

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 1776 OF 2015.

Ms.Padmayog
Though its sole Proprietor
Kamlesh Shah .. Petitioner

Vs.
Pimpri Chinchwad Municipal
Corporation & ors. .. Respondents

Ms Manjiri S.Parasnis, for the petitioner.
Mr.P.S.Dani, Senior counsel a/w Mr.Sachin Kadam, for the
respondent No.3.
Mr.G.H.Keluskar, for the respondent Nos.1 and 2.

***CORAM: Smt. Vasanti A. Naik &
Shri C.V.Bhadang JJ.
Friday 20 February, 2015.***

P.C.:

Heard.

By this petition the petitioner seeks a direction to the respondent Nos.1 and 2 to forthwith withdraw the order of cancellation of tender dated 9 September 2014 and the issuance of the new tender notice dated 29 January 2015, in pursuance of the cancellation of the tender notice dated 9 September 2014.

The respondent Nos.1 and 2, the Pimpri Chinchwad Municipal Corporation had invited tenders by a tender notice dated

9 September 2014 for supply of uniform material to Class III and Class IV employees of the Corporation. According to the petitioner who was a bidder, the respondent Nos.3 to 7, who had also submitted their bid in pursuance of the tender notice dated 9 September 2014 were related to each other and were also related to a corporator in the Pune Municipal Corporation. It is stated that the tenderers were required to supply the material, both shirting and suiting, either from Raymonds or from Bombay Dyeing. It is stated that though the initial rates of the suiting of Raymonds and Bombay Dyeing were quoted as Rs.261/- and Rs.259/- per metre, subsequently they were unilaterally changed to Rs.510/- and Rs.509/- per metre, respectively. It is stated that the petitioner had agreed to supply the suiting material from Bombay Dyeing, whereas the respondent Nos.3 to 7 had agreed to supply the suiting material from Raymonds. Three other tenderers had also submitted their tender but it is not averred in the Writ petition as to which Company's material was to be supplied by them. According to the petitioner, the tender notice dated 9 September 2014 was canceled with a malafide intention to help the respondent Nos.3 to 7 who had submitted the tender for supply of Raymonds suiting material. It is stated that the fresh tender notice was issued on 29 January 2015, with a view to help the respondent Nos.3 to 7. The petitioner has participated in the fresh tender process, initiated in pursuance of the tender notice dated 29 January 2015 by submitting the tender for supply of shirting material of Bombay Dyeing. The petition has been filed only

because the petitioner has been prohibited from supplying the suiting material from Raymonds, in as much as, the petitioner does not have any relationship with an authorised dealer of Raymonds. It is stated that the condition to seek the suiting material of Raymonds and shirting material of Bombay Dyeing is bad in law.

The learned counsel for the petitioner has relied on the Judgments reported in **2012 (8) Supreme Court Cases page 216- *Michigan Rubber (India) Limited Vs State of Karnataka and others*; 2014 (3) Supreme Court Cases page 760 - *Maa Binda Express Carrier and another Vs North-East Frontier Railway and others* and 2007 (11) Supreme Court Cases page 704 - *State of Assam and another Vs Abhinandan Trading (P) Ltd. and another***, to challenge the cancellation of the tender notice dated 9 September 2014 and the issuance of the fresh tender dated 29 January 2015.

On hearing the learned counsel for the parties, it appears that the petition is liable to be dismissed for more reasons than one. The petitioner is estopped from challenging the tender notice dated 29 January 2015 and the cancellation of the tender notice dated 9 September 2014. It is a well-settled principle that a person participating in a tender or any other selection process cannot question the process at a subsequent stage. The Hon'ble Supreme Court has held in several decisions that a challenge to an advertisement is not permissible after participation in the selection process. It would be worthwhile to refer to the judgments reported

in **2009 (3) SCC page 227-** *Amlan Jyoti Borooah Vs State of Assam and others*; **1997 (4) SCC page 426** – *University of Cochin Vs N.S.Kanjoonjamma and others*; **2008 (4) SCC page 171-***Dhananjay Malik and others Vs State of Uttaranchal and others* and **2011 (1) SCC page 150-** *Vijendra Kumar Verma Vs Public Service Commission, Uttarakhand and others* in this regard. The petitioner is challenging the cancellation of the tender notice dated 9 September 2014 by the instant petition after submitting a tender in pursuance of the fresh tender notice dated 29 January 2015, for the shirting material. If the petitioner was really aggrieved by the cancellation of the tender notice dated 9 September 2014, the petitioner ought to have approached this Court immediately after the cancellation thereof and ought not have participated in pursuance of the fresh tender notice dated 29 January 2015. Also, we find on a reading of the tender notice dated 9 September 2014 that the respondent Nos.1 and 2 had reserved their right to reject each tender without giving any reasons. The Corporation had also reserved the right to cancel the tender process and invite a fresh tender.

We also do not find any merit in the submission made on behalf of the petitioner that the tender notice on 29 January 2015 was issued only with a view to help the respondent Nos.3 to 7, who are related to each other. In pursuance of the previous tender notice dated 9 September 2014, some other tenderers who had submitted the tender and it therefore, cannot be said that the fresh tender notice

was issued with a view to help the respondent Nos.3 to 7 only. The case of the petitioner that the respondent Nos.3 to 7 are not eligible for participation in the tender process also does not appear to be correct. The clause in the tender notice clearly states that a tenderer should not have any relationship with any office bearer or corporator in the Municipal Corporation. The tender notice was issued by Pimpri Chinchwad Corporation and it is alleged by the petitioner that the respondent Nos.3 to 7 are related to a corporator in the Pune Municipal Corporation. Also, the petitioner is not aware as to whether any persons other than the respondent Nos.3 to 7 have participated in pursuance of the tender notice dated 29 January 2015. It appears that the petitioner has not made proper inquiry before filing the Writ petition. On the basis of the submissions made on behalf of the petitioner, it cannot be said that the respondent Nos.1 and 2 have cancelled the tender notice dated 9 September 2014 and have issued the notice dated 29 January 2015 with a view to grant the work order in favour of the respondent Nos.3 to 7 only. The Judgments reported in **2012 (8) Supreme Court Cases page 216- *Michigan Rubber (India) Limited Vs State of Karnataka and others*; 2014 (3) Supreme Court Cases page 760 - *Maa Binda Express Carrier and another Vs North-East Frontier Railway and others* and 2007 (11) Supreme Court Cases page 704 - *State of Assam and another Vs Abhinandan Trading (P) Ltd. and another***, cannot be made applicable to the facts of this case.

In the result, the Writ petition fails and is dismissed with no order as to costs.

(C.V.Bhadang J.)

(Vasanti A.Naik J.)