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

WRIT PETITION NO. 2444 OF 2024

M/s. Ingawale Patil Constructions
Co. .. Petitioner

Versus

Principal Secretary Water
Resource Dept. & Ors. .. Respondents

Mr. Amjith M. Anandhan i/by Mr. Rohan Kaiche for petitioner.
Mr. P. P. Kakade, Government Pleader with Mr. O. A.
Chandurkar, Addl. Govt. Pleader with Mrs. Snehal S. Jadhav,
AGP for respondent nos.1 to 7-State.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 27th FEBRUARY, 2024

P.C.:

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, writ petition is taken up for final disposal.

2. Under challenge in this petition filed under Article 226 of the Constitution of India is the decision of the Godavari Marathwada Irrigation Development Corporation (hereinafter referred to as "the Corporation"), which is a Government of Maharashtra Undertaking, whereby the petitioner has been

technically disqualified in respect of E-Tender Notice No.08/2023-24.

3. Submission of the learned counsel for the petitioner is that the reasons given for disqualifying the petitioner are flimsy and further that while taking such decision, the provisions contained in the Government Resolution dated 27th September, 2018 have not been followed.

4. A tender notice bearing No.08/2023-24 was issued by the Corporation inviting tenders for execution of work, "Construction of Mechanised Cement Concrete Paver Lining of Upper Pravara Right Bank Canal Km 69-84". The petitioner-firm submitted its tender; however, it has technically been disqualified. The reasons for disqualification can be found in letter dated 9th January, 2024, whereby the Executive Engineer concerned had called upon the petitioner to furnish explanation as to why the petitioner-firm may not be disqualified on the basis of points cited in the said letter. The three reasons cited in the letter dated 9th January, 2024 are as follows: -

*"1) As per the Tender condition no.2.1.2 "the Partnership firm has to authorize a specific individual via an **authorization certificate** signed by a partner of the firm (and in case the applicant is a partner, another partner in the same firm is required to authorize) to use*

*the digital certificate as per **The Information Technology Act, 2000**. There are two (2) Partners in M/s Ingawale Patil Construction Co. One is Shri Balasaheb Namdeo Ingawale and another one is Mr. Prachit Balasaheb Ingawale, and the firm has not submitted the **authorization certificate** in the submitted documents.*

*2) In your submitted **Power of Attorney** Shri Balasaheb Namdeo Ingawale is the true and lawful attorney of the firm to submit and sign the Tender Documents, affidavit and Undertakings. Documents submitted with the tender i.e. Appendix-F and Undertakings 1-5 are not signed by an authorized partner, i.e. Shri Balasaheb Namdeo Ingawale as per the **Power of Attorney**.*

3) As per the submitted Annexure-II on Rs.500 stamp paper the deponent is Shri Balasaheb Namdeo Ingawale but this affidavit is signed by Mr. Prachit Balasaheb Ingawale"

5. In respect of Point No.1 contained in letter dated 9th January, 2024, on a query being put, learned counsel for the petitioner has admitted that the authorization certificate, as required in terms of tender Condition No. 2.1.2, was not submitted while furnishing the tender. Similarly, in respect of the second point indicated in the letter dated 9th January, 2024 that the Power of Attorney was not signed by the authorized partner, it has been stated that the recital made in this regard in the letter dated 9th January, 2024 is correct. It is also admitted by the learned counsel for the petitioner that Rs.500 stamp paper submitted along with the tender, though

deponent was shown to be Shri Balasaheb Namdeo Ingawale but it was signed by Shri Prachit Balasaheb Ingawale. It is, thus, admitted that the said stamp paper was not signed by the deponent as depicted in the stamp paper.

6. Thus, all the three points, as narrated in the letter dated 9th January, 2024, have been admitted by the learned counsel for the petitioner, however, he has stated that the said reasons are flimsy and in terms of the provisions contained in the Government Resolution dated 27th September, 2018, on such flimsy ground, the technical bid of the petitioner could not have been rejected.

7. The Government of Maharashtra has issued a Government Resolution dated 27th September, 2018, which embodies certain guidelines regarding processes to be followed for calling the tender and acceptance of the tender for executing various works. The learned counsel for the petitioner has laid emphasis on Clause 4.5.2 of the said Government Resolution, which is extracted hereunder: -

"4.5.2 After opening of bids by the Bid Scrutiny Committee, if they find any doubts/queries regarding Eligibility/Non-Eligibility of the bidders, then they shall call the explanation from those bidders on following points/items:

1. *Paper related to Registration.*
2. *Explanation regarding power of Attorney (PoA).*
3. *Discrepancies found in Bank Guarantee.*
4. *Explanation in case any query/discrepancy found in Technical & Financial Statements.*
5. *Bridge Length, similar kind of works, height of the building & Quality standards, quantities and cost of individual items of road work.*
6. *Discrepancies found in Joint Venture Agreements and Non submission of Notified/Notarized documents, Non mention of the share of the shareholders in case of Joint Venture.*
7. *Explanation regarding discrepancies found in financial clause related statements.*
8. *Any discrepancy, lacuna, etc. and if any explanation required regarding the any documents submitted in the Technical Bid.*

Executive Engineer & Superintending Engineer shall carry out written correspondence with bidders to get their clarification/explanation in regards to above points before bids are declared as qualified or disqualified. The bidder shall not be disqualified for want of paperwork/document of less important nature. In such case, legitimate documents/papers shall be obtained from that bidder and the same shall be submitted before the Bid Scrutiny Committee and then the decision regarding eligibility of the bid shall be taken. All records in this regard shall be placed on tender file and also shall be placed on the website as well and all this shall be clearly mentioned in the proposal regarding acceptance of the bids.

Many times it so happens that, the bidder who is found eligible while opening one bid is found not eligible while opening another bid of similar kind in same tender notice. This may result into formation of the cartel. Hence the bidders, who are found eligible or Technically Qualified in the country/ State/ P.W.D. for carrying out similar kind of Building / Road / Bridge work, their Technical Bid shall not be disqualified for non-submission of minor / less important documents/ papers like PTC,

Machinery, Income Tax Related papers similar kind of work related papers/documents. After submitting all these papers by the bidder and after the due scrutiny of these documents, financial bids shall be opened.”

8. It has, thus, been argued by the learned counsel for the petitioner that in terms of the provisions contained in the aforesaid Government Resolution, if, after opening of the bid, it is found that there are any doubts or queries regarding eligibility or non-eligibility, then the Bid Scrutiny Committee shall call for the explanation from the bidder on certain points enumerated therein. Our attention has also been drawn to the latter part of Clause 4.5.2 of the said Government Resolution which provides that the Executive Engineer and Superintending Engineer shall carry out written correspondence to get clarification/explanation from the bidders before bids are declared as qualified or disqualified. It also provides that the bidder shall not be disqualified for want of paperwork/document of less important nature and further that in such cases legitimate documents/papers shall be obtained from the bidder and the same shall be submitted before the Bid Scrutiny Committee.

9. The submissions of the learned counsel for the petitioner, based on the provisions contained in the said

Government Resolution dated 27th September, 2018, are two fold; (i) that the bid of the petitioner has been technically disqualified on account of want of certain papers/documents of less important nature and (ii) that if some deficiency in the paper work/documents was found, it was incumbent upon the authority concerned to have obtained the said papers/documents from the bidder. Having not done so, the respondents have committed error in law, which renders the impugned decision of disqualifying the petitioner technically illegal.

10. So far as the submission of learned counsel for the petitioner that the papers/documents which have been pointed out to be deficient in the letter dated 9th January, 2024 is concerned, we may only observe that the said papers/documents do not carry less importance for the reasons that if any authorization signed by a party/firm is required to be furnished and the same has not been furnished, this, in our considered opinion, will not amount to furnishing papers/documents of less important nature. Similarly, if a tenderer furnishes the Power of Attorney executed in favour of one person and the tender documents, such as affidavit and undertakings etc. are not signed by such

authorized partner or Power of Attorney, such document not signed by the Power of Attorney cannot be termed to be a document of less important nature. It is also to be noticed that the estimated cost of the tender work is about Rs. 21 crore and in case a tenderer furnishes a stamp paper, described as being executed by one person and it is signed by another, such a callous approach by a tenderer cannot be accepted for entrusting the work of such a high cost of Rs.21 crore and odd.

11. Since the documents which were found to be deficient furnished by the petitioner along with its tender cannot be said to be documents of less important nature, as such question of granting opportunity to furnish fresh documents does not arise.

12. Lastly, the learned counsel for the petitioner has stated that the entire exercise of scrutiny of documents or calling upon the documents etc. from the bidder in terms of the provisions contained in Clause 4.5.2 of the Government Resolution dated 27th September, 2018 has to be preceded by the decision to disqualify, whereas in the instant case the explanation as per the said requirement was called to be submitted by the petitioner on 9th January, 2024, though the

decision to disqualify was taken in 22nd December, 2023. He, thus, submits that such a course adopted by the respondents is in violation of provisions contained in Government Resolution dated 29th September, 2018.

13. To the said argument, we may only observe that Government Resolution dated 29th September, 2018 contains only executive guidelines and secondly the contents/recitals made by the Executive Engineer in his letter dated 9th January, 2024 are all admitted. Thus, even if the petitioner was provided the opportunity in terms of the Government Resolution dated 27th September, 2018 before decision to disqualify it was taken, it would have amounted to only an empty formality.

14. Thus, for the reasons as aforesaid, we do not find any good ground to interfere in this writ petition, which is hereby dismissed.

15. Rule is, thus, discharged.

16. There will be no order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)