



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7085 OF 2023

R. K. Infraconstro Pvt. Ltd.
Through its Authorised Signatory,
Shubham s/o Madhav Thakre,
Age: 26 years, Occu.: Contractor,
R/o. Kaij Sangvi, Soni Sangvi,
Nashik, District Nashik.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through the Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Accountant (Gr.C.),
PMGSY, MRRDA, Nandurbar,
Dist. Nandurbar.
3. The Executive Engineer,
PMGSY, MRRDA, Nandurbar,
Dist. Nandurbar.
4. The accountant (Gr.B.)
PMGSY, MRRDA, Nashik Circle,
Nashik, Dist. Nashik;
5. The Deputy Engineer,
PMGSY, MRRDA, Nashik Circle,
Nashik, Dist. Nashik;
6. The Superintending Engineer,
PMGSY, MRRDA, Nashik Circle,
Nashik, Dist. Nashik.
7. Shantaram Sahebrao Patil,
R/o. Ambika Colony, Tq. Nandurbar,
District Nandurbar.
8. Dashrath Vikram Patil,
R/o. Shanti Nagar, Near Wagheshwari,

Nandurbar, District Nandurbar.

9. M/s. Girija Construction
Through its Proprietor,
Avinash Shankarrao More,
Age: 39 years, Occu.: Business,
R/o. Vardhaman Nagar, Nandurbar,
District Nandurbar.

.. RESPONDENTS

.....
Ms. Pradnya S. Talekar i/b Talekar and Associates, Advocate for petitioner.

Mr. N. S. Tekale, AGP for respondent Nos.1 to 6.

Mr. R. S. Deshmukh, Senior Counsel i/b Mr. A. R. Joshi, Advocate for respondent No.7.

Mr. B. I. Mahajan, Advocate for respondent Nos.8 and 9.

.....

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

DATE : JANUARY 15, 2024.

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

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

2. The petitioner challenges its disqualification rejecting the technical bid submitted by the petitioner by quashing the technical scrutiny checklist as well as minutes of meeting of technical evaluation committee dated 19.06.2023 and by way of amendment prayer has been made to quash the work order dated 23.11.2023 issued by the respondents in favour of respondent No.7.

3. The factual matrix leading to the petition are that the petitioner - Company had taken part in the tender floated by

Superintending Engineer, Pradhan Mantri Gram Sadak Yojana (PMGSY), Nashik Region, Nashik for total 13 works in approximately 112 kms. length in District Nandurbar. The petitioner contends that it is a seasoned Government contractor and has successfully completed works in several road development projects. There were in all four bidders and the scrutiny of those bids was undertaken on 19.06.2023. From the checklist it appears that the petitioner was found qualified on all counts, however, in the second last row concerning 'material deviation omission or reservation found', it was marked as YES, still his bid was not held to be qualified. Upon the inquiry, it was observed by the scrutiny committee that there were shortfalls with the bidder i.e. the petitioner and a separate chart regarding the same has been given mainly in respect of that the petitioner has not completed the previous projects. In fact, various government resolutions have been issued directing scrutiny authorities not to reject the bids on hyper technical grounds and if there is any shortfall in documents, then the bidder shall be permitted to cure it by granting reasonable time. There was no mandatory condition in the present bid which was not complied with by the petitioner. The petitioner has been disqualified on the three grounds i.e. (i) he has not submitted statement that there was any pending litigation or arbitration, (ii) similar works not completed and (iii) the bank certificate was not in the format. In fact, the statement was made by the petitioner and also submitted undertaking

stating that there is no litigation pending or arbitration proceedings pending. The bank certificate was given and it ought not to have been insisted that it should not have been in a particular format. Whatever was appended to the tender notice was the sample format and if at all the respondent was so keen on getting the certificate in a particular format, time could have been given to the petitioner to submit it in format. As regards the completion of the three works under Mukhya Mantri Gram Sadak Yojana, the petitioner could have shown that in fact those three works are completed. Only on the basis of some complaint or information it appears that such action is taken. The petitioner has been wrongly disqualified and it appears to be with *mala fide* intention to give the work to a particular person. Though during the pendency of the petition work order has been issued, yet this Court by order dated 28.06.2023 had issued interim order that the respondent should not open the financial bid and not to proceed further until the returnable date and therefore, the petitioner prays for the reliefs.

4. Affidavit-in-reply of Kavita Vinayak Deore, the Executive Engineer, Pradhan Mantri Gram Sadak Yojana, Nandurbar has been filed on behalf of respondent Nos.1 to 6. It has been contended that the scrutiny committee held meeting on 19.06.2023 and prior to that the technical bid was opened on 15.05.2023. Two deficiencies were

found in the bid submitted by the petitioner. The first deficiency was in respect of bank certificate of liquid, assets or credit facilities is not in format and the second deficiency was in respect of litigation and/or arbitration proceedings. As regards the third evaluated defect is concerned three similar works were allotted to the petitioner in tribal area. One was in the year 2015-2016 and two others were in 2016-2017, however, the work is not yet complete. The performance of the petitioner was found to be very poor. The present project was also from the tribal area. Despite granting extensions, the petitioner could not complete those three works. The work was in the public interest at large and, therefore, the petitioner has been held to be not qualified.

5. One Shantaram Sahebrao Patil – respondent No.7 has filed affidavit-in-reply. In order to cut short, it can be said that he has stated as to how he has qualified and he was not made party in the initial stage. He came to be made party later on and in the meantime, the work order came to be issued. He has started the work and has also furnished performance security deposit worth Rs.38,59,000/- vide letter dated 09.11.2023. He, therefore, prayed for dismissal of the petition.

6. Heard learned Advocate Ms. Pradnya S. Talekar instructed by Talekar and Associates for the petitioner, learned AGP Mr. N. S.

Tekale for respondent Nos.1 to 6, learned Senior Counsel Mr. R. S. Deshmukh instructed by learned Advocate Mr. A. R. Joshi for respondent No.7 and learned Advocate Mr. B. I. Mahajan for respondent Nos.8 and 9.

7. It has been vehemently submitted on behalf of the petitioner that after the petition was filed, this Court by order dated 28.06.2023 had directed the respondents not to open the financial bids. Unfortunately, the office objections were not removed by the petitioner and in the meantime, by order dated 28.07.2023, a conditional order came to be passed that the office objections should be removed within four weeks failing which the matter would stand dismissed automatically without further reference to the Court. The said order went unnoticed and, therefore, it was treated that the present petition has been dismissed. Thereafter, the petitioner had undertaken the exercise of filing application for restoration along with condonation of delay application. The delay was condoned. Petition was restored. By order dated 10.11.2023, this Court after taking note of all the aspects, observed that any work order issued pursuant to the tender in question shall be subject to the final outcome of the petition. Thereafter, the amendment was carried out, when a statement was made by learned AGP that the work order has already been issued on 23.11.2023. The subsequent events does not take away the right of

the present petitioner to contest the matter and show that he was eligible and has wrongly been thrown away in the technical bid. Learned Advocate for the petitioner then reiterated the pleadings as part of her submissions and taken us through the record that undertaking, in respect of no litigation pending as well as arbitration proceedings pending, was given by the petitioner. She tried to demonstrate as to how the certificate of the bank could not have been insisted upon a particular format and if it was not in a particular format, how the respondents could have gone liberally and allowed the petitioner to submit a certificate under the requisite format. Learned Advocate for the petitioner also submitted that as regards the earlier work details are concerned, it cannot be taken as a compulsory or mandatory information, as there was no column to show that the said previous work is pending and the reasons for the pendency of the projects could have been explained by the petitioner. Proper opportunity was not given by adhering to the principles of natural justice. Further, the act on the part of respondent Nos.1 to 6 is clearly arbitrary. Those factors have been considered which were not mandatory to disqualify a person and, therefore, the writ jurisdiction can be exercised.

8. Learned Advocate for the petitioner relied on the decision in **Reliance Energy Ltd. and Another Vs. Maharashtra State Road Development Corpn. Ltd. And Others**, [(2007) 8 SCC 1]. She relied on

paragraph No.36 of the said judgment and submitted that when Article 19(1)(g) of the Constitution of India confers fundamental right to carry on business to a company, then it is entitled to invoke the said doctrine of “level playing field”. The said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public interest. She further relied on the decision in **Jai Bholenath Construction Vs. The Chief Executive Officer, Zilla Parishad, Nanded and Ors.**, passed by the Hon’ble Supreme Court in Civil Appeal No.4140 of 2022 [@ Special Leave Petition (C) No.7150 of 2022] on 18.05.2022, wherein note was taken on the decision in **M/s. N. G. Projects Ltd. Vs. M/s. Vinod Kumar Jain**, reported in [2022 (5) SCALE 105], but it was then found that this Court had misread the judgment of the Apex Court. Respondent No.4 therein was declared eligible in a flagrant violation of principles of natural justice and all fairness in the process of determining the eligibility of the tenderers. The bid of respondent No.4 was accepted when at the time of opening of technical bids, the said respondent was disqualified. The order passed by this Court was set aside and the respondent – Zilla Parishad was directed to process the matter further from the stage prior to issuance of corrigendum dated 24.11.2021. She prayed that similar relief needs to be given in this case.

9. Learned AGP reiterated the same facts, which have been given in the affidavit-in-reply and mainly submitted that the bidders

were directed to give information regarding the previous work with an intention that their performance in those earlier bids or works allotted can be considered while allotting the fresh work. Though the earlier three bids were given long back, the petitioner could not complete the same even after the extension was given for its compliance. The present project is also in the tribal area. The basic purpose for work was to develop the said area. Therefore, in the public interest also the petitioner has been disqualified.

10. Learned Senior Counsel instructed by learned Advocate Mr. A. R. Joshi for respondent No.7 has taken objection on the eligibility of the authorized signatory, who has filed the petition on behalf of the petitioner – Company. He submitted that resolution by the Company was not filed in the petition and a statement has been made by the learned Senior Counsel that the said authorized signatory is party petitioner in the capacity of authorized signatory for other persons also in similar matters i.e. wherein its disqualification of those petitioners in the technical bid is under challenge. He, therefore, submits that the petition is not filed with *bona fide* intention. It is then reiterated that respondent No.7 was held to be qualified on all counts. Now, the work order has been issued. 15% work has been completed and the bill is also submitted. The performance security deposit has also been paid. Under the said circumstance, for the reasons which petitioner wants to

canvass and with the help of a person who is said to be an authorized signatory, the constitutional powers cannot be used. Learned AGP as well as learned Senior Counsel for respondent No.7 relied on decision in **M/s. N. G. Projects Limited Vs. Vinod Kumar Jain, [2022 (6) SCC 127]**.

11. Since the maintainability of the petition is also raised, we would like to deal with that objection first. The petitioner appears to be a private limited company and it is said that the petition is filed through its authorized signatory. In the entire body of the petition, a clear statement has not been made that the petitioner is a private limited company, but the name of the petitioner suggests the same. A private limited company, which is a registered one, has its own entity and, therefore, it is hard to accept that there can be an authorized signatory to the company, who is not holding any post in the company. Paragraph No.1 of the petition states that the petitioner company has executed a Power of Attorney to grant the signing authority for the present petition and the other documents concerning this litigation to Shubham Madhav Thakre. When a specific question was then put to the learned Advocate for the petitioner, photocopy of the Power of Attorney has been tendered across the bar. Perusal of the said Power of Attorney would show that it has been executed by the Director of Company in favour of the said authorized signatory. The execution of

such document cannot be accepted when it is a company. Certainly any act done by the company should be through a resolution to be passed by the requisite directors. Further, there is no reason as to why the Power of Attorney has been given. That may not be a much point for deliberation. Still, the Power of Attorney, in the fashion it is executed, cannot be said to be a legal document and, therefore, the petition should fail on this count itself.

12. Even if for the sake of arguments we keep the first point aside, we are then required to consider the issue raised in the petition. Now, the petitioner wants to canvass two points, first is the wrong or alleged illegal disqualification of the petitioner from the technical bid and second is the outcome of amendment that the work order issued in favour of respondent No.7 after holding that respondent No.7 is successful in the bid. We will have to take into consideration the subsequent events. Now, 15% work is over after the work order was issued. Even the security deposit in the lakhs of rupees has been deposited, then whether at this stage, the Court should interfere or not would be a question. Definitely, by order dated 28.06.2023 when a statement was made that the financial bid is not yet opened, this Court had directed original respondent Nos.1 to 6 not to open the financial bid and not to proceed further until the returnable date of the matter. The returnable date was 27.07.2023. Further, it was also

stated in the order that all the office objections should be removed within three weeks and copies for serving notices on the unserved respondents shall be tendered within five days. In fact, by same order dated 28.06.2023, leave was granted to add three bidders who were held to be qualified in the scrutiny process on 19.06.2023. It appears that the amendment was carried out in the Court itself, but the office objections were not removed. Thereafter, on 28.07.2023 a common order came to be passed that all the petitioners should remove the office objections within a period of four weeks. It was a conditional order that in case of failure to remove the office objections, the petition would stand dismissed without further reference to the Court. Now, it has been submitted that the order was not uploaded immediately and, therefore, it could not be noticed by the petitioner. It can be seen from the order that the matter of the petitioner was at Serial No.986 on the board. Therefore, it is the bounden duty of the petitioner to see what has happened in the matter. Further, even by order dated 28.07.2023, four weeks time was given for removal of office objections, still it appears that the office objections were not removed and, therefore, the effect of conditional order took place and it was treated that the petition stood dismissed automatically upon non compliance. That means, the interim order that was passed on 28.06.2023 was not in existence upon the conditional dismissal of the petition. Thereafter, by Civil Application No.13586 of 2023, the interim

order came to be passed on 10.11.2023, wherein it was stated that any work order issued pursuant to the tender in question shall be subject to the final outcome of the writ petition. The matter came to be restored. From all these facts, it can be seen that respondent Nos.1 to 6 or even respondent No.7 cannot be blamed for taking up steps for issuing work order and for starting the work in accordance with the work order. Therefore, unless it is now pointed out that the entire exercise of allotting the work to respondent No.7 is tainted with *mala fides*, this Court cannot interfere in the matter.

13. As regards the objections are concerned, they were three in numbers, (i) bank certificate, (ii) litigation/arbitration proceedings pending, undertaking or statement and (iii) regarding incomplete previous work by the petitioner under MMGSY. We may not give much importance to the first two objections, as it could have been got cured by respondent Nos.3 to 6 and it cannot be said that non compliance of the same was inherent defect.

14. As regards the third ground on which the petitioner has been disqualified, it has been tried to be stated that the said previous work was under different scheme and, therefore, if any incomplete work is there, it could not have been considered in another scheme. The present tender process was under the Pradhan Mantri Gram Sadak Yojana. The three previous incomplete work are said to be under

Mukhyamantri Gram Sadak Yojna. But the fact then remains is that it was to be completed almost by the same authorities. Further, in the tender notice itself, it is made clear that the Superintending Engineer, Pradhan Mantri Gram Sadak Yojana was inviting bids for the improvement and five year maintenance of rural roads in Nanded district under Mukhyamantri Gram Sadak Yojana, so it had connection and, therefore, the previous incomplete work could have been taken note of by the scrutiny committee in the present bid. The chart shows that one work was given in 2015-2016 and two other works in 2016-2017 and the status is not yet complete. Petitioner has not produced documents to show that when those works are now complete. Those works would have been completed prior to the last date of submission of bid in the present case.

15. It is not in dispute that major part of Nandurbar district is a tribal area and if development project like construction or road is undertaken by way of such tender process, then it was expected that it should be completed within the prescribed time. The project was of public interest and, therefore, not allotting or holding the petitioner as not eligible at the technical bid in the interest of public cannot be now questioned. Even in **Reliance Energy Ltd. And Another (Supra)**, in paragraph No.36 itself, it has been observed that the doctrine of level playing field is subject to public interest. In **M/s. N. G. Projects**

(Supra), the Hon'ble Supreme Court has observed that :-

"21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India."

16. Therefore, we are of the opinion that no case is made out for exercising constitutional powers of this Court under Article 226 of the Constitution of India.

17. The Writ Petition stands dismissed.

18. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm