

WRIT PETITION NO. 2589 OF 2024

Sharad R. Bargaje } **Petitioner**
versus
State of Maharashtra & Ors. } **Respondents**

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JAYANT
VISHWANATH
SALUNKE
Date: 2024.04.08
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Mr. Priyal G. Sarda with Ms. Seema S. Dighe for respondents 2, 5, 6 & 7.

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

DATE: 8th APRIL 2024

P.C.:

- 1.** Rule.
- 2.** Rule is made returnable forthwith. With the consent of the learned counsel for the parties, the matter has been heard finally.
- 3.** By instituting the proceedings of this petition under Article 226 of the Constitution of India, the petitioner has challenged rejection of his technical bid submitted by him pursuant to the re-tender notice dated 14th December 2023 and also pursuant to another tender notice dated 25th October 2023.

4. It has been argued by learned counsel for the petitioner that the tender submitted by the petitioner was found non-responsive on the alleged ground that he had not submitted site inspection report though the said reason cannot be attributed to the petitioner for the reason that he had made appropriate application and prayer to the tendering authority for permitting him to conduct site inspection so that the site inspection report can be submitted by him, however, the said opportunity was denied to him. This ground has been taken in respect of the impugned action on the part of the respondents in rejecting the technical bid pursuant to the tender notice dated 14th December 2023.

5. Regarding rejection of the technical bid pursuant to the tender notice dated 25th October 2023, it has been argued by learned counsel for the petitioner that the said bid has been rejected on the ground that the petitioner did not furnish valid contract labour licence, however, on the basis of the same contract labour licence, the petitioner was found eligible in the bid process initiated vide tender notice dated 8th September 2023. Thus, the submission is that once the contract labour licence was held to be valid and on that basis the petitioner was held to be eligible pursuant to the tender notice dated 8th September 2023, the respondents could not have held him ineligible on the basis of the same contract labour licence, pursuant to the tender notice dated 25th October 2023.

6. On the other hand, learned counsel representing Alandi Municipal Council has submitted that the petitioner was given ample opportunity to carry out site inspection, which he did not avail and accordingly, non-submission of site inspection report

cannot be attributed to the Municipal Council. He has also stated that so far as rejection of the technical bid pursuant to tender notice dated 25th October 2023 is concerned, the contract labour licence submitted by the petitioner had already expired on 4th October 2023 and accordingly, the same could not have been accepted. The submission is that since the said contract labour licence expired on 4th October 2023, as such, he was rightly held eligible pursuant to the tender notice dated 8th September 2023, however, on the basis of the same document, he could not have been held to be eligible for the reason that on the date of issuance of the tender notice, i.e., on 25th October 2023, the contract labour licence stood expired on 4th October 2023.

7. We have considered the respective submissions made by the learned counsel for the parties.

8. A tender notice was issued on 8th September 2023, but the tender process initiated pursuant to the said tender notice was cancelled for the reason that only two bidders were found technically eligible. Accordingly, decision was taken to issue fresh tender notice, which was issued on 14th December 2023.

9. It has been submitted by learned counsel for the respondents that every participant was given eight days' time for site inspection from 14th December 2023, i.e., since the date of publication of re-tender notice, however, the petitioner did not avail the said opportunity, instead, he sent an email on the last date of submission of bid i.e. on 28th December 2023.

10. It is, thus, seen that the time available between 14th December 2023 and 22nd December 2023 for carrying out site inspection was not availed by the petitioner and thus, in our

view, he cannot have any complaint of not having been provided the opportunity to carry out site inspection. We are, thus, of the opinion that the non-submission of site inspection report cannot be attributed to the respondent-Alandi Municipal Council. We, thus, do not find any illegality in rejection of the technical bid of the petitioner submitted by him pursuant to the re-tender notice dated 14th December 2023.

11. So far as rejection of the technical bid pursuant to the tender notice, dated 5th October 2023 is concerned, admittedly, on the date of publication of the said tender notice, i.e., 25th October 2023, the contract labour licence stood expired. In fact, it had expired on 4th October 2023 itself and hence, in our opinion, the petitioner could not be held eligible on the basis of the contract labour licence which stood expired prior to the date of issuance of the tender notice, dated 25th October 2023.

12. The submission that on the basis of the same contract labour licence, the petitioner was held eligible pursuant to the tender notice dated 8th September 2023 and therefore he should have been held eligible in the subsequent tender as well is of no avail to the petitioner for the reason that on the date of publication of the earlier tender notice i.e. 8th September 2023, the contract labour licence had not expired, which was, in fact, valid on the said date. It is worth noticing that the contract labour licence had expired on 4th October 2023 which is much prior to the date of publication of tender notice that is 25th October 2023.

13. Thus, for the reasons aforesaid, we are not inclined to entertain this petition. It is, accordingly dismissed.

14. Rule is discharged.

15. There shall be no order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)