



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11467 OF 2024

M/s Pruthviraj Construction Through Its Proprietor
Vitthalrao Dnyanoba Mule

VERSUS

The State Of Maharashtra Through The Secretary And
Others

Shri T. M. Venjane, Advocate for the Petitioner
Shri A. S. Shinde, AGP for Respondent No. 1
Shri S. S. Deshmukh, Advocate for Respondent Nos. 2 to 5

**CORAM : S.G. MEHARE &
SHAILESH P. BRAHME, JJ.**

DATED : JANUARY 21, 2025

PER COURT :

1. Heard both sides at the admission stage.
2. The petitioner is challenging its disqualification in the technical bid and seeking direction to permit it to participate in further tender process.
3. The respondent No. 2 floated E-tender notice on 11.07.2024. In response to that notice, the petitioner submitted its bid by uploading the requisite documents. The agreement dated 19.07.2024 for the lease of the 'Hot Mix Plant' was also

uploaded along with the bid. The petitioner was expecting the opening of the technical bid. However, it was not apprised of the technical evaluation of the bid. By letter dated 09.10.2024, it was intimated that the technical envelope was opened on 08.08.2024, and it was disqualified in the technical bid due to the cancellation of agreement, as communicated vide letter dated 04.10.2024 by the lessor. Without giving any opportunity to the petitioner and without following the procedure contemplated by Government Resolution dated 27.09.2019, it was disqualified.

4. Learned counsel for the petitioner, Mr. Venjane, submits that the technical bids were opened on 08.08.2024 and subsequently issued letter dated 04.10.2024 by lessor/Mr. Manoj Balaji More was taken into account. For an imaginary reason, the petitioner was excluded from the tender process, which is arbitrary. He further submits that no opportunity was extended, as contemplated by the policy, to cure the defect. It could have uploaded another agreement to sustain in the process. It is further submitted that petitioner was the lowest bidder and it was to offer price of Rs. 93.14 lacks approximately, whereas the lowest selected bidder had an offer of Rs. 96 lacks. Therefore,

deliberately the petitioner was disqualified from the competition. It is submitted that the process undertaken by respondents is arbitrary and conducted in a non-transparent manner, which is liable to be interfered with.

5. Per contra, learned counsel Mr. Sachin S. Deshmukh, appearing for respondent No. 2 to 5 rely on the affidavit-in-reply and submits that the envelope of the technical bid was opened on 08.08.2024, and the evaluation of the technical bid was under process. On or about 09.10.2024, the technical evaluation was completed, and, relying on a letter dated 04.10.2024, the petitioner was disqualified. He would further submit that the petitioner failed to qualify the mandatory eligibility condition and failed to ensure that the agreement of lease for Hot Mix Plant should be in place and order. It is further submitted that no endeavor was made by the petitioner to provide alternate agreement. He would further submit that clause 1 of the Government Resolution dated 17.09.2019 cannot be made applicable, as there was fundamental flaw in the bid of the petitioner. It is informed that on 11.10.2024, financial bids were opened and lowest bidder was also selected. Due to the interim

orders passed in this matter, the respondent authorities are unable to issue the work order.

6. We have considered rival submissions of the parties and we have also gone through the relevant papers produced before us.

7. We have carefully gone through tender conditions annexed to the petition. Condition No. 10 (H) is a mandatory eligibility condition. In pursuance of that condition, petitioner had uploaded the agreement dated 19.07.2024, executed between him and the lessor/Mr. Manoj Balaji More. It further reveals that lessor cancelled the agreement and intimated the authorities vide letter dated 04.10.2024. Relying on the communication, the petitioner was found to be non-responsive to the mandatory tender condition and ultimately disqualified in the technical bid.

8. Learned counsel for the petitioner referred to the communication dated 09.10.2024 and chart which is at page 31 to make out a case that technical evaluation took place on 08.08.2024 and the letter dated 04.10.2024 was not in existence. A careful reading of the letter dated 09.10.2024 shows that on 08.08.2024 the envelope of technical bid was

opened. This letter does not indicate that technical evaluation actually took place on 08.08.2024. This is further fortified by the official notings produced on record, which indicate that the technical evaluation took place on 09.10.2024 and three bidders were found to be successful in the technical bid.

9. Learned counsel for the respondent also adverted our attention to the technical bid evaluation summary, which was uploaded on 10.10.2024. We are of the considered view that technical evaluation did not take place on 08.08.2024; rather, it took place on or about 09.10.2024. The submission of learned counsel in this regard does not have any substance.

10. The petitioner was non-responsive to mandatory eligibility condition, and therefore, he was disqualified. We do not find any perversity or arbitrariness in the action of the respondents disqualifying the petitioner.

11. We have gone through clause No. 1 of the Government Resolution dated 17.09.2019. It stipulates granting of time to solicit the explanation or to cure the defect. Learned counsel for the respondents is justified in contending that if the flaw in the bid is inherent or fundamental, it cannot be cured by resorting

to the said clause of the Government Resolution. The petitioner should have taken utmost precaution to see that the mandatory clauses of the tender document are complied with and he should sustain in the fray.

12. It is the contention of the petitioner that after submitting its bid, an inquiry was conducted regarding Hot Mix Plant offered by it and our attention is adverted to correspondence dated 26.09.2024 and 03.10.2024. An inquiry pertaining to the location of the Hot Mix Plant was going on up to 03.10.2024. On 03.10.2024, the authorities found that Hot Mix Plant was within 60 kms. However, thereafter, they received letter issued by Mr. Manoj Balaji More on 04.10.2024 cancelling the lease agreement. The said letter was taken into account while conducting the technical evaluation. Due to subsequent cancellation of agreement, the petitioner was disqualified.

13. It is submitted by learned counsel for the petitioner that he was to offer Rs.93.14 lacks, while the lowest bidder offered Rs. 96 lacks. Just because the petitioner is the lowest offerer, no relief can be granted to it. It is the discretion of the employer. When the petitioner is non-responsive to mandatory eligibility condition, its offer of price is inconsequential.

14. We do not find any illegality or perversity in the tender process. We find no substance in the petition. Hence, writ petition is dismissed. There shall be no order as to costs.

(SHAILESH P. BRAHME, J.)

(S.G. MEHARE, J.)

ksk/