

pdp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 69 OF 2023

Nandkumar Constructions

.. Petitioner

Vs.

The Superintendent Engineer
PW Circle, Kolhapur & Ors.

.. Respondents

Mr. Anil Anturkar, Senior Advocate i/by Mr. Tanaji Mhatugade
for petitioner.

Mr. B. V. Samant, AGP for respondents/State.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: JANUARY 3, 2023

P.C.:

1. The technical bid of the petitioner is rejected. The petitioner had initially filed writ petition bearing No. 15556 of 2022. This Court under order dated 21st December, 2022 directed the respondents to reconsider the bid of the petitioner and the explanation tendered by the petitioner. This Court also further directed the respondents to consider the Government Resolution dated 26th May, 2014 and thereafter to take fresh decision upon technical bid of the petitioner, on its own merits.

2. After remitting the matter to the respondents, the fresh decision has been taken by the respondents holding the technical bid of the petitioner as not responsive. Aggrieved thereby the present writ petition.

3. Mr. Anturkar, learned senior advocate for the petitioner strenuously contends that the respondents have failed to consider

the order dated 21st December, 2022 in Writ Petition No. 15556 of 2022 in its correct perspective. This Court has specifically directed the respondents to consider the explanation in terms of the Government Resolution dated 26th May, 2014, however, in the impugned order, no reference is made to Government Resolution dated 26th May 2014. The said GR has been ignored thereby sitting over the judgment of this Court. The learned senior advocate further submits that as per the said GR the opportunity is available for shifting the plant to the site. The petitioner had agreed to shift the said drum mix plant at the site.

4. It is further submitted by the learned senior advocate that the Circular dated 7th March, 2019 was also relied upon. If the contractor has done similar work earlier, then the tender should not be rejected on technical ground such as PTC/Machinery. The respondents committed the same mistake by not considering the Circular dated 7th March, 2019. The learned senior advocate relies upon the Government Resolution dated 17th September, 2019 and submits that after opening of the technical bid, the opportunity is required to be given to the contractor and if as per the additional information the contractor is eligible, then the financial bid is to be opened. The petitioner herein, on 14th October, 2022 had purchased the new drum mix plant. The same can be installed at the site in question. This aspect ought to have been considered by the respondents. The very purpose of incorporating Clause 6 in the GR dated 17th September, 2019 is that the best possible bid should be eligible, the L1 to be determined and that the person who is competent and eligible should be in a position to participate. Upon purchase of the new drum mix plant, the objection of the respondents that the drum mix plant of the petitioner is at far away distance does not survive. All these aspects are not considered by the respondents.

5. We have also heard the learned AGP.

6. This Court under order dated 21st December, 2022 in Writ Petition No. 15556 of 2022 had directed the respondents to consider the GR dated 26th May, 2014 and also further directed to reconsider the technical bid of the petitioner.

7. Under GR dated 26th May, 2014 the contractor tendering the bid was entitled to shift drum mix plant at the site in question. Perusal of the order itself manifests that the respondents have considered the effect of shifting the said drum mixt plant at the site. It has been observed that the fitness certificate of the said drum mix plant is valid upto 4th July, 2023. In the said fitness certificate, it is further mentioned that if during the validity period, plant is shifted at another location, this fitness certificate will be invalid immediately. The aspect of shifting of plant as such would not be feasible in view of the fitness certificate. Further, the respondents have observed that the petitioner is already performing other works with the said drum mix plant at Satara. Said work is still remaining to be performed. The said fact was not brought to the notice of the authority. As the said drum mix plant would be required to complete the work at Satara, the respondents observed that the same would not be feasible.

8. The new machinery is purchased by the petitioner on 14th October, 2022, admittedly after the last date of tendering the bids. The bidder should have the qualification as on the date of submission of technical bid. Clause 6 of the Circular dated 17th September, 2019 cannot be read to mean that if the person on the last date of filling the tender is not qualified, he would become qualified subsequently by purchase of additional machinery. Clause 6 would be relevant to the extent that if there is some shortcoming in the information provided in technical bid, an explanation can be sought from the tenderer to clear the doubt, if any.

9. In the light of the above, we do not find any error in the decision-making process adhered to by the respondents. The writ petition as such is dismissed. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

Digitally
signed by
PRAVIN
DASHARATH
PANDIT
Date:
2023.01.04
11:25:59
+0530