



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 3009 OF 2023**

AJAY MAHADEVRAO DHAKNE

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

...

Mr. Vishal S. Kadam, Advocate for the Petitioner.

Mr. P. S. Patil, Addl. GP for Respondent-State.

Mr. P. D. Suryawanshi, Advocate for Respondent Nos.2 and 3.

...

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

DATED : 17th JANUARY, 2024.

P.C.

1. Heard learned Advocate for the petitioner.
2. By taking recourse to Article 226, 227 and 14 of the Constitution of India, the petitioner who had taken part in tender process issued by respondent nos.2 and 3 prays for quashing and setting aside the work order dated 19th January 2023 issued to respondent no.4 for village Karchundi, Tal. and Dist. Beed. He has also challenged the action of respondent nos.2 and 3 to disqualify him in the technical bid and thereby rejecting his tender for the said village in pursuance of the notice inviting tender dated 23rd May 2022 contending that it was arbitrary, illegal and he was excluded from the bid for extraneous consideration in favour of particular person. Consequently, the petitioner also prays for Writ or direction to the respondents to open financial bid of the petitioner and if the quotation submitted by him is found to be lowest, the tender should be granted in his favour.
3. The first and foremost fact that is required to be considered is that technical bid was opened on 02nd June 2022, which is stated to be published on the website of the respondents on 22nd July 2022.

Thereupon, he came to know that he has been disqualified in the technical bid. Upon query that why the petitioner had not approached this Court immediately, there is no satisfying answer. The present petition has been filed after the work order has been issued. At the cost of repetition, it can be said that work order came to be issued on 19th January 2023 and the present petition has been filed on 28th February 2023. Therefore, the petition suffers from delay and laches. When it comes to the tender process, the participants are expected to be vigilant and if aggrieved to take legal process.

4. Learned Advocate for the petitioner invites our attention to the noting dated 14th December 2022, wherein upon his representation hearing was given and it was noted that the petitioner should be declared as eligible. Even we accept that such noting was there in view of the said meeting dated 14th December 2022, yet the further process was not taken by respondent no.5 immediately pursuant to the same and on that count also the petitioner could have approached this Court prior to 28th February 2023. Further it appears that, the successful bidder i.e. respondent no.4 had made representation to respondent no.2 on 15th December 2022 for the action taken by respondent no.2 to make the petitioner eligible. This representation by respondent no.4 is immediately on the next date of alleged noting dated 14th December 2022 in favour of the petitioner. Further it appears that respondent no.4 had approached this Court by filing Writ Petition issuing direction to respondent nos.2 and 3 to complete the tender process. This Court by order dated 06th January 2023 in Writ Petition No.199/2023 had taken the statement made on behalf of respondent nos.2 and 3 that the tender process would be concluded within two weeks as an undertaking and the said Writ Petition came to be disposed of. There was an opportunity to the petitioner to intervene in the said Writ Petition. However, at the cost of repetition, when the work order is also issued much prior to the

filing of the petition, we are of the considered view that the case is not made out for exercise of Constitutional powers of this Court. We would like to rely upon the observations of the Hon'ble Supreme Court of India in the matter of *M/s N. G. Projects Limited v. M/s Vinod Kumar Jain*¹ wherein it is observed that '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 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'.

5. In view of this, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE