



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1903 OF 2023

M/s. Shreya Enterprises,
Through its Proprietor,
Smt. Sunita w/o Rama Kalkute,
Age: 28 years, Occu.: Business,
R/o. Shreya Building, Raje Chhatrapati
Chowk, Ambika Nagar, Kholwat,
District Beed.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Public Works Department,
Mantralaya, Mumbai.
2. The State of Maharashtra
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.
3. The Chief Executive Officer,
Zilla Parishad, Beed.
4. The Executive Engineer,
Rural Water Supply Division,
Beed, District Beed.
5. Santosh s/o Shamsunder Padule
Age: 35 years, Occu.: Business,
R/o. Shivshankar Building,
Sawata Mali Chowk, Mondha Road,
Beed, District Beed.

.. RESPONDENTS

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Mr. A. B. Chalak, Advocate for the petitioner.
Mr. P. S. Patil, AGP for respondent Nos.1 and 2 – State.
Mr. P. D. Suryawanshi, Advocate for respondent Nos.3 and 4.
Ms. Rakha M. Choudhari, Advocate for respondent No.5.

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

DATE : JANUARY 23, 2024.

JUDGMENT (Per Smt. Vibha Kankanwadi, J.) :-

. Rule. Rule made returnable forthwith. Heard learned Advocates for the appearing parties finally by consent.

2. By invoking the constitutional powers of this Court under Article 226 of the Constitution of India, the petitioner has prayer for following reliefs :-

"A) To quash and set aside the tender process for Water Supply Scheme at Tarnali, Taluka Kaij, District Beed under Jal Jeevan Mission, which is being carried out in pursuant to the tender notice dated 28.12.2022 issued by respondent Nos.3 and 4 by issuing a writ of certiorari or any other appropriate writ, order or directions etc., as the case may be.

B) To quash and set aside the declaration of the respondent No.5 who has been declared as a successful lowers bidder L1 in pursuant to the financial bid for the tender process for "Water Supply Scheme at Tarnali, Taluka Kaij, District Beed under Jal Jeevan Mission", by issuing a writ of certiorari or any other appropriate writ, order or directions etc., as the case may be.

C) To direct the respondents to revoke/recall the tender process for "Water Supply Scheme at Tarnali, Tqluka Kaij, District Beed under Jal Jeevan Mission"

which is being carried out in pursuant to the tender notice dated 28.12.2022 issued by the respondent No.3 and 4 and to invite afresh tenders in view of the clause 17 of the tender notice by issuing a writ of mandamus or any other appropriate writ, order or directions etc., as the case may be.

Further, by way of amendment, following relief has been prayer :-

F) To quash and set aside the work order dated 10.02.2023 for Water Supply Scheme at Tarnali, Taluka Kaij, District Beed under Jal Jeevan Mission issued in favour of respondent No.5 in view of Tender Notice dated 28.12.2022 by the respondent No.4, by issuing writ of certiorari or any other appropriate writ, order or directions; as the case may be."

3. The factual matrix leading to the petition are that the petitioner firm is a government contractor who is engaged in the business of water supply with the joint venture of Madhavrao Tukaram Phad within the State of Maharashtra. It is contended that the respondent Nos.3 and 4 issued Notice dated 28.12.2022 and invited tender for assigning/allotting work of water supply scheme at Tarnali, Taluka Kaij, District Beed under Jal Jeevan Mission as per the norms laid down under tender notice. It is contended that the petitioner participated in the said tender process by paying EMD amount online with all the necessary documents as per the tender notice. It is further contended that in all total eight bidders participated in pursuant to the said

tender notice including respondent No.5. It is contended that on 15.01.2023, the petitioner received E-mail from respondent No.4 asking the petitioner to submit a tender ID for collaboration with agencies within 24 hours, failing which the petitioner firm will be disqualified from the tender Process. It is contended that on 16.01.2023 at 11.13 a.m., the petitioner submitted tender ID along with some work orders, in view of the said E-mail by respondent No.4. It is contended that despite of that on 17.01.2023, respondent No.4 called all the participated bidders including the present petitioner for hearing before the respondent No.3 so as to comply with the deficiencies pointed out by the respondents. On 18.01.2023, during the course of hearing, again the petitioner submitted all the required documents, which were pointed out by the respondents. Thereafter, on 31.01.2023 at 02.21 p.m., technical bid came to be opened by respondent Nos.3 and 4, however, surprisingly the petitioner came to be disqualified on account of non-submission of tender ID. On the same day at 4.03 p.m., finance bid came to be opened and respondent No.5 was declared to be a successful lowest bidder (L1). Despite of submitting the tender ID and complied with all the documents and removing all the deficiencies pointed out by respondent Nos.3 and 4, the petitioner came to be disqualified. Therefore, the act of the respondents thereby disqualifying the petitioner in technical bid and not admitting in finance bid, so also declaring respondent No.5 as

successful and qualified lowest bidder, is arbitrary and unreasonable, as it amounts to violation of Article 14 of the Constitution of India. Hence, this petition.

4. Affidavit-in-reply of Sunildatta s/o Bhagwat Dhabekar, In-charge Executive Engineer, Rural Water Supply Department, Zilla Parishad, Beed has been filed on behalf of respondent Nos.1 to 3. It has been contended that respondent Nos.1 to 3 have considered all the experience certificates for the purpose of technical bid and thereafter disqualified the petitioner from the tender process. In the scrutiny chart of technical bid, the information of components has been given and after considering the entire experience certificate, the experience of the petitioner has been mentioned in the said scrutiny chart. It is contended that to verify whether these works have been allotted to the petitioner and whether those works have been completed by him, proper experience certificate under the signature of Executive Engineer is required and then only the experience has been counted and considered for technical bid. The petitioner has submitted tender summary reports with tender ID, but from those papers the information is not reflected about the specification of works and whether the works are completed by the petitioner. Specific conditions mentioned in tender notice dated 28.12.2022 are not complied with by the petitioner and, therefore, the petitioner has been declared as

disqualified. It has been further contended that the Collector is the head of the committee at district level, under whose supervision the Jal Jeevan Mission is to be implemented. In Beed district about 1265 villages have been selected for implementation of the said scheme and as on today, 1192 work orders have been issued in favour of the lowest bidders by floating tenders and they have started the works as per guidelines and the project reports. Due to some issues have been raised in 7 villages, the work orders have not yet issued and the works have not been started. Due to the vast program and implementation of scheme in 1265 villages, the work order dated 10.02.2023 could not be uploaded on the website immediately and it does not mean that there is something fishy and it is backdated order. The allegations of the petitioner regarding issuance of work order are totally false and baseless. Under such circumstance, uploading the work order belatedly on the website does not create any right to the petitioner to get qualify in the tender process.

5. The petitioner has filed rejoinder to the affidavit-in-reply filed by respondent Nos.1 to 3 and denied all the contentions raised on behalf of the respondent Nos.1 to 3.

6. Heard learned Advocate Mr. A. B. Chalak for the petitioner, learned AGP Mr. P. S. Patil for respondent Nos.1 and 2 – State, learned Advocate Mr. P. D. Suryawanshi for respondent Nos.3 and 4 and

learned Advocate Ms. Rekha M. Choudhari for respondent No.5.

7. Learned Advocate for the petitioner has taken us through the documents annexed with the petition. It is then submitted that the petitioner with joint venture agreement with one M. T. Phad took part in the tender process in respect of village Tarnali, Taluka Kaij, District Beed, however, the said tender has been rejected on the ground that tender ID was not given i.e. clause No.36 in the E-tender notice. He points out the certificate issued by Maharashtra Jeevan Pradhikaran Division, Ahmednagar on 09.03.2022, which showed the work experience of M/s. M. T. Phad and the said certificate was issued by the Executive Engineer, which was the requirement of respondent No.3. Further, work experience certificate was given under the signature of Executive Engineer, Municipal Corporation, Akola on 27.01.2022. Therefore, the disqualification of the petitioner is wrong and needs to be set aside.

8. Per contra, the learned Advocate for respondent Nos.3 and 4 submitted that the petitioner was aware about the compliance to be made. Mentioning of tender ID was necessary in view of clause No.36. The certificate dated 09.03.2022, which was uploaded, does not bear the tender ID and the document which has been now attached to the petition bears the tender ID in handwriting which appears to be a manipulated document. As regards another document i.e. the

certificate issued by Municipal Corporation, Akola, it does not mention the tender ID, therefore, the decision that was taken by the authority was in terms of the tender condition, as they were not complied with by the petitioner.

9. At the outset, it is to be noted that out of the said joint venture only one person i.e. the proprietor of M/s. Shreya Enterprises has challenged the disqualification. The person with whom she had entered into the agreement of joint venture has not been made as a party, nor he has joined her in filing the petition. She was relying on the certificates issued in favour of M/s. M. T. Phad by the concerned authorities, but as aforesaid said M/s. M. T. Phad is not a party before us. We have perused the original file of the tender and find substance in the say of respondent Nos.3 and 4 that when the certificate issued by Maharashtra Jeevan Pradhikaran Division, Ahmednagar was uploaded, it was not bearing the tender ID. It appears to have been taken at later point of time. Why it is in handwriting when the other major contents are in printed form has not been explained. As regards another experience certificate issued by Akola Municipal Corporation, the tender ID has not been mentioned. Then there are other two documents which appear to be the work orders, not the experience certificate as required under clause No.36. Similarly, on the experience certificate issued by Maharashtra Jeevan Pradhikaran Division, Thane,

no tender ID has been mentioned. Thus, there was no compliance of clause No.36. Further, learned Advocate for respondent Nos.3 and 4 submits that there is no compliance of clause No.34, which requires that all the documents should be digitally signed and the work experience should be certified by the competent authority regarding the work done. As per the tender notice, it was made compulsory that those certificates should be signed by the Executive Engineer.

10. 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.”

11. Taking into consideration all these facts, we do not find that there is any error or illegality committed by the competent authority to disqualify the petitioner. No case is made out for exercising the constitutional powers of this Court under Article 226 of the Constitution of India.

12. The Writ Petition stands dismissed.

13. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm