

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL WRIT PETITION NO. 16933 OF 2024**

Nitin D. Kadam through Partner

Nitin Dashrath Kadam

... Petitioner

V/s.

The Chief Officer, Municipal Council & Ors.

... Respondents

Mr. Nikhil Wadikar with Mr. Niranjana Kandade i/b. Nandu Pawar for
Petitioner (Through VC).

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

DATE : 29th November 2024.

P.C. :

1) By the present Petition the Petitioner, an unsuccessful bidder, has prayed for issuance of a writ of mandamus or any other appropriate order, direction or writ directing the Respondent No.1 to consider the tender/bid dated 22nd July 2024 submitted by the Petitioner in Tender dated July 10, 2024 for design, construction and commissioning of Sewage Treatment Plant and allied works for Rahimatpur Municipal Council under Swachh Maharashtra Mission 2.0, Used Water Management Project.

2) Heard Mr. Wadikar, learned Advocate for the Petitioner at length.

2.1) It is the case of the Petitioner that, though the Petitioner has

sufficient experience in synonymous and/or parallel type of work conducted by him, he has been held ineligible for the said tender as he did not comply with the pre-qualification criteria.

Clause No.6(B) of the said tender reads as under :-

“(B) The applicant should have experience:

1. successfully completed similar works during last five years ending last day of month previous to the one in which applications are invited should be either of the following:

1.1. Three similar completed works costing not less than the amount equal to 40(forty) percent of the estimated cost.

or

1.2 Two similar completed works costing not less than the amount equal to 50(fifty) percent of the estimated cost.

Or

1.3 One similar completed work costing not less than the amount equal to 80 (eighty) percent of the estimated cost.

2. “similar work” should be as mentioned in following point no.3 (as per scope of work for tender called i.e. Underground Drainage Scheme)

3. The similarity of work shall be pre-defined based on the physical size, complexity, methods/technology and/or other characteristics described, and scope of works. Substantial completion shall be based on 80 (eighty) per cent (value wise) or more works completed under the contract (Note : Substantial completion should not be defined in terms of percentage completion, rather it should be based on functional consideration. For contracts under which the applicant participated as a joint venture member or sub-contractor, only the applicant's share, by value, shall be considered to meet this requirement. For arriving at cost of similar work, the value of work executed shall be brought to current costing level by

enhancing the actual value of work at simple rate of seven percent per annum, calculated from the date of completion to the date of Bid opening.

Certificate for 'successful completion' of project/work/asset should contain two parts. Part-I shall contain 'financial value of work done' and part-II shall contain 'certificate of functional completion of project/work/asset'.

The agency shall have experience successful completion and commissioning of the similar works listed below with any Govt/Semi Govt./Corporation or equivalent organization. The experience of each work should be under single agreement."

3) It is the contention of the Petitioner that, though he did not comply with the said criteria of experience, he has parallel experience in the other field and the same may be treated as his experience for the present tender process. We are unable to accept the said contention.

The terms and conditions of the said Tender dated July 10, 2024 published by the Respondent No.1 are unambiguous and very clear. While exercising our writ jurisdiction under Article 226 of the Constitution of India, we cannot mould the conditions prescribed by the Corporation, suitable to the Petitioner or as per his whims. If the Petitioner is interested in participating in the tender process floated by Respondent No.1, he must comply with all the necessary terms and conditions prescribed therein. As the Petitioner is unable to comply with the necessary terms and conditions of the tender documents, we see no reason to exercise our writ jurisdiction under Article 226 of the Constitution of India in favour of the Petitioner,

thereby directing the Respondent No.1 to consider his tender/bid dated 22 July 2024.

4) We see no merits in the Petition.

The Petition is accordingly dismissed.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

JYOTI
PRAKASH
PAWAR

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