



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 2098 OF 2024

Pride Ventures (I) Pvt. Ltd.,  
Chh. Sambhajinagar,  
Through its Authorized Signatory,  
Mohammad Hares Siddiqui,  
Age 44 years, Occ. Business,  
R/o. House No. 8-8-585,  
Rashidpura, HUDCO road,  
Aurangabad.

... Petitioner

VERSUS

- 1) The State of Maharashtra,  
Through its Public Works Department,  
Mantralaya, Mumbai-32.
- 2) The Chief Engineer,  
Public Works Region,  
Chh.Sambhajinagar.
- 3) The Superintending Engineer,  
Public Works Circle,  
Chh. Sambhajinagar.
- 4) The Executive Engineer,  
Public Works Division,  
Chh. Sambhajinagar.

... Respondents

...

Advocate for Petitioner : Mr. D.P. Palodkar  
A.G.P for Respondent nos. 1 to 3 : Mr. P.S. Patil  
Advocate for Respondent No. 4 : Mr. Gunaratna Sadawarte, Special Counsel

CORAM : MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.

RESERVED ON : 31.07.2024  
PRONOUNCED ON : 05.08.2024

JUDGMENT : ( MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith. The learned A.G.P

and learned advocate Mr. Sadawarte waive service for the respondents. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. Respondent no. 4, who is the Executive Engineer of Public Works Department, Chhatrapati Sambhajnagar, published 'E' tender notice on 08.09.2023 for the construction of 'Collector Office building at Vishwas Nagar (Labour Colony) Aurangabad'.

3. By publishing Errata/Corrigendum on 09.09.2023 a condition was added directing the bidders to upload 'green building certificate' issued by Indian Green Building Council (IGBC). The petitioner submitted his bid on 06.10.2023 and even uploaded a certificate issued by IGBC (page 688). On 10.10.2023 technical bids were opened. By a communication dated 30.10.2023 (Exh. 'C') respondent No.4 called upon the petitioner to rectify/comply with the deficiencies *inter alia* containing item no. 9, which read as under:

*"9. The IGBC (Green Building) certificate is precertificate dated September 2021 but the actual date of work completion is 31/03/2023. Hence certified certificate of green building is required"*

4. The petitioner replied to the queries by a communication dated 01.01.2023 (Exh. 'D'), as follows:

*"With reference to the above-mentioned tender and the requirement for the clause of completion of IGBC Building certificate, it is to be noted that our consultant "Building Environment India Pvt. Ltd." has submitted the six monthly compliance to the IGBC department timely and also applied for final certification as per IGBC norms.*

*An interim certification from the IGBC department has been issued for the project which we are submitting along with this letter. Hence request you to please accept this letter*

*and qualify our bid”*

5. By a separate communication of the even date, even reply was given to five of the other queries raised in the communication (Exh. 'C').
6. On 08.01.2024 (Exh.'E') stating that since pursuant to the government resolution dated 27.09.2018 the work estimate was of more than 100 Crore, the evaluation committee in its meeting dated 04.01.2024 had recorded the minutes, evaluating the bids and mentioning *inter alia* that five bidders including the petitioner's Joint Venture were not qualified and only one bidder Shubham EPC Pvt. Ltd., was qualified. It further stated that pursuant to the self-same government resolution since there was only one qualified bidder, it was decided to go for a second call. It was further resolved to publish this decision on the website for a period of five days.
7. Aggrieved by a similar disqualification, one of the other bidders namely Hi Tech Wonder, J.V. Aurangabad, preferred Writ Petition No. 552/2024 on 12.01.2024. By the order dated 12.01.2024, this Court stayed further tender process.
8. The petitioner questioned its disqualification by filing this petition on 16.02.2024.
9. The petitioner was disqualified with the reason that it was noncompliant with the terms and conditions regarding 'green building certificate'.
10. It is the stand of the petitioner that by a communication dated 24.01.2024 (Exh. 'F') the petitioner submitted IGBC green rating certificate for project "Pride Century" to which Aurangabad Municipal Corporation had given occupancy certificate on 19.07.2021.
11. The petitioner in Writ Petition No.552/2024, with the leave of the Court withdrew its writ petition on 10.07.2024.

12. Alleging that taking advantage of this, the second call was published on 12.07.2024 (Exh. 'T'), the petitioner with the leave of the Court has now amended the petition and has put up a challenge even to the second call.

13. The learned advocate Mr. Palodkar based his arguments essentially on the ground that the additional condition in respect of certification by IGBC, modified and corrected from time to time by issuing corrigendum itself was vague. He would point out that initially no such condition was there in the tender notice published on 08.09.2023. It was incorporated by issuing corrigendum on 09.09.2023. By adding clause 4.5 (A)(d), it was added that the requirement would be regarding satisfactorily completed (from start to finish) as a prime contractor of at least one green building project of value not less than 30 crores from any government department.

14. He would submit that in order to clear the confusion the issue was raised by the petitioner and even some other bidders in a pre-bid meeting to remove the requirement of "from start to finish" or to consider works completed during last five years. It was accepted in the pre bid conference held on 27.09.2023. Accordingly, common set of deviations were published whereby this clause regarding green building certification was modified to read "satisfactorily completed/executed as a prime contractor of at least one green building project of value not less than 25 crores and the same shall be certified by authorized bodies e.g. GRIHA/LEED/IGBC. Financial turnover and cost of completed/executed works of previous years shall be given weightage of 10% per year based on a Rupee value to bring them to 2023-24 price level.

15. Mr. Palodkar would, therefore, submit that there was no clarity and deletion of words "*from start to finish*" and replacing them by word "*executed*" was confusing. The petitioner, pursuant to the query raised in that respect had even forwarded the certificate with reply dated 01.01.2024. It could have been treated as compliant with the condition. However,

designedly, taking advantage of the clause from the government resolution dated 27.09.2023, in order to enable issuance of a second call, the petitioner was disqualified thereby rendering the tender process incomplete as only one of the bidders was held to be qualified. Accordingly, the second call has been issued and the last date for submission is 01.08.2024, and the technical bids are to be opened on 04.08.2024. The decision to disqualify the petitioner is not sustainable in the light of the wording of the condition. Substitution of letters from “start to finish” by the word “execution” is susceptible to mean that a pre- certification of a green building by the IGBC was sufficient compliance. Mr. Palodkar would then take us through the guidelines of the IGBC, which contemplate pre-certification of a green building project, which is valid for three years, and which contemplates periodical submission of the reports after every three months. This was clearly indicative of the fact that the petitioner was in fact undertaking a green building project duly certified by IGBC. The condition could not have been treated as requiring completion of a green building.

16. As far as objection being raised in affidavit in reply of respondent no.4, regarding maintainability of the petition, Mr. Palodkar, would submit that filing of bid through joint venture was initially not allowed by the tender notice. By the Errata/Corrigendum dated 09.09.2023 bids by joint ventures were permitted and Common Set of Deviations (CSD) also permitted that. Clause no. 2 of CSD required joint venture to nominate a representative having authority to conduct the business for and on behalf of any or all the members of the joint ventures. The general power of attorney was executed in favour of the petitioner (Exh. R1). The petitioner is otherwise not avers to carrying out necessary correction in the title clause of the petition and the objection is not sustainable.

17. As regards the objection regarding availability of alternate and efficacious remedy as per the government resolution dated 17.09.2019, Mr. Palodkar would submit that as per that government resolution the remedy

was available regarding the complaints made by the contractors after opening of the technical bids and any objections raised to the technical bids etc. Since, admittedly, the respondent no. 4 has now issued a second call, no such remedy is now available much less can be effective and efficacious one.

18. Lastly, Mr. Palodkar would submit that as per the government resolution dated 17.09.2019 the terms and conditions of the tender and CSD should have been approved by the competent authority at the government level. The corrigendum dated 09.09.2023 was issued by respondent no. 4 only and not by the competent authority prescribed under that government resolution. Even the CSD was approved by the Chief Engineer and not by the competent authority. Consequently, the condition regarding certification of green building added subsequently under the signature of respondent no. 4-Executive Engineer and respondent no. 2-Chief Engineer cannot be regarded as essential condition.

19. Per contra, the learned advocate Mr. Sadawarte would make submissions in tune with the affidavit in reply. He would submit that the petition has been filed by Pride Ventures India Pvt. Limited, which had not participated in the tender process. It was filled by P.V.I.P.L. and L.C.C. J.V., Aurangabad ( A consortium of Pride Ventures (India) Private Limited and Laxmi Construction Company Joint Venture, Aurangabad). He would submit that Pride Ventures (India) Limited, alone could not have filed the petition.

20. Mr. Sadawarte would further submit that even the power of attorney filed by the petitioner does not expressly specify conferment of power in respect of any specific act like filing of the present petition. He would submit that the title clause describes individual as authorized signatory through whom Pirde Ventures (India) Private Limited has filed the petition. He would refer to the full bench decision of Allahabad High Court in the

matter of **Syed Wasif Husain Razvi Vs. Hasan Raza Khan & 6 Ors; 2016 SCC OnLine All 175.**

21. Mr. Sadawarte would then submit that government resoution dated 17.09.2019 expressly provides for alternate and efficacious remedy which the petitioner ought to have resorted to. In the absence of which the writ petition is not maintainable. He would cite the decision in the matter of **PHR Invent Educational Society Vs. UCO Bank and others; 2024 SCC OnLine SC 528.**

22. On merits, Mr. Sadawarte would submit that there is express stipulation in the tender document whereby, the respondents have expressly reserved the right to revise the invitation to offer and right to resort to deviations, amendments and extension. Even it contains a specific stipulation reserving a right to reject all or any of the tenders without assigning any reason. He would, therefore, submit that no fault can be found in issuing Common Set of Deviations, which were duly notified.

23. Mr. Sadawarte would further submit that the petitioner is merely challenging the disqualification but had never objected to the CSD's issue. He would, therefore, submit that the challenge by the petitioner is to the outcome or result of the tender process rather than the terms and conditions.

24. Mr. Sadawarte would then submit that initial requirement of "satisfactory completion from start to finish" replaced by the modified clause requiring "satisfactory completion/execution". Both would include and contemplate a completed project. In spite of specific queries raised by respondent no. 4, the petitioner had failed to furnish the requisite certificate of a green building. The interim certificate issued by IGBC would only demonstrate that he was undertaking construction of a green building but had no certification about completion of any green building issued by the IGBC. He was, therefore, rightly disqualified.

25. The learned advocate Mr. Sadawarte would also submit that a compliance was sought to be made by the petitioner after the technical bids were scrutinized and he was disqualified, and even after the decision was taken to go for a second call. Admittedly, the petitioner had not submitted any certificate regarding execution of a green building project before the cut-off date and cannot be heard.

26. Mr. Sadawarte would advert our attention to the resolution passed by the committee constituted under the government resolution dated 27.09.2018. He would submit that a committee of experts had found the petitioner not eligible for the specific reason. With a limited power of undertaking a judicial review resorting to Article 226 of the Constitution of India in tender matters, in the absence of any *mala fides* being attributable to the respondents, no fault can be found in the committee of experts disqualifying the petitioner by resorting to the interpretation of the term and condition regarding certification of IGBC. He would cite following decisions:

*(1) N.G. Projects Limited Vs. Vinod Kumar Jain and others; (2022) 6 SCC 127.*

*(2) Jagdish Mandal Vs. State of Orissa and others; (2007) 14 SCC 517.*

*(3) Tata Motors Limited Vs. Brihan Mumbai Electric Supply and Transport Undertaking (BEST); 2023 SCC Online SC 671,*

27. We have considered the rival submissions and perused the papers.

28. As far as the preliminary objections are concerned, admittedly, the petitioner was one of the members of the consortium of the joint venture which had submitted the bid. Therefore, it cannot be said that the petitioner has no locus. Besides, as has been mentioned in the rejoinder, the petitioner is also not avers to make necessary correction in the title of the writ petition



so as to include the name of the other member of the consortium. We, therefore, are of the view that it cannot be said that the petitioner is not an aggrieved person.

29. As far as the authority of the individual through whom the petition as well as the rejoinder has been filed, the petitioner has filed a general power of attorney expressly titled as '*For signing of bid (Exh. R1)*'. A bare look at this power would demonstrate that it is a general power of attorney enabling the holder to do, in the name of Laxmi Construction Company and as authorized signatory of Pride Ventures, to submit bids and deal with the Public Works Division, Aurangabad, in the matter of the tender process. *Ex facie* it does not authorize him to initiate any litigation for and on behalf of Laxmi Construction Company, which is the partner in the joint venture. However, in our considered view, when it has been expressly mentioned in the rejoinder that the petitioner is not avers to carrying out necessary correction in the title, in our considered view, one need not go into the aspect of authority of the person, who has filed the petition for and on behalf of one of the partners of the joint venture, which submitted the bid.

30. As far as the other objection regarding availability of the alternate and efficacious remedy as contemplated in the government resolution dated 17.09.2019, it contemplates a recourse to be adopted for a bidder in the matter of objection being raised by the bidders during the tender process. We are of the view that this government resolution only provides for some remedy for redressal of the grievances and provides for a complaint redressal mechanism. It would not be a quasi judicial authority and cannot be regarded as a statutory remedy to challenge the disqualification of a bidder. This mechanism may, possibly, avoid some litigation but cannot partake the place of judicial or quasi judicial authority so as to adjudicate a grievance being made by a bidder. We, therefore, do not see the mechanism provided under government resolution dated 17.09.2019 as an alternate and efficacious remedy.

31. As far as the merits of the matter are concerned, it is a matter of record that in pre-bid meetings, not only the petitioner's joint venture but even few other bidders had also participated, wherein, after considering their requests, common set of deviations were published. Though the relevant clause was contemplating "completion of a building from start to finish" and the words "from start to finish" were replaced by "executed", even after our query as to if such change would connote any deviation in substance, Mr. Palodkar would seek to interpret such a change to mean that execution would mean a certification by the IGBC to undertake a green building project. He would advert our attention to the norms from the website of the IGBC. He would submit that it contemplates registration of the project with IGBC, preparation for documentation and calculations to satisfy mandatory requirements and credit submittal requirements. He would submit that the norms contemplate a pre-certification of a project which requires registration of such project. Such pre-certified projects have to submit six monthly reports. The petitioner had obtained such pre-certification in September 2021, of its My World VXL Residencies, Aurangabad, which was submitted along with the bid. He would submit that having obtained the pre-certificate it was a sufficient indication of execution of a green building project and should have been treated as due compliance of the condition.

32. We have considered this submission of Mr. Palodkar in the light of the printout from the website of the IGBC (Exh. R4). At the outset, it is necessary to note that this pre-certification would essentially mean that a project is registered with IGBC, proposing to carryout construction of a green building. As has been mentioned in these broacher/printout (Exh. R2), such pre-certification is contemplated to give the owner/developer a unique advantage to market the project to potential buyers. By no stretch of imagination can such pre-certification, in our considered view, would be indicative of completion of a green building project. Hypothetically, it may

so happen that though it is a pre-certified project, the project itself could not be completed for variety of reasons. Would it mean that even such a pre-certified project would lend credence to the experience of constructing a green building, if such pre-certified project does not reach completion so as to obtain a certificate from IGBC. In our considered view, in such a case, the essential requirement which was inserted, of having experience by the proposed bidders of carrying out construction of a green building would not be fulfilled. To our mind, “execution” literally would mean not mere ‘capacity to execute’ but ‘completion of the work’.

33. We are, therefore, unable to persuade ourselves with this submission of Mr. Palodkar.

34. Besides, since it is a matter of interpretation of a term and condition expressly in respect of IGBC certification, as laid down in the matter of **Jagdish Mandal (supra)**, in exercise of the powers under Article 226 of the Constitution of India, this Court cannot undertake a judicial review of the wisdom of the employer. When the expert’s committee constituted under the government resolution dated 27.09.2018 has disqualified the petitioner precisely for being non compliant with the condition requiring IGBC certificate, we neither can allow the petitioner to interpret the clause in its own way nor can we undertake a judicial review and interpret the clause according to our own notions. The employer is the best judge and has taken a decision that the petitioner is non compliant and we cannot sit in appeal.

35. Again, there is one more aspect, which needs a specific emphasis. Though the petitioner has now been seeking to question even the authority of the respondents to issue CSD, it is clearly an after thought. He had never raised any objection to the stipulation of IGBC certification before submitting his bid or even thereafter till he was disqualified, except raising queries seeking clarification on that count. Rather it had even tried to comply with it by submitting pre-certification of IGBC. Even submissions of Mr. Palodkar are also on the same lines.

36. In this regard, it is quite interesting to note that contrary to such a stand the petitioner's joint venture, in fact, had raised a specific objection to a bid of another bidder vide letter dated 01.01.2024 (page No.682) stating that its offer was non-compliant with the very same clause of IGBC certification. This is nothing but blowing hot and cold at the same time, which cannot be permitted.

37. Once having participated in the tender process with an open eye, understanding the stipulation and precise requirement of green building completion/execution certification, it would be too late in the day for the petitioner to make a grievance about his disqualification.

38. There is no substance in the writ petition and it is liable to be dismissed.

39. The Writ Petition is dismissed.

40. Rule is discharged.

( SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-