



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

Writ Petition No. 11730 Of 2024

M/s Borse Brothers Engineers and Contractors
Pvt. Ltd., Having registered office at Plot No.23,
Anand Nagar, Near Indira Garden, Deopur,
Dhule Maharashtra – 424002.

Through it Director -

Shri. Jitendra Bhatu Sonawane,

Age : years, Occupation-Business,

R/o. Plot No.70, Pramod Nagar,

Sector No.3, Nakane Road, Deopur, Dhule,

Maharashtra – 424002.

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Principle Secretary,
Public Works Department,
Maharashtra State, Mantralaya, Mumbai – 32.

2. The Chief Engineer,
Public Works Region, Nashik,
Tq. & Dist. Nashik.

3. The Superintendent Engineer,
Public Works Circle, Jalgaon.
Tq. & Dist. Jalgaon.

4. The Executive Engineer,
Public Works Division, Jalgaon,
Tq. & Dist. Jalgaon.

5. V.P. Bhandari Construction Pvt. Ltd.,
Through its Director -
Vardhaman Bhandari,
Having Office at 88, Khandesh Mill
Shopping Complex, Tq. & Dist. Jalgaon.

.. Respondents

* Mr. Amol K. Gawali, Advocate for the Petitioner.

* Mr. S.K. Tambe, Addl.GP for Respondents/State.

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ..**

DATE : 18 OCTOBER 2024

ORDER (Per Shailesh P. Brahme, J.) :

. Heard learned Counsel for the petitioner and learned Additional GP for the respondent nos. 1 to 4.

2. The petitioner is challenging disqualification in the technical evaluation conducted on 15.10.2024 and further seeking direction to qualify it and to award work order. The tender process in question pertains to construction of 30 bedded Rural Hospital, Main Building and residential Quarters at Mhasawasd, Dist. Jalgaon. After the disqualification of the petitioner, financial bids were opened and respondent no.5 was selected being lowest bidder.

3. Petitioner was having previous experience of executing construction work of administrative building (Van Bhavan) Dhule for the Department which was worth Rs.22.32 crores. It was executed from 06.03.2018 to 05.05.2023. In pursuance of tender notice dated 05.10.2024, it submitted bid citing the previous experience stated above with the relevant documents. No pre-bid meeting was conducted. In the technical evaluation of the bids on 15.10.2024, the petitioner was disqualified on the

count that the previous work order executed by the petitioner was from 2017-2018 and it was non-responsive to the condition that it should have been commenced and completed from 2019-2020 to 2023-2024.

4. Taking exception to the action of disqualification, learned Counsel Mr. Amol Gawali for the petitioner submits that considering tender conditions viz. 4.2.4, 4.2.5 and 4.2.7 read with Item No.4 Appendix ITB, the assessment is perverse and arbitrary. It is submitted that no pre-bid meeting was conducted, depriving the petitioner of soliciting clarification about the tender conditions which are relevant for qualification. He further submits that all the relevant documents were already uploaded in respect of previously executed work. He would further submit that he was allotted the work of construction in the financial year 2017-2018 and it was completed on 05.05.2023. This experience is in consonance with the essential requirement for qualification in the technical bid. It is submitted that earlier essential qualifying conditions, nowhere prescribed that the previous work should have been commenced and completed from financial year 2019 to 2024. Lastly it is submitted that the rate quoted by the petitioner is lower than the rates offered by respondent no.5. It is loss to the public exchequer in selecting the respondent no.5.

5. Learned AGP repels the submissions of learned advocate for the petitioner. He would submit that on 14.10.2024 by addressing a letter, the petitioner was called upon to cure defects. Its bid was found to be non-compliant to the essential

qualifying conditions. It was specifically stated in the tender conditions that similar type of work would mean hospital building completed during last five years i.e. 2019-2020, 2020-2021, 2021-2022, 2022-2023 and 2023-2024. The experience of the petitioner was in respect of construction of administrative building and not that of a hospital building. It is submitted that the tendering authority is justified in rejecting the petitioner's offer in technical evaluation.

6. With the assistance of learned Counsel for petitioner, we have gone through the tender condition no.4.2.4, 4.2.5, 4.2.7 and Clause No.8 of details of the documents required in technical envelope and eligible criteria for electrical contractor. We have also gone through appendix to ITB which described similar work criteria which is as follows :

4. Similar Work Criteria :

"Satisfactory completed as prime contractor of Similar type of Hospital Building at Electrical work its magnitude completed by contractor during last 5 years i.e. 2019-2020, 2020-2021, 2021-2022, 2022-2023 and 2023-2024 as follows

A) Three Similar type of complete Work having Work wise cost of work not below than 40% of tender cost.

OR

B) Two Similar type of Complete work having work wise cost of work not below than 50% of tender cost.

OR

C) One Similar type of complete work having work wise cost of work not below than 80% of Tender cost."

7. The petitioner was called upon by the tendering authority on 14.10.2024 vide a letter to cure defects as it was allotted previous work in the year 2017-2018 and the essential requirement was the work having been executed from 2019-

2020 to 2023-2024. The petitioner was unable to satisfy the respondent-authorities. It was explained in Clause No.4 referred above that the work which is being cited as previous experience should have been completed during the last five years commencing from 2019-2020 to 2023-2024. The petitioner is not fulfilling the criteria. We do not find any infirmity in the decision making process.

8. The petitioner had previous experience of work of construction of administrative building of Forest Department whereas the essential requirement in the present tender process is that of experience of construction of a hospital building and the electrical work. This criteria has also not been satisfied by the petitioner. We do not find any arbitrariness or highhandedness in disqualifying the petitioner. The petitioner claims to have quoted lowest rate than the selected contractor i.e. respondent no.5., but that cannot be a sole criteria for succeeding in the tender process. The petitioner lacks technical qualification. Its rate has no value and the decision making process cannot be faulted with for that reason.

9. The petition is devoid of any substance. The writ petition is dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

