



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5255 OF 2024

M/s Jejurikar Infrastructure
Through Proprietor
Shri Jejurkar Anil Sudhakar,
Age : 49 Years, Occu. : Business,
R/o Sanjay Nagar, C-6,
Smashan Maruti Road,
Chhatrapati Sambhajnagar. .. Petitioner

Versus

1. The Additional Chief Executive Officer,
Zilla Parishad,
Chhatrapati Sambhajnagar.
2. The Sub Divisional Engineer,
Zilla Parishad Sub Division,
Chhatrapati Sambhajnagar. .. Respondents

AND

WRIT PETITION NO. 5256 OF 2024

M/s Jejurikar Infrastructure
Through Proprietor
Shri Jejurkar Anil Sudhakar,
Age : 49 Years, Occu. : Business,
R/o Sanjay Nagar, C-6,
Smashan Maruti Road,
Chhatrapati Sambhajnagar. .. Petitioner

Versus

1. The Additional Chief Executive Officer,
Zilla Parishad,
Chhatrapati Sambhajnagar.

2. The Sub Divisional Engineer,
Zilla Parishad Sub Division,
Chhatrapati Sambhajnagar. .. Respondents

AND
WRIT PETITION NO. 5258 OF 2024

M/s Jejurkar Infrastructure
Through Proprietor
Shri Jejurkar Anil Sudhakar,
Age : 49 Years, Occu. : Business,
R/o Sanjay Nagar, C-6,
Smashan Maruti Road,
Chhatrapati Sambhajnagar. .. Petitioner

Versus

1. The Additional Chief Executive Officer,
Zilla Parishad,
Chhatrapati Sambhajnagar.
2. The Sub Divisional Engineer,
Zilla Parishad Sub Division,
Chhatrapati Sambhajnagar. .. Respondents

Shri K. J. Suryawanshi, Advocate for the Petitioner in all matters.

Shri U. B. Bondar, Advocate for the Respondent Nos. 1 and 2 in all matters.

CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 09 JULY 2024.

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. With the consent of parties heard these matters finally at the admission stage.

2. As all the facts are common, we propose to decide these petitions by this common judgment.

3. The petitioner is aggrieved by its disqualification in the technical bid only on the ground of non submission of distance certificate of the Deputy Engineer. Petitioner is seeking mandamus for opening and considering its financial bid and for issuing distance certificate. The tender process in all these petitions has been floated vide E-tender notice dated 16.05.2024 for the purpose of construction of civil work at Wadodbazar, Babara and Warud Kazi in the respective petitions.

4. Petitioner participated in the tender process and submitted relevant documents. However, it was unable to submit the distance certificate issued by the Deputy Engineer and instead submitted a google map disclosing the distance. The technical bids were opened on 16.05.2024 and the petitioner was found to be non responsive for want of distance certificate. The financial bids are yet to be opened. With this cause, the petitioner has approached High Court.

5. Learned counsel Mr. K. J. Suryawanahsi for the petitioner submits that the distance certificate was not issued by the Deputy Engineer despite repeated requests by the petitioner. Petitioner submitted application on 21.03.2024 seeking issuance of distance certificate, which was not responded deliberately. Hence it is contended that there was no fault on the part of the petitioner. It is further submitted that uploading distance

certificate cannot be said to be mandatory eligibility condition. He would further submit that the distance certificate of 60 KM is uncalled for because the work to be allotted does not pertain to construction of road. It is further submitted that in order to eliminate the petitioner, deliberately distance certificate was not issued.

6. Per contra, learned counsel Mr. U. B. Bondar for the respondents would repel the submissions of the petitioner. It is submitted that all other tenderers/participants were issued with the distance certificates and were submitted along with their tenders. It is further submitted that there was no reason to deny the distance certificate to the petitioner only. He would further submit that the petitioner did not comply with vital condition/document and, therefore was found to be non responsive. Considering limited scope of judicial review in the tender matters, no case is made out for the interference in the tender process.

7. We have considered rival submissions of the parties. Tender notice shows relevant tender condition No. 7(B) for uploading certain documents including the distance certificate to be issued by the Deputy Engineer showing distance between site and land. In all these matters four tenderers participated. Technical bids were opened on 16.05.2024. Petitioner was disqualified in all the process solely on the ground that distance certificate duly not signed by the Deputy Engineer was not furnished.

8. A specific tender condition No. 7(B) was incorporated in a tender notice dated 16.03.2024, which was known to the petitioner. Petitioner did not challenge the tender condition and participated in the process by accepting the conditions.

9. It reveals from record that other participants could secure distance certificates and could upload them. None of the participants raised any grievance in respect of the distance certificate. It is incomprehensible as to why the petitioner would be denied the distance certificate.

10. Petitioner appears to have submitted application on 21.03.2024 soliciting distance certificate. Application is cryptic and is not accompanied by a copy of google map showing distance. If the Deputy Engineer was not responding the petitioner, it could have approached this Court. No endeavour was made to challenge inaction of the Deputy Engineer, but incomplete documents were uploaded. We do not find any arbitrariness in disqualifying the petitioner in the technical bid.

11. We have already recorded that no case is made out by the petitioner to demonstrate *mala fides* and intentional act to eliminate the petitioner. High Court has very limited power in the tender matters. It has been laid down by the Supreme Court in the matters of Jagdish Mandal Vs. State of Orissa and others reported in (2007) 14 SCC 517, N. G. Projects Ltd. Vs. Vinod Kumar Jain reported in AIR 2022 SC 1531 and Tata Motors Ltd. Vs.

Brihan Mumbai Electricity Supply and Transport Undertaking (BEST) and others reported in *AIR 2023 SC 2717*. We find that no case is made out to cause interference in the tender process and to grant any relief to the petitioner.

12. Writ petitions are dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb/July 24