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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.4049 OF 2024

Aditya Construction Company ... Petitioner

V/s.

The State of Maharashtra, through
its Secretary, Soil and Water
Conservation Department & Ors. ... Respondents

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Mr. Karl Tamboly with Mr. Malcolm Siganporia, Mr.
Anul Desai, Ms. Nidhi Salgaonkar and Mr. Rohan
Garje i/by Jayakar & Partners for the petitioner.

Ms. Prachi Tatake, Additional Government Pleader
for respondent Nos.1 to 4 – State.

Mr. Shriram Kulkarni for respondent No.5.

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

DATED : SEPTEMBER 3, 2024

P.C.:

1. Learned AGP representing respondent Nos.1 to 4 - State has produced before us a letter/order dated 29th June 2019 issued by the Deputy Executive Engineer, Maharashtra Water Conservation Corporation, whereby the petitioner has been prohibited from participating in the tender process. A copy of said letter/order dated 29th June 2019 is taken on record.

2. Learned counsel for the petitioner has drawn our attention to the instructions contained in the tender document regarding opening of online tender in respect of technical bid (envelop No.1) and has submitted that the said instructions clearly state that if the documents contained in envelop No.1 furnished by the tenderer do not meet the requirement of the tender conditions, a note has to be recorded by the tender opening authority who has to ask the bidder for clarification. It is his submission that if the tendering authority was of the opinion that the petitioner did not fulfill the tender conditions or the cost of work and height of dam as also rainfall for establishing the past experience, it was incumbent on the tendering authority to have prepared a note to that effect and require the petitioner to furnish his clarification. He has stated that no such clarification was ever sought.

3. He relies upon the certificate dated 4th October 2023, enclosed at page 294 of the writ petition, issued in respect of construction of earthen dam at Chikhaldara, District Amravati. Learned counsel for the petitioner has also relied upon the information submitted at the time of participation in the bid process in the proforma from pages 290 to 296.

4. Before impressing upon the Court in respect of non-compliance of principles of natural justice as provided in the tender documents itself in the construction for opening of online tender of technical bid (envelop No.1), the petitioner needs to satisfy the Court that the criteria of past experience in terms of the requirement of the tender was fulfilled by it.

5. Let an affidavit in respect of the aforesaid two issues be filed by the petitioner by tomorrow, 4th September 2024 after serving a copy thereof upon the learned counsel for the respondents, who may file affidavits-in-rejoinder to the said affidavit/seek instructions by the next date.

6. Stand over to Friday, 6th September 2024. To be placed high on board.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)