

jvs

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

**WRIT PETITION NO. 2560 OF 2024
WITH
WRIT PETITION NO. 2561 OF 2024
WITH
WRIT PETITION NO. 2562 OF 2024
WITH
WRIT PETITION NO. 2563 OF 2024
WITH
WRIT PETITION NO. 2564 OF 2024**

Jha P. & Company	}	Petitioner
Versus		
Executive Engineer, Public	}	
Works Division No. 1, Thane	}	
& Anr.	}	Respondents

Mr. Ashutosh Kumbhakoni, Senior Advocate
i/b. Mr. Akshay Shinde for the petitioner in all
writ petitions.

Mr. P. P. Kakade, Government Pleader with
Mr. O. A. Chandurkar, Additional Government
Pleader and Ms. G. R. Raghuwanshi, AGP for
respondents (State).

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

DATE: 29th FEBRUARY, 2024

P.C.:

- 1.** Rule.
- 2.** Rule is made returnable forthwith. With the consent of the parties, the petitions are taken up and are being decided finally.

3. These five writ petitions have been filed challenging the decision of respondent no. 1, whereby the petitioner has been technically disqualified in the tender bearing Reference No. NIT No. 81-FOR-2323-24 for the reason that the petitioner did not submit the requisite E-bid Capacity Certificate. The reason for disqualification of the petitioner can be found at page 119 of Writ Petition No. 2560 of 2024. The reason, thus, indicated is that the petitioner did not submit "Online Bid Capacity Certificate". In all other writ petitions, the same reason has been assigned for declaring the petitioner to be technically disqualified.

4. It is the submission of Mr. Kumbhakoni, learned senior counsel appearing for the petitioner that by means of a letter dated 9th February 2024, the petitioner was required to make good the deficiencies in the papers/documents submitted in response to the tender notice during office hours in the office of the Executive Engineer concerned. Mr. Kumbhakoni has drawn our attention to the contents of the said letter dated 9th February 2024, whereby, amongst others, the petitioner was also required to submit Bid Capacity Certificate and accordingly, the petitioner submitted the Bid Capacity Certificate issued by the Chartered Accountant showing the assessed available bid capacity of the petitioner in the office of the Executive Engineer during office hours.

5. In view of the aforesaid, it has been argued by Mr. Kumbhakoni that once the Bid Capacity Certificate was submitted in physical form by the petitioner as per the requirement disclosed in the letter dated 9th February 2024, rejecting the petitioner's bid on the ground that it did not

submit Online Bid Capacity Certificate is absolutely arbitrary and thus illegal.

6. Mr. Chandurkar, learned Additional Government Pleader representing the State respondents has, however, submitted that the technical bid of the petitioner has been rejected on account of non-submission of "Online Bid Capacity Certificate". It is his submission that in terms of clause 4.6.6 of the tender conditions, the tenderers were required to submit QR based Bid Capacity Certificate which is mandatory as prescribed by clause 4.6.6(f) of the tender conditions. Learned Additional Government Pleader has, thus, argued that in absence of submission of QR based Bid Capacity Certificate of the petitioner, the bid has rightly been rejected.

7. Further submission made by learned State counsel is that QR based Bid Capacity Certificate is distinct from a certificate issued by the Chartered Accountant. According to him, once any tenderer furnishes QR based Bid Capacity Certificate through e-mode, the necessary information is extracted from the portal created for the said purpose and since the requirement as per the tender conditions was submission of QR based Bid Capacity Certificate, hence, the petitioner's bid has rightly been rejected.

8. Having considered the submissions made by the parties, we are convinced that the decision to reject the petitioner's bid does not suffer from any illegality. Once, by means of the letter dated 9th February 2024, the petitioner was required to submit documents, including the Bid Capacity Certificate, he was required to submit the said Bid Capacity Certificate as per the requirement of clause 4.6.6(f) of the tender conditions.

The Bid Capacity Certificate obtained from a Chartered Accountant and submitted by the petitioner cannot be equated with the QR based Bid Capacity Certificate for the reason that once any tenderer furnishes QR based Bid Capacity Certificate, his bid capacity is gathered by the tendering authority from the portal created for the said purpose. The submission made by learned senior counsel Mr.Kumbhakoni that since the letter dated 9th February 2024 required the petitioner to submit Bid Capacity Certificate only and not QR based certificate and as such, in compliance of the said letter, the petitioner submitted the Bid Capacity Certificate issued by the Chartered Accountant is not acceptable for the reason that any requirement as indicated in the letter dated 9th February 2024 has to be read in conjunction with the tender conditions and no deviation from the tender conditions can be permitted.

9. For the reasons aforesaid, we are not inclined to entertain the writ petitions. They, being devoid of merit, are hereby dismissed.

10. Rule is discharged.

11. There shall be no order as to costs.

JAYANT
VISHWANATH
SALUNKE

Digitally signed by
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SALUNKE
Date: 2024.03.01
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(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)