IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.758 OF 2024

Er. Santosh Shamsundar Padule
Age: 37 years, Occu.: Government
Contractor, R/o. At post Aurangpur,
Taluka and District Beed. .. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai-32.

2. The Executive Engineer,
Public Works Department,
Public Works Division, Beed.

3. Tender Scrutiny Committee
Through Assistant Superintendent
Engineer, Public Works Circle,
Dharashiv. .. Respondents

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Mr. A. D. Kulkarni h/f Mr. V. S. Kadam, Advocate for the petitioner.
Mr. S. K. Shirse, AGP for the respondents – State.

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CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.

DATE : JANUARY 18, 2024.

ORDER (Per Smt. Justice Vibha Kankanwadi, J.) :-

. Present writ petition has been filed by one of the bidder to challenge his ineligibility/disqualification in the technical bid by respondent Nos.2 and 3, which was communicated to him by letter dated 01.12.2023.

2. Heard learned Advocate Mr. A. D. Kulkarni holding for learned Advocate Mr. V. S. Kadam for the petitioner and learned AGP Mr. S. K. Shirse for the respondents – State. Unless the petitioner would have shown *prima facie* case even for issuance of notice, there was no point in issuing the notice automatically on the first date. Therefore, with the help of learned Advocate for the petitioner, we have gone through the documents placed on record by the petitioner.

3. The fact cannot be in dispute that respondent No.2 published e-tender notice on 18.09.2023 inviting the bid for development to be carried at Shri. Mahalaxmi Mandir at Shidod, Taluka and District Beed. The date to apply online bid was from 18.09.2023 to 03.10.2023. The technical bid was supposed to be opened at 11.00 a.m. on 05.10.2023.

4. The petitioner contends that he had gone through the terms and conditions of the e-tender and thereafter applied through online portal of Maha E-tenders and submitted his bid. It is further contended that respondent No.3 opened the technical bid on 01.12.2023 (though it was not as per the schedule). It was revealed that there were in all five bidders, who had applied for the same project. Except two bidders, all others were declared ineligible by the Executive Engineer of respondent Nos.2 and 3. The copy of scrutiny sheet done by Executive Engineer and tender summary report dated 14.01.2024 has

been attached. It was contended that the petitioner has not qualified the term No.VIII. It was in respect of no dues clearance certificate from the competent authority in respect of PTR and PTE under Section 5 of the Maharashtra State Tax on Profession, Trade, Callings and Employment Act, 1975. The petitioner contends that he had produced challan copies. He was not informed by respondent No.2 immediately after the opening of the technical bid, as to why he has been disqualified. But when he had personally visited respondent No.2 and cleared all the defects on 08.11.2023, he ought not to have been disqualified or held ineligible to participate in the further process of tender. The petitioner contends that the entire process has not been conducted in a transparent manner. Further, respondent No.1 through its Public Works Department has passed Government Resolution dated 27.09.2018, which was in the nature of guidance as regards opening of technical bid, scrutiny etc. Even as per those terms, the respondent No.2 could have asked the petitioner to cure the defect and, therefore, the petitioner says that the impugned communication about disqualification should be set aside and he should be held eligible in the technical bid and should be allowed to participate in the further process.

5. Taking into consideration the tender notice along with its terms and conditions, it can be seen that point No.2.0 of the tender notice

provides for manner of submission of tender and its accompaniments. Point No.2.1 says about which document should be put in Envelope No.1. Term No.VIII of the said Point No.2.1 reads thus :-

> "VIII. **Scanned from original / attested copy** of Valid Professional Tax Registration Certificate in the form of PTR and PTE under Section (1) of Section 5 of Maharashtra State Tax on Profession, Trade callings and Employment Act, 1975, Rule 3(2) for employees including technical personnel from the Professional Tax officer of the concerned District of Maharashtra with its latest valid clearance certificate upto 31.03.2022. "*No Dues Clearance Certificate*" from competent authority should be submitted."

Perusal of the said term would show that word 'should' has been used. That means, the authority was expecting that this term should be complied and such document should be submitted in Envelope No.1. In other words, it was clearly mentioned in the tender notice itself that no dues clearance certificate from competent authority up to 31.03.2022 should be submitted along with the other tender documents before the closure of the tender i.e. 03.10.2023. If this mandatory condition was not fulfilled, then the ineligibility so declared should be upheld. No doubt, it appears that though it was made public that the technical bid would be opened on 05.10.2023, it appears that it was not opened on that day. But on the day it was opened, the petitioner says that he was present. The checklist item No.9 clearly states that no dues clearance certificate was submitted by the petitioner. The petitioner has produced copy of the challan, which he had uploaded along with the bid. It appears that it is issued by the Sales Tax Department in respect of the amount he had paid under PTRC Act on 18.09.2023 and another challan is in respect of payment of amount under PTEC Act on 25.09.2023. The condition clearly says that there should be certificate issued by the competent authority under the Act. Therefore, mere payment or submission of challan copies was not contemplated under the said term. Thereafter, it appears that on 08.11.2023, he had submitted certain documents with the office of respondent No.2, however, he has not tendered it along with a covering letter and there is no such document indicating that the said document were accepted by the responsible officer. By a reminder letter dated 12.01.2024, the petitioner has stated that the certificates were submitted by him on 08.11.2023. This letter is admittedly after the technical bid was opened on 01.12.2023 and he was held ineligible. If he was present and when it was noticed that this document was not uploaded by him, why he had not pointed it out on 01.12.2023 itself that he has already tendered those documents on 08.11.2023 has not been explained by him either in the pleadings or in his reminder letter dated 12.01.2024. When he was already declared as ineligible, there was no question of issuing reminder and asking respondent No.2 to hold him eligible thereafter.

6. Perusal of the no dues certificate issued under the Maharashtra State Tax on Profession, Trade callings and Employment Act, 1975 would show that it was issued to him on 28.09.2023 by the competent authority. If this is so, then why he had not uploaded those documents before 03.10.2023, is a question. It is not the case of the petitioner that he had uploaded the no dues clearance certificate along with the other bid documents when he submitted the bid. We are more concerned with the position at the end of the period stipulated under the bid i.e. up to 03.10.2023. In other words, it can be certainly said that by the end of 03.10.2023, there was no compliance of Point No.2.1 term/condition No.VIII by the petitioner, which was in fact a mandatory term.

7. The petitioner is relying upon the Government Resolution dated 27.09.2018, which is in the form of guidelines to the process in respect of E-tenders by Public Works Department. Perusal of the said Government Resolution would show that the scrutiny committee may ask for the clarification from the contractors at the time of scrutiny, which would be throwing light on the eligibility or ineligibility of the concerned contractor and about eight circumstances have been noted in respect of which the said clarification can be called upon. Point No.4.5.2(8) of the said Government Resolution says about तांत्रिक

लिफाफ्यातील सादर केलेले प्रस्ताव/कागदपत्रातील अटी/शर्ती व पत्र व्यवहारातील संदिग्धता, अस्पष्टता इत्यादि. Here, there was no ambiguity in respect of the term which is held to be not complied by the petitioner. Further, it has been stated in the Government Resolution that many times it is found that a contractor at one time held to be eligible, is held to be not eligible on the second occasion. This might be the situation due to cartel formation by the contractors. Under such circumstance, the contractor should not be disqualified or to be held ineligible on trifle matters (PTC, Machinery, Income Tax documents, similar work condition etc.). If the contractor has given documents in that respect earlier, then those documents can be relied. By pointing out this clause, the learned Advocate for the petitioner submits that time ought to have been given to the petitioner to cure the said defect when it was brought to the notice of the scrutiny committee that the amount has been paid. We do not agree with the said submission. First of all, the non compliance of the term in respect of submission of no dues clearance certificate cannot be termed as 'किरकोळ कारण' i.e. trifle reason. It is also not covered under PTC, Machinery, Income Tax documents, similar work condition. It was the mandatory requirement to obtain the no dues clearance certificate in respect of professional tax for the employees including technical personnel, as required under Section 5 of the Maharashtra State Tax on Profession, Trade, Callings and Employment Act, 1975.

8. When there is clear non compliance of a mandatory condition, we do not find that any case is made out for interference in the tender process by exercising constitutional powers of this Court.

9. We would like to rely on the decision in **M/s. N. G. Projects Limited Vs. M/s. Vinod Kumar Jain and Ors., [2022 LiveLaw (SC) 302],** wherein it has been observed that :-

> "23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a *mala fide* manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the state and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by

being deprived of the infrastructure for which they present-day Governments are expected to work."

10. For the aforesaid reasons, Writ Petition stands dismissed at the threshold.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm