

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6356/2019

(S.D.PL. AND C.C.C.PL., A JOINT VENTURE, YAVATMAL **VERSUS** PUBLIC WORKS DEPARTMENT,
MANTRALAYA, MUMBAI & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.P Bhandarkar, counsel for the petitioner.
Shri A.A. Madiwale, Assistant Government Pleader for the R-1 to 4.
Shri M.G. Bhangde, Senior Advocate with Shri R.M. Bhangde, counsel for the R-5.

CORAM : A. S. CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATE : JANUARY 25, 2023.

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The challenge raised in this writ petition is to the action on the part of the respondent nos.1 to 4 in cancelling Tender No. 82861 pursuant to the tender notice issued on 10.02.2019. Further prayer has been made by the petitioner seeking issuance of work order in its favour pursuant to the petitioner being the lowest bidder for the work in question.

2. The petitioner, a registered contractor firm which is functioning as a joint venture participated in the notice inviting tender dated 05.02.2019 whereby bids were invited for the work of improvement of State Highway No.315 from Kilometer 39/500 to 69/000 at Taluka Jhari, District Yavatmal. The last date for submission of bids was 20.02.2019 and the bids were to be opened on 25.02.2019. The technical bids of two bidders including the petitioner were found to be competent and thereafter the financial bids came to be opened. The financial bid submitted by the petitioner was found to be the lowest. Based on this, the respondent no.4 by communication dated 01.03.2019 sought approval from the respondent no.3 for issuance of the work order. It is the case of the petitioner that some complaints came to be made in the matter of the aforesaid tender notice and hence communication dated 14.05.2019 came to be issued to the respondent no.2 to look into the matter. The Chief Engineer on 01.06.2019 submitted his report to the Principal Secretary, Public Works Department,

Mumbai that there was no substance in the complaints made by the complainant and that the tender process had been carried out in accordance with the tender notice. Thereafter the Chief Engineer on 03.08.2019 issued an order proposing acceptance of the bid of the petitioner. However on 03.09.2019 the petitioner was informed by an E-mail that Tender No.82861 had been cancelled by the Department. According to the petitioner there was a direction to re-tender the work in question. Being aggrieved the petitioner has challenged the aforesaid decision of the respondent no.1 cancelling the tender process.

The petitioner has also filed Civil Application (W) No. 2809 of 2019 praying therein that the Principal Secretary, Public Works Department, Mumbai be called upon to file a specific affidavit so as to bring on record the reasons for cancelling the tender in question since no substantial reason was indicated for cancelling the same and for issuing a fresh work order.

In the affidavit filed on behalf of the respondent nos.1 to 4 it was asserted that the tender notice in question was published in the concerned newspaper on 14.02.2019 and the last date for submission of online bids was 19.02.2019. In effect, publicity of about four to five days was given which was in violation of the instructions issued by the State Government *vide* its letter dated 10.01.2019. These directions were binding in the entire State and hence since there was breach of these directions a communication dated 28.08.2019 was issued by the State Government cancelling the work in question. Thereafter another E-Tender No.89698 dated 04.09.2019 for the same work came to be issued. It was denied that the cancellation of the tender work was arbitrary thus warranting interference by this Court. In that backdrop the communication dated 28.08.2019 came to be issued.

3. Pursuant to the fresh tender notice the bid of another bidder came to be accepted. Since the fresh tender process was permitted to be conducted subject to the outcome of the present writ petition by the order dated 17.09.2019 leave was granted to the petitioner to implead the successful bidder. Thereafter the respondent no.5 who is the said successful bidder has been impleaded. According to the said respondent as per Government Resolution dated

27.09.2018 it was necessary to give publicity of atleast eight days when the tender notice pertained to work exceeding Rupees Thirty Crores. Since the same was not so given when the first tender notice came to be issued, the tender process was cancelled. In the subsequent bid, the rates quoted by the respondent no.5 were the lowest and there was a difference of about Rupees Ten Crores in the value of the rates quoted by the respondent no.5 and the petitioner's rates quoted earlier. Further by July-2022 about 75% work under the tender notice had been completed by the respondent no.5.

4. Shri S.P. Bhandarkar, learned counsel for the petitioner submitted that the cancellation of the tender process was without any justifiable reason. The impugned communication in that regard dated 28.08.2019 as well as the E-mail addressed to the petitioner did not indicate any reason whatsoever for cancelling the tender process. The petitioner being the lowest bidder and having been found duly qualified the work order ought to have been issued to it. It was for that reason that Civil Application (W) No. 2809 of 2019 had been filed seeking a response from the concerned Principal Secretary as regards the basis for cancelling the tender process. The reason assigned in the affidavit filed on behalf of the respondent nos.1 to 4 that sufficient publicity was not given to the tender notice could not be a justifiable reason as after cancellation of the tender process, within a short period a fresh tender notice was again issued. The Authorities having acted arbitrarily in the said matter, this Court ought to interfere in exercise of extraordinary writ jurisdiction and set aside the decision of cancelling the tender process.

5. Shri A.A. Madiwale, learned Assistant Government Pleader for the respondent nos.1 to 4 opposed the writ petition and relied upon the affidavit-in-reply filed on behalf of the said respondents. He submitted that on 10.01.2019 instructions had been issued by the State Government to all the Chief Engineers of the Public Works Department to grant a minimum period of eight days to prospective bidders for responding to any tender notice. In the present case the tender notice was published in the newspapers on 14.02.2019 and the last date

fixed for online submission of bids was 19.02.2019. Since it was found that the period of publicity granted was not in accordance with the instructions dated 10.01.2019 it was decided to cancel the tender process. There were no *mala fides* on the part of the respondents while taking such action. The learned Assistant Government Pleader opposed the prayers made in Civil Application (W) No.2809 and further submitted that more than 75% work under the tender had now been completed. Hence, no interference was called for.

6. Shri M.G. Bhangde, learned Senior Advocate for the respondent no.5 in addition to the contentions urged by the learned Assistant Government Pleader submitted that the decision to cancel the tender notice was taken in the light of violation of the instructions of the State Government in the matter of giving adequate publicity dated 10.01.2019. After cancellation of the tender process it was open for the petitioner to again participate in the fresh process. Pursuant to the second call, the bid of the respondent no.5 was found to be the lowest and after issuance of the work order more than 75% of the tender work had been completed by July-2022. Moreover, there was a difference of almost Rupees Ten Crores in the rates quoted by the respondent no.5 and the petitioner in its earlier bid. The decision thus taken did not call for any interference in larger public interest.

7. On hearing the learned counsel for the parties and after perusing the documents filed on record, we do not find any reason to interfere with the decision of the respondent nos.1 to 4 in cancelling the tender process by virtue of the impugned communication dated 28.08.2019. The issuance of instructions by the State Government on 10.01.2019 to all the Chief Engineers is not in dispute. A minimum period of eight days is stated to be given by way of publicity to any tender notice. It is also not in dispute that in the present proceedings the tender notice was published on 14.02.2019 with the last date of submission of online bids being 19.02.2019. This period of publicity was found to be inadequate thus resulting in cancellation of the tender process. It is true that the financial bid of the petitioner was opened and it was found to be the

lowest bidder but that by itself would not confer any right on the petitioner to seek allotment of a work order to it. On noticing the inadequate publicity given to the tender notice a direction was issued by the superior Authorities to cancel the tender process. There are no *mala fides* alleged by the petitioner except that the rates quoted by it were disclosed. It is also to be noted that pursuant to the fresh tender notice which was issued giving adequate publicity, three bidders had participated. The rate quoted by the respondent no.5 was found to be the lowest and the difference between its bid and that of the next lowest bidder was about Rupees Six Crores. Further the petitioner while submitting its financial bid in response to the first tender notice had quoted the rate of Rs.72,41,00,009/- for the said work while the respondent no.5 has been issued the work order after quoting the rate of Rs.62,92,32,357/-. Thus in effect there is a difference of almost Rupees Ten Crores in the rate that was quoted by the petitioner initially and the rate at which the work order has been issued to the respondent no.5. There being a substantial difference of almost Rupees Ten Crores, we do not find it expedient in larger public interest to interfere with the grant of the work order to the respondent no.5 especially when more than 75% of the said work has been completed. In absence of any arbitrariness or favouritism being brought on record, we do not find any reason to interfere in writ jurisdiction. In this backdrop it is not found necessary to call for any further affidavit from the Principal Secretary as prayed for. The writ petition is thus dismissed with no order as to costs. Pending civil applications also stand disposed of.

(MRS.VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

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