



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3233 OF 2024

Rishu Kichu Industries Private Limited,
Through its Director,
Sanjay Manikrao Thorat
Age: 53 years, Occu.: Business,
R/o. Sai Sadan, Shankar Parvati Nagar,
Parali Vaijnath, District Beed.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Department of Energy,
Mantralaya, Mumbai.
2. The Managing Director,
Maharashtra State Energy Power Co. Ltd.
Prakashgad, Kalanar Nagar, Bandra,
Mumbai.
3. The Chief Engineer (Generation),
MAHAGENCO Thermal Power Station,
Parali Vaijnath, Taluka Parali
Vaijnath, District Beed.

.. RESPONDENTS

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Mr. S. S. Jadhavar, Advocate for the petitioner.
Mr. S. J. Salgare, AGP for respondent No.1 – State.
Mr. R. A. Tambe, Advocate for respondent Nos.2 and 3.

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

DATE : 24th APRIL, 2024.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

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

2. The petitioner – company has participated in Tender Notice bearing Rfx No.3000041906 inviting bids for operational help in plant operation of pre-treatment plant, softening plant, DM plant and chemical lab at 250 Megawatt Thermal Power Station, Parali Vajinath, District Beed. The estimated cost of the tender was Rs.3,47,56,546.96/-. One of the condition that was incorporated was that the bidder should have experience of having successfully completed similar works during last nine years ending last day of month previous to the one in which applications were invited. The petitioner had submitted all the necessary documents along with its bid, however, the said bid has been rejected. Communication to that effect was received through E-mail on 15.03.2024. No reasons were assigned for disqualifying/rejecting the technical bid. Hence, the petition has been filed to challenge the disqualification by respondent No.3 and for directions to reconsider and accept the technical bid of the petitioner – company and also to open its financial bid.

3. Heard learned Advocate Mr. S. S. Jadhavar for the petitioner, learned AGP Mr. S. J. Salgare for respondent No.1 – State and learned Advocate Mr. R. A. Tambe for respondent Nos.2 and 3.

4. Learned Advocate Mr. S. S. Jadhavar for the petitioner has taken us through the tender document i.e. the terms and conditions, the papers which have been produced by the petitioner along with Exhibit

and submitted that those documents fulfilled the requirements under the tender. The term similar work has been wrongly interpreted by respondent No.3. Respondent No.3 failed to consider that the petitioner was selected and is working for the project of the company at Chandrapur plant and Koradi plant. Learned Advocate for the petitioner harped upon the fact that no reasons have been assigned while rejecting the technical bid of the petitioner. It shows the arbitrariness on the part of respondent No.3, which deserves to be tackled under the writ petition.

5. Learned Advocate for respondent Nos.2 and 3 relied on the affidavit-in-reply of Shri. Satish Walmikrao Munde, Executive Chemist, MSPGCL, Parali T.P.S., Taluka Parali, District Beed and submitted that since it was the administrative decision of respondent No.3 to reject the bid of the petitioner, it need not be communicated with reasons. It was one of the condition that each tender has different scope of work and in order to qualify, the bidder should have completed three similar works having same scope of work. Petitioner did not qualify condition No.1.2 i.e. experience of having successfully completed similar works during last nine years ending last day of month previous to the one in which applications are invited. In fact, the definition of similar work has also been provided in condition No.1.3. Since the petitioner has not completed three similar works, it is not qualifying the

requirements. A tabular chart has been given in the affidavit to show as to how the interpretation has been done that three similar works have not been completed. Out of them it is stated that work at Koradi and Chandrapur are still running and they are not completed.

6. Learned Advocate for the petitioner relied on the decision in **N. G. Projects Limited vs. Vinod Kumar Jain and others**, [(2022) 6 SCC 127] and submitted that when the arbitrariness has been pointed out, the judicial review is permissible.

7. Learned Advocate for respondent Nos.2 and 3 relied on the decision in **Agmatel India Private Limited Vs. Resourcesys Telecom and others**, [(2022) 5 SCC 362] and submitted that when the rejection of the bid is on account of non fulfillment of criteria, then interference in the rejection cannot be entertained in a writ petition. He also relied on the decision in **N. G. Projects (Supra)** and submitted that only narrow scope is available for judicial review and for the interim orders in tender matters. He strongly relied on the decision in **Silppi Constructions Contractors Vs. Union of India and another**, [(2020) 16 SCC 489], wherein Hon'ble Supreme Court has observed that no reasons are required to be assigned while rejecting the tender, as it is an administrative action. He also submitted that this Court in Writ Petition No.11687 of 2023 filed by the present petitioner itself in respect of another tender decided on 03.04.2024 has wrongly

observed that reasons ought to have been assigned and he submits that those observations are contrary to **Silppi Constructions (Supra)**, but he relies on the said judgment of this Court when it has observed that in that matter also the petitioner had failed to prove that it had carried out three similar works within the stipulated period of nine years.

8. We would like to rely on the observations from the recent decision by the Hon'ble Supreme Court in **M/s. N. G. Projects Limited (Supra)**, in which the earlier decisions have been taken note of and 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.”

9. We are aware of the decision in **Jagdish Mandal Vs. State of Orissa, (2007) 14 SCC 517**, wherein Hon’ble Supreme Court has held that :-

“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 always 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."

10. Thus, taking into consideration the well settled law on this point, we have limited scope. We are to see whether the petitioner has demonstrated firstly that the petitioner was eligible, as it had complied with all the tender requirements, then only we can go to the second

aspect i.e. challenge by the petitioner to the decision of respondent No.3 in the technical bid, otherwise the course is open to the petitioner as aforesaid in **M/s. N.G. Projects Limited (Supra)** and **Jagdish Mandal (Supra)**.

11. In the petition as it was drafted till then the petitioner had no idea as to on which count its technical bid was disqualified and, therefore, it appears that the main contention that was raised was non assigning any reason. Of course in the earlier petition i.e. Writ Petition No.11687 of 2023, we had observed that it was expected from respondent Nos.2 to 4 to assign the reasons. At the same time we would say that in that petition, though the same Advocate was representing respondent Nos.2 and 3, he had not pointed out the decision in **Silppi Constructions (Supra)**, wherein Hon'ble Supreme Court in paragraph No.25 observed thus :-

"25. That brings us to the most contentious issue as to whether the learned Single Judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a State within the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State

would come to a grinding halt. The State must be given sufficient leeway in this regard. Respondents 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done.”

12. What we had observed was that as transparency is required in entire affairs of the working of respondent No.3, we expect that the reasons ought to have been assigned and communicated while informing the fact of non acceptance of technical bid. We do not agree with the submission on behalf of learned Advocate for respondent Nos.2 and 3 that those observations/directions can be said to be contrary. Definitely, the observations by the Hon’ble Supreme Court are binding on this Court. Though the action that would be taken by respondent Nos.2 and 3 would be fairly administrative decision, yet if the reasons are assigned, then it becomes easy for the person to challenge the rejection or if that person/bidder is not convinced with the reasons that has been assigned, then he may not unnecessarily take up the step of challenging the rejection. Thus, communication of the reasons would help in reducing the litigation also.

13. Now, turning towards consideration of the disqualification of the petitioner the reason which has now emerged is that petitioner has not completed three similar works during the last nine years ending last day of month previous to the one in which applications were invited. It is especially in respect of tender work of Chandrapur and Koradi

tender.

14. One more affidavit-in-reply has been filed on behalf of respondent Nos.2 and 3 by same person further explaining that scope of work differs in respect of P.O. Nos.455006159 and 4550012507 of Koradi TPS, the scope of work is relating to cleaning/housekeeping only, however, the scope of work in the present tender is purely technical and related to the maintenance of the auxiliaries/equipments. Further, the layout of Chandrapur TPS is different than that of Parali TPS and the construction of Water Treatment Plant of Chandrapur TPS was altogether different than the construction of Parali TPS Water Treatment Plant. To this affidavit, there was counter additional affidavit by petitioner stating that the work at Koradi and Chandrapur are similar. Item/heads are not mentioned in the tender notice. A hyper-technical view appears to have been taken by respondent No.3 while scrutinizing the technical bid. He has then attached certain documents to support his contention that the work that he has been carrying out is similar.

15. At the outset, we would say that we cannot go into those technical aspects and the further expectations from respondent No.3 that leniency is to be given to respondent No.3, who has invited the tender. The certificates of Koradi says that the work has been completed within scheduled period. However, it appears that still in

respect of two P.O. numbers the work is currently going on. As the disqualification is on the basis of non fulfillment of one of the term which is then supported by the documents, we find that the said decision of disqualification of the technical bid of the petitioner was justified. No case is made out for exercise of constitutional powers of this Court and, therefore, the writ petition deserves to be dismissed. Accordingly, the writ petition stands dismissed.

16. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm