

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14383 OF 2024

M/s. A. S. Construction,
Through Properiter Mr. Arif S. Shaikh,
Age: 32 Years, Occupation: Business,
Having Office at 98,
Jay Malhar Housing Society,
Khed, Satara 415 003.

... Petitioner

V/s.

- 1. The State of Maharashtra,**
Through Public Work Department,
Mantralaya Mumbai.
- 2. The Superintending Engineer,**
Through Public Work Department, Satara.
- 3. The Executive Engineer,**
Through Public Work Department, Satara.
- 4. A. S. Desai Infrastructure Pvt. Ltd.,**
Kalyani Nagar-Vadgaon Sheri, Pune.

... Respondents

Mr. Suryajeet P. Chavan for petitioner.

Mrs. Neha S. Bhide, Government Pleader with Mr.
O. A. Chandurkar, Additional Government Pleader
with Mrs. G. R. Raghuwanshi, AGP for respondent
Nos.1 to 3.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ &
AMIT BORKAR, J.**

DATED : OCTOBER 21, 2024

Digitally
signed by
SHABNOOR
AYUB
PATHAN
Date:
2024.10.24
15:23:10
+0530

ORAL ORDER: (Per Amit Borkar, J.)

1. The present writ petition impugns the legality and propriety of the technical bid evaluation summary dated 30th September 2024 issued by respondent No.2, wherein the petitioner has been disqualified from further participation in the tender process due to non-submission of essential documents as per tender condition No. 3.6.19 (3), (4), (5), and (6). The petitioner contends that the decision to disqualify him is arbitrary and disproportionate, particularly considering that the defects in submission are minor and could have been remedied through a clarification or an opportunity for rectification.

2. The facts and circumstances relevant for determining the petitioner's eligibility are as under: The petitioner is a proprietary concern engaged in the business of construction and government contracting, primarily for the construction of roads, buildings, and other necessary infrastructure. Respondent No.2 issued a notice inviting tender on 12th February 2024 for various development works, including the construction of roads. The petitioner duly submitted his tender bid along with the necessary documents as per the

specifications mentioned in the tender document. However, after considerable delay, the petitioner, by communication dated 27th September 2024, called upon respondent No.2 to open the bids in accordance with the tender dated 12th February 2024. Respondent No.2, on 30th September 2024, proceeded to open the technical bids and disqualified the petitioner on the ground of non-submission of certain documents required under clause 3.6.19 (3), (4), (5), and (6). Subsequently, on 1st October 2024, respondent No.2 opened the financial bids.

3. The technical evaluation summary specifically lists the documents required to be submitted by the petitioner, which are as follows:

- **Clause 3.6.19(3):** Plan of completion of works using machinery available with the bidder – *Not Submitted*
- **Clause 3.6.19(4):** Plan of completion of the present work – *Not Submitted*
- **Clause 3.6.19(5):** Plan of deployment of machinery for the current work – *Not Submitted*
- **Clause 3.6.19(6):** Adequacy of machinery for the present work – *Not Submitted*

These omissions were cited as the basis for the disqualification of the petitioner from the tender process.

4. The reason assigned by the technical evaluation committee for disqualification was the petitioner's failure to submit required documents as per tender condition Nos. 3.6.19 (3), (4), (5), and (6). These documents are essential and directly relate to the petitioner's technical capability to execute the project. The absence of these documents prevented the committee from assessing the petitioner's preparedness, the availability of machinery, and the feasibility of his proposed completion schedule. It is noteworthy that tendering authorities are under an obligation to ensure that all bidders are compliant with essential tender conditions to maintain fairness and competition in public procurement.

5. The petitioner, aggrieved by this decision, has approached this Court seeking intervention under Article 226 of the Constitution of India, contending that the decision to declare him technically disqualified is arbitrary and not in consonance with the principles of natural justice. The petitioner asserts that the tendering authority should have allowed him an opportunity to rectify these minor deficiencies, as they do not pertain to fundamental aspects of the bid. It is his case that the rejection of his bid, without an opportunity for clarification, violates the principles of fairness and

transparency.

6. Mr. Chavan, learned Advocate for the petitioner, further argued that as per clause (2) of the Government Resolution dated 7th March 2019, the petitioner should have been given an opportunity to rectify any shortcomings before being disqualified. He submitted that the Government Resolution specifically provides that a bidder should not be disqualified for trivial reasons such as non-submission of certain documents, especially if the bidder had previously submitted similar documents for related works and was found eligible. The petitioner contends that the omissions in this case, particularly the non-submission of the work completion plan and machinery deployment plan, are trivial in nature and should not have resulted in outright disqualification.

7. Before evaluating the merits of this argument, it is crucial to understand the established legal framework concerning judicial review of decisions made by tendering authorities. The Supreme Court has consistently reiterated that the scope of judicial review in tender matters is limited. The courts, in exercise of their jurisdiction under Article 226, are not expected to sit as appellate authorities over decisions

made by the tendering committees. Their role is confined to ensuring that the decision-making process is fair, transparent, and free from arbitrariness or mala fides.

8. In *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.* (2016) 16 SCC 818, the Supreme Court held that in matters of tender evaluation, the tendering authority possesses technical expertise and is in the best position to assess the qualifications of bidders. Courts should ordinarily refrain from interfering in such matters unless the decision is so arbitrary or unreasonable that it shocks the conscience of the Court. The emphasis is on maintaining the integrity of the tender process while ensuring that no bidder is unfairly treated.

9. Similarly, in *N.G. Projects Ltd. v. Vinod Kumar Jain* (2022) 6 SCC 127, the Court reiterated that the discretion of the tendering authority should not be lightly interfered with unless there is clear evidence of total arbitrariness or mala fide. The Court observed that commercial interests and technical considerations in tendering are best left to the experts. The Court's role is not to scrutinize the decision-making process with a magnifying glass, seeking minor faults,

but rather to assess whether the process adhered to the procedures set out in the tender conditions.

10. The present case involves the application of tender conditions Nos. 3.6.19 (3), (4), (5), and (6), which are essential in determining the technical soundness of the bid. The petitioner has not disputed the fact that these documents were not submitted with his bid, and it is evident from the record that these documents were crucial for evaluating the feasibility of the petitioner's bid. Given the nature of the project—construction of roads and related infrastructure—these documents were not merely procedural but substantive in ensuring that the petitioner had the necessary machinery, plans, and resources to execute the work efficiently and within the prescribed timeframe.

11. The petitioner's reliance on the Government Resolution dated 7th March 2019, in our view, does not aid his case. The resolution is intended to prevent disqualification for trivial or technical reasons, such as non-submission of documents like income tax returns. However, the non-submission of critical documents, such as the completion plan and machinery deployment plan, cannot be deemed trivial. These documents

form the very basis of evaluating the technical viability of the bid. The tendering authority must ensure that all bidders meet the minimum technical requirements to protect public interest and ensure the timely and successful completion of the project.

12. It is also pertinent to note that the petitioner has not demonstrated that he was previously qualified for similar work under identical or similar conditions. The reliance on the Government Resolution is misplaced, as it is intended to cover minor omissions where the bidder was otherwise found eligible. In this case, the omission of essential technical documents renders the petitioner's bid incomplete and unresponsive.

13. In light of the above discussion, the contention that the petitioner should have been allowed to rectify the omissions is untenable. The petitioner had ample opportunity to comply with the tender conditions at the time of submitting the bid. The tendering authority is not obligated to seek clarifications or allow rectifications for non-compliance with essential conditions, as it would compromise the fairness and transparency of the tender process. Allowing one bidder to

rectify material omissions after the submission deadline would provide an unfair advantage and undermine the integrity of the competitive process.

14. For the foregoing reasons, we are of the opinion that the technical evaluation committee acted well within its discretion in disqualifying the petitioner for non-compliance with tender condition Nos. 3.6.19 (3), (4), (5), and (6). The decision was neither arbitrary nor unreasonable, and there is no evidence of mala fides in the committee's action. Consequently, this Court finds no grounds to interfere with the impugned decision under its writ jurisdiction.

15. The writ petition, therefore, stands dismissed with no order as to costs.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)