



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.1570/2024

Satyanarayan M. Gaddewar,
Aged about 49 years, Occ.-Civil Contractor,
R/o. Vangepalli (Camp), P.O. Mahagav Taluka Aheri,
District Gadchiroli.

.... Petitioner.

Versus

1. State of Maharashtra,
Department of Soil & Water Conservation Development,
through its Secretary, Mantralaya, Mumbai-32.
2. The Collector Gadchiroli Tah and District Gadchiroli.
3. District Water Conservation Officer, Gadchiroli
Karwafa Coloney Potegaon Road Taluka Aheri
District Gadchiroli.

.... Respondents.

Mr. A.R. Fule, Advocate for the petitioner.
Mr. D.V. Chavan, Government Pleader for the respondent nos.1 to 3.

CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ
DATE : 12-03-2024.

J u d g m e n t (Per Abhay J Mantri, J.)

Rule. Rule is made returnable forthwith.

2. Heard finally with the consent of learned Counsel appearing for the parties.

3. The challenge raised to the disqualification of the tender form submitted by the petitioner to participate in tender no.20 (2nd Call) Year 2023-2024, by the scrutiny committee on 17-01-2024.

4. The facts giving rise to the present petition are, as under :-

The petitioner is a Civil Contractor in the category of Class-IV registered with the Public Works Department (for short - *PWD*). His Certificate of Registration is valid till 19-06-2024.

5. Respondent no.3 vide advertisement dated 20.11.2023 published tender ID 2023_SSIP_963798_1, calling upon the bids for the proposed construction of gated storage weir @ Laxmidevipetha, Tahsil and District Gadchiroli. Accordingly, the petitioner has filed a tender form and also deposited an Earnest Money (EMD) of Rs. 1,50,000/- along with the other documents on 04-12-2023.

6. On 17-01-2024, the competent Committee of respondent no.3 commenced the scrutiny of the tenders and during the scrutiny, they found that the petitioner had not furnished two affidavits in '*format Appendix E and F*' as well as failed to deposit the EMD amount. Therefore, the petitioner was disqualified from participating in the said tender process. The same is here under challenge.

7. Learned Advocate for the petitioner vehemently contended, that the petitioner has deposited EMD of Rs.1,50,000/-. But, inadvertently, he failed to furnish the affidavits in format Appendix E and F. However, as per the Government Resolution dated 17-09-2019 issued by the PWD,

the petitioner is entitled to cure the defects caused in the tender form and can furnish the affidavits in format Appendix E and F within 8 to 15 days. The respondents without considering the guidelines in the Government Resolution and giving any opportunity to the petitioner held that the petitioner was disqualified. Said order is contrary to the conditions laid down in the Government Resolution. It is also submitted that disqualifying the petitioner from participating in the tender process for a minor defect is arbitrary, unreasonable, and illegal. The same is violative of the fundamental rights under Articles 14 and 19(1)(g) of the Constitution. To substantiate his contentions, he has relied upon the Government Resolution dated 17-09-2019 and invited our attention to Clause (4) of the said Government Resolution.

8. *Per contra*, the learned Government Pleader strenuously argued, that the Government Resolution on which the petitioner is relying, is issued by the PWD and the same does not apply to the present case. However, the Government Resolution issued by the '*Soil and Water Conservation Department*', dated 18-10-2023 applies to the case in hand. He further drew our attention to Clause 17.5 of the said Government Resolution as well as pointed out Clause-D of the tender notice and submitted that passing of the order of disqualification of the petitioner is just and proper.

9. Having heard the rival submissions, a short question arises, as to whether the disqualification of the petitioner to

participate in the tender process for non-submission of the affidavits in format '*Appendix E and F*,' is just and proper or not.

10. While considering the disputed question in the matter, we would like to mention that the tender notice was issued by the 'Soil and Water Conservation Department' and it was not published by the PWD. Therefore, in our view, the Government Resolution issued by the Soil and Water Conservation Department only is applicable in the case at hand and not the Government Resolution issued by the PWD as pointed out by the Counsel of the petitioner.

11. It is to be noted that the petitioner has not disputed the non-submission of the affidavits in format Appendix E and F, but his contention was only that the said defect is curable as per the condition laid down in the Government Resolution dated 17-09-2019 as observed above. Which was issued by the PWD and therefore the same is not applicable. On the contrary, conditions laid down in the Government Resolution dated 18-10-2013 issued by the 'Soil and Water Conversation Department' are applicable. As per one of the conditions, it would not be permissible to call any documents or papers from the tenderer.

12. *Moreover*, we would like to reproduce one of the conditions/ Clause-D of the tender notice as under:-

"D) OPENING OF ONLINE TENDERS :

On the date specified in the tender notice following procedure will be adopted for opening of the online tender.

TECHNICAL BID (ENVELOPE No.1) :

*Envelope No.1 of all the Bidders will be opened first to verify that its contents are as per requirements. Bidders should have to upload scanned copies of various registrations/updated clearances of Government dues. Appendix E, Appendix F (Affidavits), Appendix L (Authority Letter) etc. online for further evaluation of his documents. **Non-submission of such documents, the tender will be rejected outright.**"*

13. Bare perusal of the said condition reflects, that if the tenderer fails to submit any document like format 'Appendix E and F,' in such an eventuality, the tender will be rejected outrightly. The aforesaid condition itself shows that the said condition is mandatory and as per the said condition tenderer has to furnish affidavits in format Appendix E and F and non-submission of the same, tender will be liable to be rejected.

14. Admittedly, in the case at hand, the petitioner failed to submit the affidavits in 'format Appendix E and F' and therefore passing the order by the Committee for disqualification of the tender form of the petitioner is just and proper. That being so, it cannot be said that the said defect is curable or that the disqualification of the petitioner from participating in the tender process due to a minor defect is arbitrary, illegal, and unreasonable. On the contrary, the said condition is mandatory as per Clause-D

of the tender notice and as per Clause 17.5 of the Government Resolution dated 18-10-2023, the tenderer is not entitled to furnish the documents.

15. It is pertinent to note that during the argument learned Government Pleader submitted that on 17-01-2024 financial tender was opened and one Sainath Ramwardhan Padishala was found as the lowest bidder L1.

16. In the aforesaid background, we are of the opinion that the passing of the order by the Committee about the disqualification of the tender form/document of the petitioner is just and proper. No illegality has been committed by the Committee. That being so, we hardly see any merit in the petition to entertain in the writ jurisdiction. Accordingly, we answer the aforesaid question. In view of the above, the petition stands dismissed with no costs.

17. Rule stands discharged.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J)