



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11061 OF 2023

Saibhumi Construction
Through its Proprietor,
Manoj Sahebrao Salunke,
Age: 50 years, Occu.: Business,
R/o. Adarsh Nagar, Opp. Ganesh
Mangal Karyalaya, Hirapur Road,
Chalisgaon, Dist. Jalgaon.

.. PETITIONER

VERSUS

1. State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai – 400032
2. The Collector, Beed
Office of the Collector, Beed.
3. Chief Executive Officer,
Zilla Parishad, Beed,
Office of the Zilla Parishad,
Beed.

.. RESPONDENTS

...

WITH

CIVIL APPLICATION NO.14749 OF 2023

Ganesh Haribhau Khande
Age: 42 years, Occu.: Business,
R/o. C/o. Mohiniraj Constructions
Navghan Plaza, Jalna Road,
Beed – 431122

.. APPLICANT

VERSUS

1. State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai – 400032

2. The Collector, Beed
Office of the Collector, Beed.
3. Chief Executive Officer,
Zilla Parishad, Beed,
Office of the Zilla Parishad,
Beed.
4. Saibhumi Construction
Through its Proprietor,
Manoj Sahebrao Salunke,
Age: 50 years, Occu.: Business,
R/o. Adarsh Nagar, Opp. Ganesh
Mangal Karyalaya, Hirapur Road,
Chalisgaon, Dist. Jalgaon.

..RESPONDENTS

...
Mr. Sayyed Tauseef Yaseen, Advocate for Petitioner.
Mr. V. M. Jaware, AGP for respondents – State.
Mr. S. R. Shirsat, Advocate for respondent No.3.
Mr. V. S. Kadam, Advocate for intervenor.
...

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

**RESERVED ON : JANUARY 19, 2024.
PRONOUNCED ON : FEBRUARY 07, 2024.**

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

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

2. Present writ petition has been filed by the petitioner for following reliefs :-

“B. By issuing Writ of Certiorari or any other Writ, order or direction in the like nature, to quash and set aside the technical bid scrutiny dated 14.08.2023 disqualifying the petitioner from participating in the

tender process at Exhibit-B issued by respondent Zilla Parishad, Beed as being illegal, arbitrary.

C. By issuing appropriate Writ of mandamus or any other Writ, order or direction in the like nature, to declare the petitioner as qualified in the technical bid scrutiny dated 14.08.2023 allowing him to participate in tender process at Exhibit-A.”

3. The facts leading to the petition are that the petitioner had taken part in the tender process issued by Zilla Parishad, Beed for various works in Jal Jeevan Mission. The tender notice was published on 14.03.2022. He participated in the said tender process. Petitioner was informed on 22.04.2022 that work done certificate relied by him bears the signature of Deputy Engineer. He was directed to cure the defect. Thereafter the petitioner submitted the work done certificate signed by the Executive Engineer, Rural Water Supply Division, Zilla Parishad, Jalgaon vide application dated 27.04.2022. It was accepted by the Zilla Parishad satisfying the defects pointed out by respondent No.3. However, thereafter, the petitioner received mail informing that his bid for village Nathapur has been rejected. On perusal of the technical bid it appears that it was opened on 14.08.2023, but it bears the signature of Executive Engineer, Shri. Namdeo Ubale, who stood retired in the month of April, 2022. In spite of curing the defect, the same was not considered and for the same defect (which was cured later) his technical bid has been rejected. The petitioner also submits

that in fact the said tender process was cancelled by respondent No.3 vide order dated 31.10.2022 and fresh tender was initiated on 14.11.2022. In the said fresh tender, petitioner had participated and was found eligible and, therefore, there is illegality in the entire process. Therefore, he has prayed for setting aside the scrutiny by the technical bid committee and declare him as qualified.

4. On behalf of respondent No.3 Avinash Prabhakar Pathak, Chief Executive Officer, Zilla Parishad, filed the affidavit-in-reply. He submitted that during the tenure of his predecessor, the tenders were floated on 14.03.2022 as there were complaints from politicians. His predecessor by order dated 10.06.2022 cancelled the entire tender process. The said cancellation was challenged before this Court in Writ Petition No.6411 of 2022. Group of individuals also approached this Court by filing Writ Petition No.9182 of 2022 and companion matters. In view of the statement by the deponent on 20.04.2023 that fresh tender notice has been issued on 14.11.2022, Writ Petition No.6411 of 2022 and connected Writ Petitions came to be disposed of, however, thereafter some Grampanchayats had filed Writ Petition No.6085 of 2023 and companion matters seeking direction that Jal Jeevan Mission be commenced at the earliest for their villages. This Court while disposing of those writ petitions, restored the first tender process and cancelled the second and it was directed that the first tender process be taken forward from its left out earlier stage. According to the same,

the petitioner had submitted the certificate issued by Deputy Engineer, which was not in compliance with the mandatory condition. Further, it appears that there is manipulation in the date. It is then stated that the technical bids in respect of village Nathapur were opened on 14.08.2023 under the signature of the then in-charge Executive Engineer by name Mr. Namdeo Ubale. In fact, the scrutiny was done when he was in service. Condition No.9 of the E-tender Notice was relied by intervening M/s. Mohiniraj Construction, wherein receipt of a fresh document for curing defects was banned. Various Writ Petitions have been filed just to stall the tender process. The tenders were floated to give drinking water in the rural area and the said object is not being achieved.

5. Rejoinder has been filed by the petitioner reiterating the same contents in the petition and denying the allegations in the affidavit-in-reply.

6. Civil Application No.14749 of 2023 is filed by the intervenor Mohiniraj Constructions, who has now been declared as qualified. The said application stands allowed and thereupon, opportunity of hearing is given.

7. Heard learned Advocate Mr. Sayyed Tauseef Yaseen for the petitioner, learned AGP Mr. V. M. Jaware for respondents – State, learned Advocate Mr. S. R. Shirsat for respondent No.3 as well as

learned Advocate Mr. V. S. Kadam for applicant/ intervenor in Civil Application No.14749 of 2023. In order to cut short, it can be said that all of them have made submissions in support of their respective contentions.

8. The facts are not much in dispute. It appears that in all 19 works were put in one tender notice, which was floated on 14.03.2022. When the said tender process was cancelled on 10.06.2022, Writ Petition No.6411 of 2022 was filed before this Court and in the meantime, second tender process was taken up. This Court by order dated 10.08.2022 in Writ Petition No.6411 of 2022 therefore directed that the second tender process should not be finalized until further orders. On 20.04.2023, a statement was made by respondent No.3 before this Court that the second tender process has been suspended and the earlier tender process would be taken to its logical end and, therefore, on 27.06.2023, a detailed order was passed by this Court, allowing the first tender process to be proceeded from the stage at which it was get in abeyance. Now, the petitioner is contending that when the hearing had taken place in the office of respondent No.3 on 22.04.2022, he was asked to cure the defect and, thereafter he obtained the certificate from Executive Engineer (which was the mandatory requirement in the tender) and then he submitted the same along with letter dated 27.04.2022. We may not go into the

dispute as to whether there is manipulation in the date etc., but the fact remains is that prior to 22.04.2022 the petitioner was not holding the said document i.e. work done certificate by Executive Engineer, which was the date on which the tender scrutiny was done. There is no stipulation in the tender for acceptance of documents to cure the defects. When he has not complied with a clear mandatory provision, his rejection was justified.

9. Now, turning towards the objection in respect of signature of Mr. Namdeo Ubale on the date when the scrutiny was opened i.e. 14.08.2023, respondent No.3 has given explanation that the scrutiny was already done prior to 31.05.2022 i.e. before the retirement of Mr. Namdeo Ubale and in view of the order passed by this Court in Writ Petition No.6805 of 2023 to start the first tender process from the stage at which it was kept in abeyance, only opening of that document on 14.08.2023 cannot be said to be a point/ground in favour of the petitioner.

10. We would like to rely on the decision in **M/s. N. G. Projects Limited Vs. M/s. Vinod Kumar Jain and Ors.**, [2022 LiveLaw (SC) 302], wherein 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."

11. No case is made out for exercising the constitutional powers of this Court under Article 226 of the Constitution of India.
12. For the above-said reasons, the Writ Petition stands dismissed.
13. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm