannot exercise the jurisdiction under Article 226 of the Constitution.

12. The petition is dismissed.

13. It is made clear that it would always be open for the petitioner, in spite of dismissal of this writ petition, to participate in the fresh tender floated by the respondent no. 3.

14. Rule is discharged.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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