

(2024) 04 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 3114 Of 2024

Jawahar Speakers And Mandap Contractor
Vs

APPELLANT

District Collector And Others

RESPONDENT

Date of Decision : 04-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 04 BOM CK 0031

Hon'ble Judges : Vibha Kankanwadi, J;S.G. Chapalgaonkar, J

Bench : Division Bench

Advocate : Dnyaneshwar S. Bagul, S.J. Salgare

Final Decision : Allowed

Judgement

Vibha Kankanwadi, J

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.

2. By present Writ Petition, the petitioner seeks to invoke the constitutional powers of this Court under Article 226 of the Constitution of India to challenge the order dated 28th February 2024 passed by respondent No.1 refusing to open the financial bid of the petitioner and seeks directions to respondent No.1 to issue work order in favour of the petitioner and further restraining the respondents from taking further steps including publication of fresh tender pursuant to the impugned order dated 28 th February 2024.

3. It is the case of the petitioner that respondent No.1 floated tender bearing No. 10 of 2023 on 6th December 2023 for supply of electrical appliances, sound systems and other necessary items on rent basis for conducting the ensuing elections of Lok Sabha / Vidhan Sabha General Elections 2024. The tender was published on 7th December 2023 and last date for submission of tender was 22nd December 2023 up-to 6.00 p.m. The petitioner participated in the said tender process and paid requisite EMD amount. The tenders submitted by the

petitioner and other tenderers were opened on 26th December 2023. In all seven tenderers had participated at that time. Out of them six were declared ineligible and the petitioner was only declared as eligible. As petitioner was the single eligible tenderer, the said tender notice was cancelled by respondent No.1 and a fresh second tender notice was published on 23rd January 2024. The last date for submission of said tender was 30th January 2024 and the technical envelope was to be opened on 1st February 2024. The petitioner again participated in the said tender process, uploaded the document and paid the requisite EMD amount. In all four tenderers had participated this time and respondent No.1 opened the technical envelope on 1st February 2024 and declared all the tenderers including the petitioner, as ineligible. The petitioner contends that though he had submitted the requisite experience certificate to the tune of 60% of the tender document as per Condition No.13 of the tender notice, yet the petitioner has been declared as ineligible. In the earlier round, the petitioner was held to be eligible on the basis of the same document. This shows mala fides on the part of the respondent authorities.

4. The petitioner has come with the case that since all the four tenderers were declared as ineligible, respondent No.1 again issued fresh tender on 20th February 2024 i.e. third time. The tender was published on 21st February 2024 and last date for submission of tender was 27th February 2024. Technical envelope was to be opened on 28th February 2024. The petitioner had again participated in the process by submitting documents as well as paying requisite tender fees. Now, in all three tenderers had participated including the petitioner. Again respondent No.1 had declared all the tenderers as ineligible. Now the ground of rejection of the petitioner's bid was that he has not submitted the requisite certificate issued by the competent authority indicating 60% of completion of work during any one year election of Lok Sabha / Vidhan Sabha of last preceding 7 years. It was stated by the authorities that the petitioner has uploaded the certificate dated 10th January 2024 issued by the Deputy Returning Officer, Solapur, which is of supply of Mandap (tent) and furniture articles and not of the electrical work done by the petitioner. The respondent authorities could not have rejected the bid presented by the petitioner i.e. especially the certificate taking into consideration Condition No.13 of the tender document. The petitioner has contended that the respondent authorities have acted deliberately and rejected his technical bid just to accommodate the contractor of their choice and therefore the petitioner has filed the present Writ Petition with the prayers stated herein above.

5. Learned Advocate Mr. Bagul appearing for the petitioner had taken us through the documents produced on behalf of the petitioner. He submits that the petitioner had taken part in the work of election process at various places and certificates have been issued to that effect. Learned Advocate for the petitioner has specifically relied upon the certificate issued by the Deputy District Election Officer, Solapur dated 10th January 2024 stating that the petitioner has supplied tent, furniture and other articles on rent. The value of the work done has also

been mentioned in the said certificate. He submits that Condition No.13 of the tender document does not specify that supply of electric items and carrying out electric work was specific feature. The literal translation of Condition No.13 would show that the bidder ought to have completed the work up to 60% of the tender value in any Lok Sabha / Vidhan Sabha election in any of the year preceding seven years to 30th October 2023. It was wrong on the part of the respondent authorities to say that there was no certificate produced by the petitioner to fulfill Condition No.13 of the tender document. The respondent authorities say that the certificate is in respect of providing tent and furniture. The disqualification therefore, is arbitrary. Learned Advocate for the petitioner specifically states that from the affidavit-in-reply on behalf of the respondents it can be gathered that they are under wrong impression that the petitioner is challenging the terms and conditions after participating in the tender process. In fact the petitioner is not challenging any of the condition of the tender document. What petitioner is challenging is the wrong interpretation that has been done. When same document was earlier produced, at that time the petitioner was held to be eligible by the same authority. When there is total arbitrariness, the judicial review of the rejection of the tender is necessary.

6. Per contra, the learned AGP relies on the affidavit-in-reply filed by Pankaj Bhagwat Mandade, Nayab Tahsildar (Election) at Collector Office, Latur. Though he has filed a long affidavit-in-reply, we are concerned with the issue involved. In Para No.9 he has given the list of the certificates annexed by the petitioner along with the bid, which are in respect of year 2011 and 2015 and submitted that as those are not fulfilling the criteria mentioned in Condition No.13, therefore, cannot be considered. The only document which required consideration was the document dated 10th January 2024 issued by the Deputy District Election Officer, Solapur. The said certificate showed that the petitioner had carried out the work of tent, furniture and other ancillary work in respect of tent and furniture. According to him, the said certificate is not helpful to the petitioner. He further states that since all the three E-tenderers of the tender issued third time were also not qualified, the Deputy District Election Officer issued a letter dated 13th March 2024 to the Deputy District Election Officer of District Dharashiv, Parbhani, Nanded and Beed which are adjacent districts to Latur District and asked them to inform, whether participants of their E-tender process had been qualified and whether they are ready to work in Latur District. He relies on the decision of this Court in Writ Petition No. 7006 of 2023 decided at Nagpur Bench on 17th October 2023 in Minakshi Traders vs. State of Maharashtra and others, as well as the Judgments of the Hon'ble Apex Court to support his statement that there is no fundamental right available to any tenderer to do business with the Government, what is to say about business with Government on their own conditions.

7. As aforesaid, learned Advocate for the petitioner as well as the contents of the Petition would clearly show that the petitioner is not challenging any term or condition of the E-tender. The petitioner wants to say that the said Condition No.13 of the tender notice has been misread by the respondents and the

committee. Therefore, it is necessary to reproduce Condition No.13 of the tender notice, which reads thus:-

The translation of the above said Condition No.13 is as under:-

"13. Tender holder must have a certificate from the Competent Authority that any Lok Sabha / Vidhan Sabha election related work has been done (by him) for 60% of the estimated amount mentioned in the tender in any one year up to 7 years prior to 31.10.2023."

(Translated by Senior Translator and Interpreter High Court of Bombay, Bench at Aurangabad)

8. Thus, perusal of Condition No.13 of the tender document would clearly show that what was expected from the tenderer was the work in respect of any Lok Sabha / Vidhan Sabha election within seven years prior to 30th October 2023. The value of the such work done should be 60% of the estimated work in the present tender and such certificate should be issued by the competent authority. The said Condition does not specifically say that the work that is expected is inclusive of electric appliances and related work. If respondent No.1 wanted particular work to include in Condition No.13 and it should not have been restricted only to tent and furniture work, then it ought to have been so specified in the condition.

9. Interesting point to be noted is that while rejecting the technical bid of the petitioner and also in the affidavit-in-reply, the respondents are not saying that there was no compliance of Condition No.9 of the tender document, which is in respect of supply of electric appliances etc. on rent, and the same reads thus:-

10. It can be seen from the other documents that the petitioner is having license of electric contractor. Udyam Registration Certificate of the petitioner states that the petitioner is entitled for the services of renting of tent, furniture, pottery and glass, kitchen and tableware, utensils, household electrical and electronic equipments etc. The petitioner has also produced on record the work orders issued to him in 2019 General Elections at various places, but we are concerned with the certificates and therefore the work orders are required to be read along with the certificate. The Deputy District Election Officer has issued the said certificate dated 10th January 2024 for completion of the work of the said work order, thereby indicating that in respect of providing tent and furniture, the petitioner has completed the work. Again reverting back to Condition No.13 of the tender document, as aforesaid, we are not concerned with electric or any other article but we are concerned with only the election related work, whereas Condition No.9 does not stipulate any duration in which the petitioner or any tenderer would have supplied the electric appliances, speakers etc. Therefore, the disqualification of the petitioner for the grounds mentioned in the minutes of the meeting dated 28th February 2024 and order dated 1st March 2024 as regards the petitioner is concerned, on the count of non fulfilling of Condition No.13 is illogical and illegal. The tendering authority cannot add or delete any

part of the condition or condition itself. Plain and literal meaning to the conditions as those are, is required to be given.

11. The reliance of the respondents on the decision in *Minakshi Traders vs. State of Maharashtra and others* (supra) appears to be misconceived. The facts were total different and there was challenge to the conditions of the tender document. We are aware that in *Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and another*, (2016) 16 SCC 818, the Hon'ble Supreme Court has held that it is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given. We are also taking note of the decision of the Hon'ble Apex Court in *Agmatel India Private Limited vs. Resoursys Telecom and others*, (2022) 5 SCC 363, wherein it has been held that the author of the tender document is taken to be the best person to understand and appreciate its requirements. However, we are not giving any another interpretation to the tender conditions, but we are considering the fact that the tendering authority has tried to interpret the simple words in Condition No.13 of the tender document in a wrong way. Further it can also be so demonstrated that the condition was the same at the time of first round of tender and at that time the same authority had held that the petitioner is qualified, however, unfortunately the petitioner was the only successful technical bidder at that time and therefore, it was re-tendered. This fact is also admitted in the affidavit-in-reply.

12. We are also taking note of the decision in *Jagdish Mangal vs. State of Orissa*, (2007) 14 SCC 517, *Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers vs. New J.K. Roadways, Fleet Owners and Transport Contractors and others*, 2021 (16) SCC 808, *N.J. Projects Ltd. vs. Vinod Kumar Jain and others*, (2022) 6 SCC 127, *Tata Motors Ltd. vs. Brihan Mumbai Electric Supply and Transport Undertaking (BEST) and others*, 2023 SCC OnLine SC 671, regarding the limitations in respect of judicial review of administrative action. The present administrative action on the part of the respondents in misinterpreting its own condition, adding something which was not contemplated or in the mind of the public who would have participated in the tender process and declaring the petitioner as eligible at the first time and rejecting his technical bid at the later point of time in the third round by putting such interpretation, amounts to irrational, unreasonable, tainted with mala fide, we are of the opinion that interference is required under Article 226 of the Constitution of India. Hence following order is passed:-

ORDER

(I) The Writ Petition stands allowed.

(II) We quash and set aside the impugned order dated 1st March 2024, which is the result of resolution in the meeting of the technical committee on 28th February 2024.

(III) We direct respondent No.1 to open the financial bid of the petitioner and to examine it under the policies prevailing presently and to take up the decision in respect of issuance of work order in favour of the petitioner.

(IV) The entire exercise to be done within a period of two weeks from today. Respondent No.1 to communicate the decision taken to the petitioner immediately.

(V) The respondents are restrained from taking any further steps including publication of fresh tender in pursuance to the impugned order dated 1st March 2024 and letter dated 13th March 2024, issued by the Deputy District Election Officer, Latur, for a period of one week after the communication of the decision to the petitioner.

(VI) Rule is made absolute in above terms.