IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

Writ Petition No. 1893 Of 2024

Shri. Dinkar Dnyandeo Rane
Age: 48 years, Occu.: Contractor,
R/o. At post Talwel, Tq. Bhusawal,
District Jalgaon. .. **Petitioner**

Versus

1. The State of Maharashtra,
Department Urban Development,
Mantralaya, Mumbai-32.
Through its Secretary.

2. The Bhusawal Municipal Council,
Bhusawal, Tq. Bhusawal, Dist. Jalgaon,
Through Chief Officer.

3. Vaibhav Vikas Vikas Pachpande
Contractor K.P. Club Badri Plot,
Bhusawal Tq. Bhusawal,
Dist. Jalgaon.

4. Asha Construction,
Shaikh Farooq Shaikh Yusuf,
Age: 42 years, Occu.: Contractor,
R/o. Khadki Road, Tq. Bhusawal,
District Jalgaon,
Through Shaikh Farukh Shaikh Musof,

5. Vishal Ramlal Pawar,
Age: 38 years, Occu.: Contractor,
R/o. At post Varangaon, Tq. Bhusawal,
District Jalgaon. .. **Respondents**

Mr. S.B. Yawalkar, Advocate for the petitioner.

Mr. A.R. Kale, Additional Government Pleader for respondent No.1.

Mr. N.B. Khandare, Advocate h/f Mr. B.S. Deshmukh, Advocate for respondent No.2.

Mr. S.A. Mulla, Advocate for Respondent No.3.

Respondent No.4 and 5 are served.

CORAM : MANGESH S. PATIL AND SHAILESH P BRAHME, JJ.

RESERVED ON : 26 AUGUST 2024

PRONOUNCED ON : 30 AUGUST 2024

J U D G M E N T **[**Per Shailesh P. Brahme, J.**]** **:-**

. Rule. Rule is made returnable forthwith. With the consent of both the sides, heard finally. None appears for the respondent no.4 and 5.

2. The petitioner is challenging tender process commenced with tender notice dated 20.12.2023 and the rejection of his technical as well as financial bid dated 07.02.2024. He is seeking direction to accept his bid.

3. This petition pertains the work i.e. Lokshahir Annabhau Sathe Nagri Dalit Vasti Sudhar Yojana Antargat Bhusawal Shaharatil Pra Kra 1 Yawal Road Varil New Ambedkar Nagar Bhilwadi Parisarat Bandist Gatar va Rasta Concreti Karan. It was floated through tender notice dated 20.12.2023 by the respondent no.2/Municipal Council. The petitioner submitted his bid with requisite documents. He was called upon to submit an agreement of Ready Mix Concrete Plant (hereinafter to 'RMC') vide letter dated 25.01.2024. It was promptly complied by him on the next day. He received message on 06.02.2024 from the respondent no.2 for having accepted the technical bid. He accessed tender summary report on 06.02.2024 at 06:52 pm. and found to be lowest in the financial bid.

4. Abruptly on the next day, he received a mail. The summary report was flashed on 07.02.2024, disclosing that the tender was revoked. He came across tender summary report dated 08.02.2024, rejecting technical bid for the reason 'No RMC Plant'. Excluding the petitioner financial bids of three bidders were opened and respondent no.3 was found to be lowest one. Being aggrieved, the petitioner is before this Court.

5. Learned Counsel for the petitioner submits that the tender process in question is unfair and non-transparent. The petitioner was declared to be successful in technical bid and financial bid on 06.02.2024. He should not have been disqualified. He would submit that the revocation of the tender was without any intimation, uncalled for and patently illegal. It is contended that the respondent no.2 should not have rejected the technical bid of petitioner under the garb of revocation of tender when petitioner was declared to be lowest one.

6. It is further submitted that without giving any opportunity to cure the defect he was disqualified which is arbitrary. It is contended that the reason for disqualification is patently perverse because already agreement showing machinery of RMC Plant was submitted. Lastly, by way of rejoinder, it is submitted that the plea that inadvertently the wrong tender summary was uploaded by the operator, is fallacious. The correspondence dated 07.02.2024 was vague.

7. Learned AGP for the respondent no.1 and learned Counsel for respondent no.3 adopt the submission of learned Counsel Mr. N.B. Khandare appearing for respondent no.2. Mr. Khandare relying on affidavit-in-reply submits that the petitioner was non-responsive because he was not having agreement to comply with tender condition no. (f) read with 21 of the tender document. He would submit that the technical bid of the petitioner was not accepted for want of RMC Plant. Despite extending opportunity, no document was placed on record. The agreement tendered by the petitioner did not pertain to plant but was that of a vehicle. The financial bid was opened on 07.02.2024 and the respondent no.3 was found to be lowest one.

8. Mr. Khandare submits that due to inadvertent mistake, the petitioner was shown to be admitted to the technical bid and thereafter financial bid. When the mistake was realized recourse was taken to revoke tender facility to rectify the mistake. It is further submitted that the authorities have initiated action against the computer engineering by issuing notice on 07.02.2024 which was replied by him. Thereafter the tender Committee opened the bids and found the petitioner disqualified. Thereafter the financial bids were opened. Accordingly tender summary reports were uploaded.

9. Learned Counsel further submits that due to oversight wrong information was uploaded and no benefit can be given for such a mistake to the petitioner. He would submit that considering minor aberrations, the entire process cannot be faulted. The powers of judicial review in the tender matters is well defined. Reliance is placed on **N.G. Projects Limited Vs. Vinod Kumar Jain and Others**, (2022) 6 SCC 127. Judgment rendered in the matter of **Pride Ventures (I) Pvt. Ltd., Vs. State of Maharashtra and Others**, Writ Petition No.2098/2024 is also relied on.

10. We have considered rival submissions advanced across the bar. At the outset, we would like to refer to scope of judicial review laid down by the Supreme Court in the matter of **Jagdish Mandal Vs. State of Orissa and Others**, (2007) 14 SCC 517. Paragraph No.22.

> "22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. *Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.* The tenderer or contractor with a grievance can al- ways seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in

tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say:" the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/ contractor or distribution of State largesse (allotment of sites/ shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

20. This being the case, we are unable to fathom how the Division Bench, on its own appraisal, arrived at the conclusion that the Appellant held work experience of only 1 year, substituting the appraisal of the expert four-member Tender Opening Committee with its own." (emphasis supplied)

11. We are also guided by law laid down by the Supreme Court in the matter of N.G. Projects Limited (supra). Its Paragraph No.23 is as follows :

"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 ex-pertise 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 com- plying 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 malafide 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 the present-day Governments are expected to work."

12. The latest decision of the Supreme Court in the matter of Tata Motors Limited Vs. Brihan Mumbai Electric Supply and Transport Undertaking (BEST), 2023 SCC Online SC 671, and our decision in the matter of Pride Ventures (I) Pvt. Ltd. (supra) are the touchstone of guidelines on the basis of which we proceed to consider the matter.

13. We have gone through the tender condition no. (f) and (21) which provide for RMC Plant, either self owned or to be taken on lease and the requisite machinery, vehicle and manpower. The petitioner and others had challenged tender condition no. 'f' by preferring Writ Petition No.14299/2023. By a reasoned order dated 03.01.2024, the petition was dismissed, upholding the impugned condition. It was mandatory for the petitioner to comply with condition 'f'.

14. The petitioner was called upon vide letter dated 25.01.2024 to submit the requisite document. In response to it, agreement for RMC Plant was tendered. We have gone through the agreement which is a part of record. It pertains to making available machinery and vehicles to the petitioner. It was not pertaining to RMC Plant either self owned or to be taken on lease. What was expected of was either to have RMC Plant within 15 Km. of Bhusawal City or to have it on lease. The agreement tendered by the petitioner is not a compliance of eligibility condition. The respondent no.2 rightly rejected the technical bid.

15. The petitioner vehemently criticized the decision making process. On 06.02.2024, petitioner came across message and technical evaluation summary disclosing that his technical bid was accepted. Immediately on the same date, he came across result of financial bid of four bidders including himself and he was declared to be lowest one. This uploading of information on 06.02.2024 is contended to be sheer in-advertent mistake by the operators of respondent no.2. We have gone through paragraph nos.6 to 9 of affidavit-in-reply of the respondent no.2. The respondent no.2 has offered the reason for the mistake and also mentions about the steps taken against erring Officer and rectification of the mistake.

16. We find no reason to discard the explanation given by the tendering authority in paragraph nos.6 to 9 of the reply. Due to oversight, the petitioner was declared to be successful in a technical bid and then declared to be lowest bidder in financial bids. These mistakes are rectified by resorting to revocation of tender facility and the correct information was uploaded. Pertinently, the mistakes were rectified after receiving reply from computer engineer. We have also gone through the correspondence dated 07.02.2024 and reply of the even date. We do not see any mala fides in rectifying the mistake. Though the reply dated 07.02.2024 has been castigated by the petitioner to be absurd, being a writ Court, we are unable to go into factual details. We have not been shown any reason or material to suspect the conduct and to doubt bona fides of the respondents. When the petitioner is found to be non-responsive to the eligibility condition, we do not find any case is made out to interfere with the tender process.

17. We find that the decision making process is in public interest. There is procedural aberration, which is not intentional and much less causes any prejudice to the petitioner. There is no merit in the petition. Hence the writ petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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