

VRJ

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

WRIT PETITION NO.3007 OF 2024

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RAMESH
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Date: 2024.09.05
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M/s. Anuni Infrastructure,
Through Partner, Sachin T. Patil,
Age. 45, Bearing Registration
No."Anusaya", S. No.78, Karad Wahab
Road, Opposite Karad Urban Bank,
Branch-Rukmininagar Karad, Dist:
Satara, 415 110

... Petitioner

V/s.

- 1 Chief Officer, Karad Municipal Council,
Karad
- 2 Principal Secretary,
Urban Development Department,
Mantralaya, Madam Cama Road,
Nariman Point, Mumbai – 1.
- 3 Amit Enterprises, 77, Budhwar Peth,
Karad, Satara, 415 110

... Respondents

Mr. Yuvraj Narvankar for the Petitioner.

Mr. Dilip Bodake with Mr. Sharad T. Bhosale for
Respondent No.1.

Mr. P. P. Kakade, Government Pleader with Mr. O. A.
Chandurkar, Additional Government Pleader and
Ms. G. R. Raghuwanshi, AGP for the State –
Respondent No.2.

Mr. Chaitanya C. Mulawkar for Respondent No.3.

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

RESERVED ON : AUGUST 30, 2024

PRONOUNCED ON : SEPTEMBER 3, 2024

JUDGMENT.: (PER AMIT BORKAR, J.)

1. Rule. With consent of learned counsel for respective parties rule is made returnable forthwith.

2. Respondent No. 1, Karad Municipal Council, issued an invitation for bids on 31 January 2024 for execution of road construction work from Shukrawar Peth to Sarda Ghar Nana Nani Park. The tender notice issued by Respondent No. 1 detailed the general terms and conditions and the scope of work for the tender. It was stipulated that the tender process would follow a two-stage system. In the first stage, pursuant to Condition No. 6.1, proposals were scrutinized for compliance with the tender notice requirements, with only compliant proposals advancing to the second stage. The second stage, in accordance with Condition No. 8, involved a technical evaluation based on the criteria set forth in the tender documents.

3. In the present case, the technical bids were opened on 12 February 2024. The tender committee examined the documents submitted by all bidders, including the Petitioner and Respondent No. 3. By order dated 15 February 2024, the tender inviting authority decided to reject the Petitioner's technical bid and recommended the opening of financial bids

submitted by the other three bidders. The decision of the tender inviting authority dated 15 February 2024, declaring the Petitioner's bid as non-responsive, is challenged in the present writ petition.

4. In challenging the decision to declare the Petitioner ineligible, the learned advocate for the Petitioner submitted that the reason provided by the tender inviting authority was the Petitioner's failure to produce the Geo-Tag certificate, as required by Condition No. 6.1.13. This site visit certificate is issued by the Chief Officer of Karad Municipal Council. The process for obtaining such a Geo-Tag certificate necessitates any person seeking such certificate to apply to Respondent No. 1 for a site visit along with his representative, and upon the photograph being uploaded by Respondent No. 1, the certificate is prepared by Respondent No. 1. Accordingly, the Petitioner applied to Respondent No. 1 on 9 February 2024 for certificates for seven sites, including the subject site. On 12 February 2024, Respondent No. 1 issued site visit certificates for six of the sites. According to the Petitioner, all seven sites pertain to the same road, making it difficult to distinguish individual sites; hence, the Petitioner annexed the Geo-Tag certificate of a different site for the present tender process. Upon the rejection of the Petitioner's bid, the Petitioner immediately lodged a complaint with Respondent No. 1 on 20 February 2024, contending that the officer concerned issued the wrong Geo-Tag certificate. The Petitioner further argued that the Government Resolution dated 27 September 2018 in terms of Condition No. 4.5.2, mandates that the tenderer be

given notice in case of minor deficiencies in the bidding process. The Petitioner thus requested that they be deemed eligible to participate in the tender process. On 23 February 2024, Respondent No. 1 communicated to the Petitioner that the Petitioner's representative had orally informed that the Petitioner required Geo-Tag certificates for only six works. The Petitioner contends that the approach of Respondent No. 1 is contrary to the Government Resolution dated 27 September 2018.

5. Conversely, it is argued on behalf of Respondent No. 1 that the Petitioner's representative had orally informed the officials of Respondent No. 1 that the Petitioner did not require a Geo-Tag certificate, and therefore, the Petitioner failed to comply with the eligibility condition, resulting in his rightful disqualification. Respondent No. 1 had issued site visit certificates for the other six tender sites.

6. The learned advocate for Respondent No. 3 submitted that the petitioner was rightly declared disqualified, and given the Petitioner's non-compliance with the eligibility condition of furnishing the Geo-Tag certificate, Respondent No. 1 rightly declared the Petitioner's bid non-responsive. He further submitted that Respondent No. 3 has not yet commenced the road construction work but has procured the necessary materials, and thus, no interference under the extraordinary jurisdiction under Article 226 of the Constitution of India is warranted in this petition, as the decision of the tender inviting authority is neither arbitrary, unreasonable, nor perverse.

7. The rival contentions now require adjudication.

8. The primary issue for consideration is whether the Petitioner's inability to furnish the Geo-Tag certificate is attributable to the inaction on the part of Respondent No. 1 which led the Petitioner's disqualification for reasons beyond his control. For effective adjudication of the issue, it is necessary to examine the following tender conditions:

"6.1 ONLINE ENVELOPE No.1: (Documents)

The First Online Envelope, "Envelope No.1," shall contain the following documents:

6.1.13 SITE VISIT CERTIFICATE ISSUED BY THE CHIEF OFFICER, KARAD MUNICIPAL COUNCIL, KARAD, WITH A GEO-TAG PHOTO."

9. The following factual scenario emerges on consideration and examination of the rival submissions made on behalf of the parties:

(i) The Petitioner applied for a site visit certificate with a Geo-Tag photo for seven works, including the subject work.

(ii) The site of all seven works is located along the same stretch of road.

(iii) Six site visit certificates for the works listed as Serial Nos. 1 to 6 in the application dated 9 February 2024 were issued by Respondent No. 1.

(iv) The site visit certificate with a Geo-Tag photo for the work listed as Serial No. 7 was not issued by Respondent No. 1.

10. In response to the Petitioner's complaint dated 20 February 2024, Respondent No. 1 replied, stating that the Petitioner's representative had orally informed an employee of Respondent No. 1 to issue site visit certificates for only six works. The Petitioner has annexed a written application from another bidder in a different tender process, withdrawing the application for the issuance of a Geo-Tag certificate, to demonstrate that similar applications were withdrawn in writing.

11. Furthermore, the Petitioner promptly filed a complaint on 20 February 2024, asserting that Respondent No. 1 had provided six site visit certificates to the Petitioner. Considering the location of all sites on the same road, the Petitioner was unable to ascertain the exact location of the site visit certificate for the subject work, as the distance between the sites is merely 20 to 30 feet along the same road.

12. Moreover, Clause 4.5.2 of the Government Resolution dated 27 September 2018 mandates that in case of any ambiguity or deficiency in the documents relating to the technical and financial bids, it is obligatory for the tender scrutiny committee to seek an explanation from the tenderer. This clause specifically requires the competent officer to communicate in writing with the tenderer before disqualifying them. It also requires the evaluation committee to consider corrected documents regarding the tenderer's eligibility. Additionally, it is stated that if such a tenderer was deemed eligible in an earlier tender process and had completed the earlier work to the satisfaction of the authority, such a

tenderer should not be disqualified on trivial grounds.

13. Therefore, in our opinion, there was Respondent No. 1's failure to comply with Condition No. 4.5.2 of the Government Resolution dated 27 September, 2018 by not granting the Petitioner an opportunity to rectify the deficiency in the supply of the site visit certificate. The Petitioner's inability to furnish such a certificate occurred due to Respondent No. 1's inaction. The Petitioner having been deemed eligible for an earlier contract and having completed that work to the satisfaction of Respondent No. 1 all the above failures on the part of Respondent No. 1, make the impugned decision to declare the Petitioner ineligible unjustified. Thus, the decision of the Tender Evaluation Committee is, on the face of it, arbitrary and ultra vires, as it violates the binding Government Resolution dated 27 September 2018.

14. In view of the aforementioned facts and circumstances, we are of the opinion that the Petition is entitled to succeed. We, therefore, quash and set aside the decision of rejection of the technical bid dated 15 February 2024 and the work order dated 1 March 2024 issued in favor of Respondent No. 3.

15. Respondent No. 1 shall be at liberty to invite fresh bids if it so deems fit.

16. Rule made absolute in above terms.

17. The writ petition stands disposed of. No costs.

18. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)

19. After pronouncement of the judgment, learned counsel representing respondent No.1 seeks stay of the judgment and order. The oral prayer is rejected.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)