

requisite work experience and the qualifications in terms of the tender conditions contained in the E-tender floated on 23rd September 2024 to provide 1194 helpers to the security guards to the PCMC for a period of three years at the cost of Rs.1,16,13,84,696/-. The technical bids were opened on 05th November 2024. It is the grievance of the learned counsel for the petitioner that PCMC asked respondents no. 3 to 6 to submit short-fall of the documents and they were given time from 04th January 2025 to 07th January 2025 to submit such short-fall of documents. However, the petitioner was not given that opportunity. This according to the petitioner is arbitrary and hence disqualification of the petitioner is illegal. The petitioner submitted the representation on 17th February 2025 providing details of experience, however, no decision so far has been taken on such representation.

3. The question is whether the petitioner has fulfilled the conditions of clauses 3(m)(a) and 3(m)(b) of the tender document. The services of the 'Helpers to Security Guards' is 'Essential Services'. The helpers assist the security guards in maintaining and protecting the property of the Corporation. They also during times of dharna/morcha take care of law and order situation and assist the security guards and the local police. The tender for 'Helpers to Security Guards' was floated by

PCMC on 24th September 2024. The petitioner as well as respondents no. 3 to 6 participated in the said tender process. The petitioner has been regularly participating in the PCMC tenders and was awarded the earlier tenders since 2017-18 onwards for supply of helpers to security guards. As per clause 3(m) of the tender conditions, for a tenderer to technically qualify for the tender had to satisfy at least one of the three conditions as mentioned in clauses 3(m)(a), 3(m)(b), 3(m)(c).

4. As per condition no. 3(m)(a) of the tender conditions, a tenderer ought to have completed at least three similar works of providing 'helpers to security guards' in any financial years during the past 7 years of his experience and the said 3 works ought to have been not less than 40% in value of the annual tender cost of the present tender. In addition to the above, the tenderer ought to have secured minimum three work orders with experience certificate of completion of supplying at least 478 helpers in each of the said work orders.

5. As per condition No. 3 (m)(b) of the tender conditions, a tenderer should have completed at least two similar works of providing 'helpers to security guards' in any financial years during the past 7 years of his experience and the said 2 works should be not less than 50% in value of

the annual tender cost of the present tender. In addition to the above, the tenderer ought to have secured minimum two work orders with experience certificate of completion of supplying at least 597 helpers in each of the said work orders.

6. As per condition No. 3 (m)(c) of the tender document, a tenderer ought to have completed at least 1 similar work of providing helpers to security guards in any financial year during the past 7 years of his experience and the said work order should be equal to or not less than 80% in value of the annual tender cost of the present tender. In addition to the above, the tenderer should have secured minimum one work order with experience certificate of completion of supplying at least 955 helpers in the said work order.

7. The petitioner in compliance with clause 3M of the tender conditions submitted various documents. He relied on the work order dated 14th February 2018 issued by PCMC. The said work order was issued pursuant to tender No. 2/2016-17. Under the said work order, the petitioner was required to supply 715 'helpers to security guards'. The petitioner successfully secured the tender for himself and work order was issued on 14th February 2018.

8. The petitioner relied on the work order dated 07th March 2018. However the same was issued without following any tender process/competition. The same was issued as per clause 25 of the Agreement dated 09th February 2018 pursuant to which the first work order 14th February 2018 was issued to the petitioner. As per clause 25, in the event the contractor performs satisfactory work, he may be given 'extension order' of work for the next one year. As such, the same was only an extension of work order granted earlier i.e. on 14th February 2018. The said extension of work order was without any kind of competition and bidding process. There was no change in the wages of the helpers to security guards and the wages payable were same as was fixed in first work order issued on 14th February 2018.

9. We do not find any substance in the submission of learned counsel for the petitioner that this extension should be considered as a fresh work order. The second work order was merely the extension of the first work order.

10. So far as the period of work order from 10th September 2019 to 15th February 2020 is concerned, by the work order dated 09th September 2019, additional 149 helpers were required to be provided by the

petitioner in continuation of the earlier work order. We are in agreement with the learned counsel for the PCMC that the petitioner cannot claim this to be a fresh work order. We do not find the stand of the PCMC that the work order issued after following regular tender process /bidding and facing competition in open market and change in the rate of tender can only be considered as a fresh work order for the purpose of the tender document as irrational or arbitrary.

11. Even so far as the work order from 16th February 2020 to 15th May 2020 is concerned, the same was granted in view of the Covid-19 situation, that is, due to exceptional circumstances. In these circumstances, it is seen that the petitioner had only one valid work order issued to him and all other work orders are actually extension orders issued for a short time period without following tender process. We therefore find ourselves in favour of the stand taken by the respondent that the experience certificate produced by the petitioner did not fit into the description of 'fresh work order' mentioned in either of the sub-clause 3(m)(a), 3(m)(b) of the tender conditions.

12. Though it is the case of the PCMC that the petitioner does not have the necessary experience in terms of the 3(m)(c), however, we

refrain from giving any finding, as in the petition, no case has been set up or foundation laid that the petitioner has fulfilled condition no. 3(m)(c).

13. We are satisfied that the petitioner does not fulfill clauses 3(m)(a) and 3(m)(b) on the basis of the materials on record and as such, there is no infirmity on the part of the respondents in disqualifying the petitioner in technical bid.

14. During the course of the arguments, learned counsel for the petitioner made an attempt to persuade us that the petitioner satisfies the criteria laid down in clause 3(m)(c). We invited the attention of learned counsel Shri Dighe appearing for PCMC to paragraph 21 of the affidavit-in-reply where it is stated that had the petitioner any case on merits, he would have annexed those documents to the present petition and would have asked for fresh consideration of the said additional documents. It is stated that the respondent-Corporation shall consider these documents on merits subject to orders of this Court.

15. In such a view of the matter and having regard to the fair stand taken by the PCMC, since the representation made by the petitioner is

pending, we permit the petitioner to file an additional/fresh representation to the PCMC along with any additional documents in support of its case that the petitioner fulfills the eligibility conditions. The said representation along with supporting additional documents be duly considered and an informed decision be taken on such representation. If such representation is made, Shri Dighe submits that within a period of two days therefrom, a decision thereon will be taken on its own merits.

16. The petition is disposed of in the above terms. No costs.

(M.S.KARNIK, J.)

(CHIEF JUSTICE)