



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

WRIT PETITION NO. 4750 OF 2024

(Mauli Construction, Washim

Vs.

The State of Maharashtra, Thr. its Secretary, Public Works Department,
Mantralaya, Mumbai & Ors.)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. R.N. Ghuge, Advocate for the Petitioner.

Mr. A.A. Madiwale, AGP for the Respondent Nos.1 & 2/State.

Mr. R.D. Karode, Advocate for the Respondent No.3.

**CORAM: AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

DATED : 24th FEBRUARY, 2025

Heard Mr. Ghuge, learned Counsel for the
Petitioner, Mr. Madiwale, learned AGP for the Respondent
Nos.1 and 2/State and Mr. Karode, learned Counsel for the
Respondent No.3.

2. The Petition questions the award of contract to
the Respondent No.3 on the ground, that the Respondent
No.3 did not comply with the requirement of term
No.5(I)(xv)(d) (page 67) regarding the uploading of the QR
based Bid Capacity and QR based Technical Manpower
certificate by the tenderer.

3. It is contended by Mr. Ghuge, learned Counsel for
the Petitioner, that since the said documents submitted by the
Respondent No.3, did not comply with the requirement of the
aforesaid condition, the acceptance of the bid of the

Respondent No.3 was illegal, on account of which, the awarding of the work order to the Respondent No.3 cannot be sustained. He further contends, that the Respondent No.3, in view of the work order dated 07.08.2024, had not commenced the work and it is only after the receipt of the notice of this Court, that some movement is there.

4. Mr. Madiwale, learned AGP for the Respondent Nos.1 and 2/State, submits that the clause referred is based upon the clauses 1, 2, and 13 of the Government Resolution dated 07.12.2023 (page 321), on account of which, since the Respondent No.3 had submitted the requisite documents online which was also the position of the other bidder Mr. D.A. Malpani, the grievance raised in this regard at the behest of the Petitioner, who had not even submitted the documents ought not to be entertained. He further submits, that the work is already commenced and is under progress, on account of which, this Court ought not to interfere. The relevant clause is as under:

“ Contactor should compulsory upload QR Based Bid Capacity and QR based Technical Manpower certificate by using above line (Use Manual is available on above Link) (Date of certificate should must be, between start of download tender document and End of tender submission date) If QR Based Bid Capacity and QR based Technical Manpower Deployment certificate is not found in envelop No 1 (T) then it shall be consider non responsive and tender will be rejected.”

5. It is not in dispute, that the Petitioner had not uploaded the aforesaid document, on account of which, the bid of the Petitioner was held to be unresponsive, and therefore, rejected. It is also not disputed, that the bid of the

Respondent No.3 was accepted on 01.03.2024, on account of which, a work order came to be executed in favour of the Respondent No.3 on 07.08.2024 (page 282-A).

6. The question whether the work has indeed commenced or not or is at a tardy pace is a question which cannot be gone into these proceedings, specifically so when the Respondent Nos.1 and 2 have stated that the work is going on.

7. The requirement of the condition as quoted above for uploading the QR based Bid Capacity and QR based Technical Manpower certificate, as is discerned from the language of the Government Resolution dated 07.12.2023, particularly clauses 1, 2 and 13 would indicate, that it is for the purpose of testing the capacity of the tenderer to complete the work under the tender. To that extent, it will have to be held, that the requirement to upload the QR based Bid Capacity and QR based Technical Manpower certificate would be an essential condition.

8. However, what is required to be considered as contended by Mr. Ghuge, learned Counsel for the Petitioner, is that such a certificate needs to be generated between the start of download tender document and end of tender submission date, in view of which it is submitted, that since the certificate of the Respondent No.3 in this regard has been generated on 09.02.2024, which was earlier to the start of download of tender which commenced on 21.02.2024 and expired on 28.02.2024 on account of the bids being opened on 01.03.2024, the requirement of the condition is not fulfilled, and therefore, the Respondent Nos.1 and 2 ought

not to have accepted the bid of the Respondent No.3.

9. In this regard what is essential to note, is the requirement of uploading the QR based Bid Capacity and QR based Technical Manpower certificate as indicated above, is for the purpose of testing the capacity of the tenderer to perform the work, which capacity has to be considered by the authorities, for the purposes of accepting the bid. A mere date of generation, which is 12 days earlier, in our considered opinion would not make any difference to the issue of testing the capacity of the tenderer for performing the work. This is also substantiated, by the aforesaid clauses 1, 2 and 13 of the Government Resolution dated 07.12.2023, as it does not impose any such condition for the purpose of determining the Bid Capacity/Technical Manpower.

10. That apart, since the Petitioner has not even uploaded the QR based Bid Capacity and QR based Technical Manpower certificate, it is not permissible for the Petitioner to raise a plea of discrimination, which could only be permissible, if a similar treatment, was not accorded to the Petitioner upon submission of the said documents, which is not the case at all.

11. That apart, though the tender was allotted to the Respondent No.3 on 01.03.2024 and the work order was issued on 07.08.2024, the Petitioner has approached this Court only thereafter on 09.08.2024, which would indicate to us the lack of *bonafides* in the matter.

12. Though, Mr. Ghuge, learned Counsel for the Petitioner, relies upon ***Banshidhar Construction Private***

Limited Vs. Bharat Coking Coal Limited and others, (2024) 10 SCC 273, in support of his contention, we however, find that the facts in the matter, are not similar to what falls for consideration, though the proposition as enunciated in para 20 thereof cannot be denied to be applicable.

13. Though Reliance is also placed on *Balaji Surgical, Nashik Vs State of Maharashtra and others, 2024(3) Mh.L.J. 356 [para 20 (D)]*, we do not find any allegation of *malafides* or bias in the instant matter, being made out by the Petitioner in the matter of award of contract to the Respondent No.3.

14. In view of the above discussion, we do not find any reason to interfere in the rejection of the bid of the Petitioner, or for that matter of award of the work order to the Respondent No.3.

15. The Petition is therefore **dismissed**. No costs.

16. Pending application/s, if any, shall stand disposed of accordingly.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)