



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

WRIT PETITION NO.6164 OF 2023

M/s Shyamsingh Devisingh Thakur Construction Company, Thr. Partner, Katol Railway Station,  
Nagpur Road, Katol

-vs-

The Collector, Nagpur and ors.

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

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Shri T. S. Kene, Advocate for petitioner.  
Shri A. A. Madiwale, Assistant Government Pleader for respondent No.1.  
Shri M. I. Dhatriak, Advocate for respondent No.2.  
Shri K. J. Tople, Advocate for respondent No.3.

CORAM : A. S. CHANDURKAR AND ABHAY J. MANTRI, JJ.  
DATE : November 02, 2023

P. C.

Heard.

The petitioner is aggrieved by the conduct of the second respondent-Municipal Council in issuing Work Order dated 29/08/2023 to the third respondent-successful bidder notwithstanding the fact that the security deposit was not submitted by the successful bidder in accordance with the requirements of Government Resolution dated 26/11/2018.

2. It is submitted by the learned counsel for the petitioner that in accordance with Government Resolution dated 26/11/2018, Additional Performance Security Deposit was required to be furnished within a period of eight days of submission and consideration of the financial bid. The financial bid was submitted by the third respondent on

03/08/2023 and hence the Additional Performance Security Deposit was required to be submitted by 11/08/2023. It was only on 17/08/2023 that the third respondent submitted this deposit. Relying upon the decision in *Tirupati Construction, Latur vs. State of Maharashtra and ors.* **2021(4) Mh.L.J. 428**, it is submitted that the Work Order could not have been issued to the third respondent and the petitioner being the next lowest bidder, it is entitled to be granted the Work Order.

3. On the other hand, the learned counsel for the Municipal Council has referred to communication dated 01/08/2023 issued by the Chief Officer to the third respondent requiring the said respondent to furnish security deposit within a period of seven days of the communication dated 01/08/2023. He submits that on 17/08/2023 the requisite deposit was furnished by issuing bank guarantee. Placing reliance on the decisions in *Khilari Infrastructure Pvt. Ltd. vs. State of Maharashtra and ors.* **2023(2) Mh.L.J. 435**, *Agmatel India Private Limited vs. Resoursys Telecom and ors.* **(2022) 5 SCC 362**, *N. G. Projects Ltd. vs. Vinod Kumar Jain and ors.* **(2022) 6 SCC 127** and the decisions of this Court in Writ Petition No.5244/2018 (*M/s R.K. Sancheti vs. The State of Maharashtra through its Secretary, and ors.*) dated 06/09/2018 and Writ Petition No.2448/2021 in *M/s R. K. Sancheti vs. State of Maharashtra and ors.*) dated 27/07/2022, it is

submitted that there being absence of any allegations of malafides and bias, no interference was called for.

The learned counsel for the third respondent submitted that in view of various holidays between 03/08/2023 to 15/08/2023, time was rightly granted by the Chief Officer on 11/08/2023 to furnish security deposit. He placed reliance on the decision in *Om Gurusai Construction Company vs. V. N. Reddy and ors.* **2023 SCC Online SC 1051.**

4. Having heard the learned counsel for the parties and having perused the documents on record, it is to be noted that the Government Resolution dated 26/11/2018 has been issued by the Public Works Department. It required furnishing of Additional Performance Security Deposit within a period of eight days of submitting the financial bid. In the present case the concerned Department is the Urban Development Department. The Chief Officer by his communication dated 11/08/2023 had directed the third respondent to deposit this amount within a period of seven days which condition has been complied with. We find that there is no specific case of malafides raised by the petitioner except by urging that such extension of time was not permissible. In the recent decision of the Honourable Supreme Court in *Om Gurusai Construction Company* (supra) a similar deposit after stipulated time was held to be permissible on the premise that in

absence of any malafides, action of the tendering authority could not be faulted.

5. In the facts of the present case, we do not find that there is any material deviation requiring interference by this Court. The acceptance of security deposit subsequently not being arbitrary, we are not inclined to interfere in writ jurisdiction. The Writ Petition is therefore dismissed. No costs.

(Abhay J. Mantri, J.)

(A. S. Chandurkar, J.)