

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

**REVIEW APPLICATION NO. 30 OF 2020
IN
WRIT PETITION NO. 6426 OF 2019**

M/s Yogiraj Powertech Pvt. Ltd.
Through its Director Prasanna
Vinayak Date .. Applicant

Versus

The State of Maharashtra and others .. Respondents

Shri S. G. Chapalgaonkar, Advocate for the Applicant.
Shri P. S. Patil, Addl.G.P. for the Respondent No. 1.
Shri S. S. Dande, Advocate for Respondent Nos. 2 to 5

**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

Closed for Order on : 28.02.2020

Order Pronounced on : 30.04.2020

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

. The present review application is filed of the judgment and order passed by this Court dated 20th December, 2019 in Writ Petition No. 6426 of 2019.

2. The present applicant/original writ petitioner had filed writ petition challenging the communication dated 23.05.2019 rejecting the technical bid of the petitioner on two counts (i) the company has not submitted the bid capacity certificate of the

Chartered Accountant, (ii) Technical Data sheet is not as per the notice inviting tender. We had negatived the contention of the petitioner pursuant to the judgment under review.

3. Mr. Chapalgaonkar, the learned advocate for the review applicant submits that, during the course of the hearing of the writ petition, it was specifically pointed out that condition No. 1.4 regarding certification from the Chartered Accountant is not relevant. The same is not the requirement. It was further pointed out that, applicant had submitted all requisite documents relevant to the technical data of the motor and pumps certified by the manufacturer. The information regarding pump and motor was duly filled in as per the format provided along with online tender notice. The said information was made part and parcel of the envelopment No. 1.

4. The learned advocate further submits that, considering the rival contentions, this Court was pleased to appoint Court Commissioner to verify the fact from the official record of the Maharashtra Industrial Development Corporation (for short M.I.D.C.) as available on the portal. The Court Commissioner submitted the report. As per the report of the Court Commissioner, the applicant has uploaded the information along with the tender format in envelopment No. 1. The controversy was set at rest confirming that the applicant had submitted information regarding motor and pump along with envelop No. 1 in the format provided with notice inviting tender. This Court in para No. 41 of the judgment under review has observed that, the

petitioner has not submitted data sheet of pump as per notice inviting tender in a given format. It was further observed in para No. 43 of the judgment that, the petitioner materially changed the script and submitted the information in the modified state and not submitted the same in the given format as per the necessary terms of the tender. This Court in para No. 45 of the judgment observed that, the petitioner agreed that even though information was not submitted in the given format, but the required information was submitted. The learned counsel submits that, no such argument was advanced on behalf of the petitioner. This Court further in para No. 47 of the judgment has observed that, the petitioner failed to submit data sheet of pump in given format. The report of Court Commissioner dated 09.08.2019 is not gone into. In para No. 48 and 49 of the judgment this Court observed that, the petitioner failed to comply condition No. 1.4. However, it was specifically pointed out that, the condition regarding certification of bid capacity by Chartered Accountant is not made applicable. to clause No. 1.4 of the notice inviting tender. The learned counsel submits that, all these facts constitute an error apparent on the face of record. The learned counsel submits that, the documents that are part of writ petition from page Nos. 532 to 536 i. e. information regarding pump and motor is missed from consideration. The learned counsel further submits that, the judgment deserves to be reviewed.

5. Mr. Dande, the learned advocate for the M.I.D.C. submits that, the tenders were submitted online. The bidders are

required to follow mandatory terms and condition and to upload the documents as required pursuant to the tender notice. The petitioner failed to submit the technical data sheet with required parameters and change the technical data sheets ignoring the number of parameters required by the M.I.D.C. The critical data as required by the M.I.D.C. was found missing. Since the technical data uploaded by the petitioner was incomplete, it was found impossible to evaluate techno commercial offer/bid. The petitioner also did not submit the documents duly certified by the Chartered Accountant as required under Clause 1.4. The learned counsel further submits that, as per the work order the work is to be completed within eight (08) months. The work has commenced and the date of completion of work is 15.03.2020.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. The scope of review is in narrow compass. The same cannot be considered as an appeal in disguise.

8. The respondents issued a tender notice for the work namely 30/1 Waluj power supply arrangement for centralized water supply scheme @ Waluj providing erecting pumping, machinery along with power supply arrangement for Chikalthana feeder of WTP Waluj. Five bidders had participated. Two were disqualified. The petitioner was one, to be disqualified.

9. The petitioner was disqualified on two counts, (i) the company has not submitted the bid capacity certified by the Chartered Accountant, (ii) Technical Data form is not as per the NIT i. e. notice inviting tender. As per the condition under Clause A to the notice inviting tender, following clause is relevant.

“The information regarding the tender & the facility to download it, will be available on MIDC E tendering portal on website www.midcindia.org. The downloaded & duly completed tender form shall be submitted (by eligible contractors only) without making any change in the script of tender document. If after submission of tender, it is noticed that, the tender script is modified in any manner whatsoever, the tender will be summarily rejected.”

10. It is a matter of fact that, the petitioner had not submitted the bid capacity certificate certified by the Chartered Accountant. The terms and conditions are required to be adhered too. It has been observed by us that, the petitioner had submitted documents duly certified by the Chartered Account, except the bid capacity document and particularly document relevant to cash in hand. The other qualified bidders had strictly complied with the said condition. The petitioner failed to comply with the said condition. The deviation therefrom is not permissible. On that count itself the petitioner is disqualified from participating in the tender process. The terms and conditions of the tender cannot be altered. Upon having failed to submit the bid capacity document duly certified by the Chartered

Accountant no fault can be found in disqualifying the petitioner.

11. As far as technical data in the required format is concerned, after discussing the material arguments of the either side and documents on record, we had concluded that information as required in the format given in the tender document for pumps and motors was not as per the format. The same has been discussed by us under the judgment under review.

12. Moreover, the work has already commenced long back. The work has to be concluded within a particular period. The public interest would be defeated.

13. In the light of the above, no case for review is made out. The review application is rejected. No costs.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

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