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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14739 OF 2024

Anvi Construction, through its proprietor Arjun Santram Patil … Petitioner

V/s.

The State of Maharashtra, through its Secretary, Urban Development Department & Ors. … Respondent

Mr. Aditya S. Raktade with Mr. Abhishek Devkar i/by Ms. Aarti P. Shah for the petitioner.

Mrs. Neha S. Bhide, G.P. with Mr. O.A. Chandurkar, Additional G.P. and Mrs. G.R. Raghuwanshi, AGP for respondent No.1 – State.

Mr. Amit Sale i/by Mr. Shivaji Masal for respondent No.2.

Mr. Vishwajeet Sawant, Senior Advocate i/by Mr. Manoj Pawar for respondent No.3.

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

DATED : OCTOBER 22, 2024

P.C.:

1. Heard learned counsel for the petitioner and Mr. Amit Sale, learned counsel representing respondent No.2 – Vita Nagar Parishad, Taluka Khanapur, District Sangli.

2. By instituting this writ petition under Article 226 of the Constitution of India, the petitioner, which is a proprietary firm, challenges the decision of respondent No.2, whereby the technical bid submitted by the petitioner in response to e-tender notice No.WSD_WORK No.-01 for 2024-25 for the work described as 'Vita Water Supply Scheme, Taluka Khanapur, District Sangli', has been rejected.

3. The technical bid evaluation sheet is on record, according to which, the technical bid of the petitioner has been found to be non-responsive on five counts, that is to say (i) that as per the profit and loss account submitted by the petitioner, the average annual financial turnover of the petitioner was Rs.20.35 crore which is less than the required turnover of Rs.21.41 crore as per the notice inviting tender, according to which, the turnover should be at least 30% of the estimated cost; (ii) that the petitioner had entered into collaboration agreement with some other company; however such collaboration agreement is not notarized; (iii) net worth is available only for the year 2023-2024 and that net worth certificate for previous two years is not submitted as per the notice inviting tender; (iv) the certificate showing the bid capacity did not contain UDIN number; and (v) the collaboration agreement is not notarized, and as such the same is not valid as per the notice inviting tender.

4. It has been stated by the learned counsel for the petitioner that on 7th October 2024 the technical bid was opened and on the same day financial bid was also opened. It has been further argued by the learned counsel for the petitioner that before declaring the petitioner's technical bid non-responsive, no opportunity was given to the petitioner for removing such discrepancies and making the deficiencies good, and accordingly, the impugned decision of the respondent No.2 – Council is not tenable.

5. Mr. Sale, learned counsel representing respondent No.2 – Council, while opposing the writ petition, has, however, stated that so far as non-submission of notarized agreement and non-submission of certificate containing UDIN number are concerned, such discrepancies can be said to be minor and in terms of Government Resolution dated 17th September 2019 it is only in case of minor deficiencies that the participating tenderer is required to be given opportunity to remove the same. However, the reason that the figure mentioned in the certificate relating to average annual financial turnover did not match with the figure of the average annual financial turnover in the profit and loss account is so glaring, that even if opportunity was given, it was not possible for the petitioner to remove such a deficiency.

6. We have considered the rival submissions made by the learned counsel for parties and find ourselves in complete agreement with the submissions made by the learned counsel for the respondent No. 2 – Council.

7. The Government Resolution dated 17th September 2019 provides that opportunity should be given to the participating tenderer in case there are some minor deficiencies in submission of the documents, for making such deficiencies good. However, such a provision cannot be read to mean that opportunity in all such cases shall be provided. Embodiment of such provision in Government Resolution dated 17th September 2019 is reflection of the principles of natural justice incorporated by the State Government in the said Government Resolution. However, it is to be noticed that principles of natural justice cannot be put into a straight jacketed formula. In a situation where even after grant of opportunity, the party or the person is not in a position to rectify the mistake or to make the deficiency good, providing of opportunity will be nothing but an exercise in futility.

8. If the aforesaid principle is applied in the facts of the present case, what we find is that the profit and loss account admittedly reveal that the average annual financial turnover of the petitioner was Rs.20.35 crore, which is less than the required turnover of Rs.21.41 crore as per the notice inviting tender. Merely because some other figure in the certificate submitted by the petitioner evidencing average annual financial turnover was mentioned, it will not improve the case of the petitioner even if he was given an opportunity to rectify the alleged mistake or deficiency. It is the same profit and loss account on the basis of which the petitioner – firm is said to have filed its income-tax returns, and as such the petitioner – firm cannot resile from such statement as are available in the profit and loss account.

9. For the reasons aforesaid, we are of the clear opinion that providing opportunity to the petitioner would have amounted to an exercise in futility and, hence, we are not inclined to entertain the writ petition, which is hereby dismissed.

10. However, there will be no order as to costs.

(AMIT BORKAR, J.) **(CHIEF JUSTICE)**