



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

WRIT PETITION NO. 7446 OF 2024

M/S. WATERGRACE PRODUCTS

**Through Its Proprietor Shri. Chetan Prithviraj Bora
Near Kannamwar Bridge, Mumbai -
Agra Road, Dwarka, Nashik – 01.**

...Petitioner

Versus

- 1. THE STATE OF MAHARASHTRA
Through The Secretary
Urban Development Department,
Mantralaya, Mumbai – 01.**
- 2. THE MUNICIPAL COMMISSIONER
Chhatrapati Sambhajinagar
Municipal Corporation
Main Building, Town Hall,
Behind Head Post Office,
Chhatrapati Sambhajinagar
Maharashtra – 431001.**
- 3. THE MEDICAL HEALTH OFFICER
Chhatrapati Sambhajinagar
Municipal Corporation
Main Building, Town Hall,
Behind Head Post Office,
Chhatrapati Sambhajinagar
Maharashtra – 431001.**

...Respondents

***Advocate for Petitioner : Mr. Rampal S. Kohli a/w Mr. Yogendra M. Koli and
Ms. Michelle J. Almeida i/by M/s C.K. Legal Advocates and Consultants***

AGP for Respondent/State : Mr. R.S. Wani

***Advocate for Respondent No.2 and 3 : Senior Av. Mr. S.B. Deshpande i/by
Mr. A.P. Bhandari***

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

RESERVED ON : 29 JULY 2024
PRONOUNCED ON : 5 AUGUST 2024

JUDGMENT (*Per Shailesh P. Brahme J.*) :

. Rule. Rule is made returnable forthwith. Heard litigating sides for final disposal at the admission stage. Heard learned Counsel Mr. Rampal S. Kohli through video conference.

2. The petitioner is a proprietary firm having experience in solid and Biomedical Waste Management. It is approaching High Court under Article 226 of the Constitution of India questioning tender document dated 13.03.2024 issued by the respondent no.2/Corporation. By the impugned document, a tender process is floated by the respondent/Corporation for "Common Biomedical Waste Treatment Facility, Operator for collection, transportation, storage, treatment and disposal of biomedical waste for health facilities for area Chhatrapati Sambhajnagar District on Build Operate and Transfer (B.O.T) basis." The duration of the tender work is of 12 months.

3. Petitioner was selected for executing work for the period from 2002 to 2022 for management in incineration and disposal of biomedical waste. The period ended on 14.02.2023. However, it was extended till newly selected

tenderer executes the contract. The tender process is floated vide notice dated 13.03.2024 for further period.

4. The petitioner raised objections to the substantial tender conditions vide representation dated 25.03.2024, 15.05.2024, 19.06.2024 and lastly, by notice dated 21.06.2024. There were pre bid meetings resulting in common set of deviation dated 12.04.2024; 12.06.2024 and 05.07.2024. It is the case of the petitioner that despite the objections, respondent no.2/Corporation has been bent upon to retain clause no.2.4(ii), 3.2.1 A(i) and other clauses.

5. It needs to be clarified at the outset that the petitioner raised objection to various clauses of the tender document. Accordingly, various grounds are taken in memo of writ petition but learned Counsel for the petitioner restricted arguments to clause no. 2.4(ii). We, therefore, propose to examine the matter to the extent of only one clause. It is informed that 15.07.2024 was the last date to submit the bids. The petitioner did not submit bid. The Corporation received four bids.

6. Learned Counsel for the petitioner makes following submissions :

i. Impugned clause 2.4(ii) is against provisions of Biomedical Waste Rules of 2016 (hereinafter referred to as the Rules of 2016) and Solid Waste Management Rules, 2016.

- ii. Impugned clause is designedly incorporated in the tender document with mala fide intention to exclude the petitioner and other prospective contractors and to favour interested few.
- iii. Impugned tender clause would lay down criteria which are arbitrary, discriminatory and irrational.
- iv. Respondent/Corporation overlooked the objection of the petitioner and maintained impugned clause with oblique motive.
- v. It is impermissible to include hair saloon and industrial waste in biomedical waste. Impugned clause is against public interest and likely to affect public health as well as environment.
- vi. Impugned clause is uncalled for and arbitrary. It has been the past practice of the Corporation to treat biomedical waste separately from solid waste. Hence entire tender document is vitiated.

7. The contesting party, respondent no.2/Corporation has filed affidavit in reply. Learned Senior Counsel Mr. Sanjiv Deshpande would advance following submissions :

- a. Petitioner has no locus standi. Without participating in the process, it is not permissible to challenge tender conditions.
- b. No prejudice is caused to the petitioner or to any other bidder. Corporation received four bids, without any demur.
- c. Petition is proxy one and filed with ulterior motive to retain the work. Intention of the petitioner is to stall the project.

d. Respondent/Corporation is the best judge to select the conditions considering the nature of the work.

e. There is no prohibition for floating a common tender for management of biomedical waste and solid waste.

f. The judicial review for examining the impugned condition is very restricted. Minor aberrations would not vitiate entire process.

g. There are latches on the part of the petitioner in approaching this Court.

h. The conditions in question are formulated considering future development, increasing need of the city and population expansion.

8. Learned Counsel for the petitioner, in rejoinder, would submit that biomedical waste and solid waste need to be treated differently. The disposal of solid waste is regulated by the Rules of 2016. Impugned conditions could have cascading effects on environment. It is further submitted that considering Rule 3(f)(j)(m) and Rule 4 composite disposition of biomedical waste and solid waste is impermissible. It is further submitted that the petitioner is an experienced contractor and executing work at various places in this State as well as outside the State.

9. Learned Counsel for the petitioner tenders on record compilation of the documents mainly comprising of Rules of

2016 and Solid Waste Management Rules of 2016. Bio Medical Waste Management (Amendment) Rules 2018 were not referred to, though it is mentioned in Index.

10. Learned Senior Counsel for the respondent/Management would rely upon following judgments :

- i. M/S. N.G. Projects Limited Vs. M/S. Vinod Kumar Jain and Ors., Civil Appeal No.1846/2022.
- ii. Gypsum Structural India Pvt. Ltd. And Anr. Vs. Brihanmumbai Municipal Corporation and Others, in Writ Petition (Lodging) No.4209/2023.
- iii. Tata Motors Limited Vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and others, 2023 SCC OnLine SC 671.
- iv. National Highways Authority of India Vs. Gwalior Jhansi Expressway Limited, 2018 DGLS(SC) 662.

11. Having heard litigating sides elaborately, we notice few undisputed facts. Petitioner is a contractor for earlier period which expired on 14.02.2023 and continues to work till new contractor takes the charge. Petitioner did not participate in the tender process. In response to the tender notice, Corporation received four bids. The technical bid was to be opened.

12. The controversy in the present matter pertains to clause no.2.4(i). The submissions of both the parties are restricted to

this particular clause. Clause No.2.4(i) is as under :

2.4. Brief Scope of Work :

i. Chhatrapati Sambhajnagar Municipal Corporation inviting Proposal for collection, transportation, reception, storage, treatment and disposal of Bio Medical Waste based on Air Plasma Gasification technology or incineration with dry Scrubbing technology (which is proven to be higher/superior and modern/ environmental friendly than already existing technology) from all registered facilities including hospitals, nursing homes, clinics, dispensaries, veterinary institutions, animal houses, pathology laboratories, blood banks and clinical establishments, irrespective of their system of medicine, also waste generated (like hairs, cotton swabs, nails etc.) from hair cutting saloons (1500 approximately) and beauty parlors (1000 approximately) of Chhatrapati Sambhajnagar district.

. The above original clause suffered marginal modifications by common set of deviation no.1 and 2. Ultimately improvised clause is as follows :

“Brief Scope of Work : Chhatrapati Sambhajnagar Municipal corporation inviting proposal for collection, transportation, reception, storage, treatment and disposal of Bio Medical Waste based on rotary kiln Incinerator with dry Scrubbing technology (which is proven to be higher/superior and modern/ environmental friendly than already existing technology) having capacity of 10 to 15 MT per day which can be enhanced and expanded upto 20 MT per day from all registered facilities including hospitals, nursing homes, clinics, dispensaries, veterinary, institutions, animal houses, pathology laboratories, blood banks and clinical establishments, irrespective of their system of medicine, also waste generated (like hairs, cotton swabs, nails etc.) from hair cutting saloons (1500 approximately) and beauty parlors (1000 approximately) of Chhatrapati Sambhajnagar district. Also Pharmaceutical waste, expired medicine, Industrial Waste, Sanitary Napkins, Microbiological waste, First Aid Waste from all hotels, biomedical waste from science laboratories of Schools and Colleges.”

13. Learned Counsel for the petitioner invites our attention to definition clause 3(f),(j),(m) of Rules 2016. He would submit that as per Rule 7 biomedical waste needs to be treated and dispose of in accordance with these rules. A modality is provided by Rule 6, 9 r/w with scheduled II, III, to

dispose of biomedical waste and that has to be done in that manner only. It is further pointed out that as per Rule 4, it is the duty of the occupier to ensure disposal of biomedical waste in accordance with the Rules. It is pointed out that for management and disposal of solid waste, Solid Management Rules of 2016 govern the field. We are pointed out the provisions of Rule 3 (17)(19)(35)(36)(46)(56) of the Rules of 2016. Waste emanating from hair cutting saloon and beauty parlors would be covered by the Rules and a separate modality is provided for its management and disposal.

14. The respondents have raised objection regarding locus of the petitioner and latches in preferring petition. Petitioner is challenging clause no.2.4, 3.2.1 and other clauses of the tender document. It is a case of petitioner that the clauses are arbitrary and illegal and prevented it from participating in the tender process. The privilege of the participation in the tender process is well recognized by the Supreme Court in the matter of **Ramana Dayaram Shetty Vs. The International Airport Authority of India and Ors.** (1979) 3 SCC 489. The following is the relevant paragraph :

“9. That takes us to the next question whether the acceptance of the tender of the 4th respondents was invalid and liable to be set aside at the instance of the appellant. It was contended on behalf GI the 1st and the 4th respondents that the appellant had no locus to maintain the writ petition since no tender was submitted by him and he was a mere stranger. The argument was that if the appellant did not enter the field of competition by submitting a tender, what did it matter to him whose tender was accepted; what grievance could he have if the tender of the 4th respondents was wrongly accepted. A person whose tender was rejected might very well complain that the tender of

someone else was wrongly accepted, but it was submitted, how could a person who never tendered and who was at no time in the field, put forward such a complaint ? This argument, in our opinion, is mis-conceived and cannot be sustained for a moment. The grievance of the appellant, it may be noted, was not that his tender was rejected as a result of improper acceptance of the tender of the 4th respondents, but that he was differentially treated and denied equality of opportunity with the 4th respondents in submitting a tender. His complaint was that if it were known that non-fulfilment of the condition of eligibility would be no bar to consideration of a tender, he also would have submitted a tender and competed for obtaining a contract. But he was precluded from submitting a tender and entering the field of consideration by reason of the condition of eligibility, while so far as the 4th respondents were concerned, their tender was entertained and accepted even though they did not satisfy the condition of eligibility and this resulted in inequality of treatment which was constitutionally impermissible. This was the grievance made by the appellant in the writ petition and there can be no doubt that if this grievance were well founded, the appellant would be entitled to maintain the writ petition. The question is whether this grievance was justified in law and the acceptance of the tender of the 4th respondents was vitiated by any legal infirmity.”

15. Though, the respondents submitted that there are judgments of the Supreme Court taking different view from the view taken in the matter of Ramana Dayaram Shetty (supra), no specific judgment has been pointed out by them. The judgments cited by them would not either distinguish, explain or overrule law laid down by the Supreme Court in Ramana Dayaram Shetty (supra). We are, therefore, bound by its ratio. We are of the considered view that a person or the entity aspiring to participate in the tender process can legitimately raise grievance for the arbitrary and illegal conditions of the tender which are designedly incorporated to favour a particular person or entity. On the contrary it would not be open for the contractor or bidder after participating in the process to raise objection regarding tender conditions. We

therefore hereby overrule the objection regarding locus standi of the petitioner.

16. The petition is filed on 12.07.2024 challenging the tender document floated on 13.03.2024. It is the case of the petitioner that it was constantly raising objection against the tender conditions vide representation dated 25.03.2024, 15.05.2024 and 13.03.2024. Thereafter a notice was also issued on 21.06.2024. There was no response by the Corporation. Once having made the representation, it was legitimate for the petitioner to wait for certain period and then approach High Court. Though technical bids were proposed to be opened on 15.07.2024, the date was further postponed. Petitioner cannot be non-suited for latches or belated filing of the petition. We, therefore, overrule the objection of the respondents and consider the matter on merits.

17. Learned Counsel for the petitioner refers to Rule 2 of Rules of 2016 which is as follows :

“2. Application :-

- (1) These rules shall apply to all persons who generate, collect, receive, store, transport, treat, dispose, or handle bio medical waste in any form including hospitals, nursing homes, clinics, dispensaries, veterinary institutions, animal houses, pathological laboratories, blood banks, ayush hospitals, clinical establishments, research or educational institutions, health camps, medical or surgical camps, vaccination camps, blood donation camps, first aid rooms of schools, forensic laboratories and research labs.
- (2) These rules shall not apply to,-
 - (a) radioactive wastes as covered under the provisions of the Atomic Energy Act, 192(33 of 1962) and the rules made there under :
 - (b) hazardous chemicals covered under the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 made under the Act;

- (c) solid wastes covered under the Municipal Solid Waste (Management and Handling) Rules, 2000 made under the Act;
- (d) the lead acid batteries covered under the Batteries (Management and Handling) Rules, 2001 made under the Act;
- (e) hazardous wastes covered under the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 made under the Act;
- (f) waste covered under the e-Waste (Management and Handling) Rules, 2011 made under the Act, and
- (g) hazardous micro organisms, genetically engineered micro organisms and cells covered under the Manufacture, Use, Import, Export and Storage of Hazardous Microorganisms, Genetically Engineered Micro organisms or Cells Rules, 1989 made under the Act.”

18. We have gone through Rule 2 as well as definition clause 3. We have also considered Rule 4, 6 to 9 and schedule III. We do not find that there is any prohibition in Rule 2016 for management, disposition and treatment of biomedical waste if the tender is floated alongwith solid waste. Rules of 2016 depicts the modality to deal with biomedical waste. Solid Waste Management Rules, 2016 provides modalities for solid waste. We are unable to persuaded by learned Counsel for the petitioner that from reading of Rule 2(1) and 2(2) it is impermissible to manage to collect biomedical waste and solid waste and to dispose those separately.

19. We have also given anxious consideration to Solid Waste Management Rules of 2016. We do not find any specific provision in the Rules prohibiting solid waste management/ disposal at the same time with disposition or management of biomedical waste. What can be gathered from reading of Rules of 2016 and Solid Waste Management Rules 2016 is that there are different modalities prescribed for biomedical

waste or solid waste. It is imperative for the occupier or the operator to undertake the respective procedure prescribed under Rules for management of biomedical waste as well as solid waste.

20. There cannot be any dispute for the proposition that biomedical waste and solid waste need to be treated differently for their disposal and the management. In other words, it is permissible for the occupier or the operator to conduct management of biomedical waste in accordance with Rules of 2016, simultaneously with management of solid waste in accordance with the Solid Waste Management Rules of 2016. Therefore the submission of learned Counsel for the petitioner that the impugned tender condition is against Rules cannot be countenanced.

21. Original tender clause no. 2.4 was pertaining to biomedical waste and the solid waste like hair, nails etc. from hair cutting saloons and beauty parlors. It was improvised by common set of deviation to add pharmaceutical waste, expired medicine industrial waste, sanitary napkin, microbiological waste, first aid waste from hotels, biomedical waste from science laboratory school and colleges. Although the final clause no. 2.4 contemplates waste of various categories inclusive of biomedical, solid, pharmaceutical, industrial etc., by no stretch of imagination it can be said that

only one set of rules would be applicable, notwithstanding the category of waste. It is obvious that the successful contractor while executing the contract has to undertake different methods of management for the waste considering its nature and the rules applicable.

22. At the cost of repetition, we observe that as biomedical waste and solid waste are to be managed differently as per respective rules, it is imperative that norms pertaining to environmental laws are also to be adhered to by the operator/contractor. We do not find any stipulation either in the impugned tender clause or other clauses to indicate that environmental laws or the norms of pollution control would be bypassed while handling biomedical waste and solid waste simultaneously. The submission of the petitioner that there would be cascading effect on the environment due to the alleged composite management of biomedical waste and solid waste is misconceived.

23. It reveals that representative of State Pollution Control Board had attended the meetings of the respondent/Corporation which is evident from the minutes of the meetings produced by the respondent alongwith reply. Resultantly, we find no merit in the contention that there would be catastrophic effects on the public health.

24. It is the case of the respondent/Corporation that tender

clauses are formulated considering future development, increasing need of the city and population expansion which cannot be doubted. We do not find from the impugned clause or any other clauses that there is any hidden agenda to discriminate any tenderer or to favour a particular prospective bidder in the process. The officers from the Pollution Board Health Department, dean of medical college and hospitals were also present. The respondent/Corporation appears to have taken due care in formulating the conditions to suit the purpose best possible. The respondent/Corporation is the best judge to decide the tender clauses. Writ Court cannot sit in appeal with magnifying glass to assess tender conditions. We do not find that there is any arbitrariness and irrationality in the impugned tender condition.

25. Having considered impugned clause and other clauses of the tender document, we do not find that the respondent/Corporation has deliberately incorporated clauses to eliminate petitioner or few prospective bidders. Equally, no material is placed on record to indicate that endeavour of the respondent/Corporation is to favour particular bidder. The parameters laid down by the tender conditions/clauses would be applicable to all interested bidders equally. Just because the Corporation did not respond to the objection of the petitioner would not make the conditions/clauses vulnerable. We are unable to accept the submission of the petitioner,

pertaining to mala fides and favoritism.

26. It is a matter of record that the respondent/Corporation has received four bids. Had the tender conditions and impugned clauses been arbitrary, perverse or leading to impossibility, the Corporation would not have received the response. There is no reason for us to entertain any doubt about the genuineness of the conditions or the process reached, so far. We have no hesitation to hold that the impugned clause cannot be said to be uncalled for, arbitrary or against public health or public interest.

27. Petitioner's term of earlier contract expired on 14.02.2023. As an ad hoc arrangement, it is permitted to execute the work till new contractor takes the charge. The petitioner did not submit bid in the tender process. Rather it preferred to challenge the tender clauses. Grounds (S) and (T) raised in memo of the writ petition would go to suggest that in all probabilities, petitioner wants to continue with the contract and he was expecting extension of work. In such a situation, we have our reservations for the bona fides of the petitioner in challenging the impugned clauses.

28. Agreement executed between the petitioner and the respondent/Corporation for the tenure from 2002 to 2022 shows that management of solid waste was not included in

the nature of the work. The contract was restricted to management of biomedical waste. It is imperative for the respondent/Corporation to make arrangement for solid waste. Therefore in all probabilities, the fresh process has been set into motion to take care of biomedical waste as well as solid waste. In any case, the discretion and the wisdom of the respondent/Corporation for selecting the clauses/conditions of the tender document cannot be faulted with.

29. The respondent/Corporation has cited various judgments mainly to show the scope of judicial review in a contractual or a tender matter. We are not oblivious of the scope laid down by the Supreme Court from time to time and especially in the matters of Jagdish Mandal Vs, State of Orissa, reported in (2007) 14 SCC 517 and M/S N.G. Projects Limited (supra). Recently, Supreme Court in the matter of Tata Motors Limited (supra), has laid down following principles :

“54. As observed by this Court in Jagdish Mandal v. State of Orissa and Others, reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.”

30. We are bound to follow the principles to uphold the impugned condition and the process. The procedural

aberrations or the prejudice to a particular tenderer, though prospective tenderer in the present case, would not be sufficient to halt the tender process. It would be in the interest of public health, sanitation that the process in question should be concluded with all promptitude. To avoid burdening the judgment, we do not intend to reproduce the ratio laid down in all the judgments submitted by the respondents.

31. It is useful to refer to the judgment of the Supreme Court in the matter of Airport Authority of India versus Centre for Aviation Policy, Safety & Research (CAPSR) & Others, AIR 2022 SC 4749. It observes as under :

“7. While considering the scope and ambit of the High Court under Article 226 of the Constitution of India with respect to judicial scrutiny of the eligibility criteria/tender conditions, few decisions of this Court are required to be referred to, which are as under:

In the case of Maa Binda Express Carrier (supra), in paragraph 8, this Court observed and held as under:

“8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial

scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.”

In the case of Michigan Rubber (India) Ltd. (*supra*), after considering the law on the judicial scrutiny with respect to tender conditions, ultimately it is concluded in paragraph 23 as under:

“23. From the above decisions, the following principles emerge:

- (a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;
- (b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;
- (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;
- (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and
- (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.”

In the aforesaid decision, it is further observed that the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. It is further observed that the courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical.

Similar views have been expressed in the case of Educomp Datamatics Ltd. (*supra*) and Meerut Development Authority (*supra*).

32. If the facts of the case in hand are tested on the

touchstone of above principles, we have no iota of doubt that the petition is devoid of any substance.

33. The writ petition is dismissed. No order as to costs. Rule is discharged.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE

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