

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8406 OF 2015**

**Bhartiya Mahila Swaymrozgar
Seva Sahakari Sanstha Maryadit**

..Petitioner

Vs.

**Pimpri Chinchwad Municipal
Corporation & Anr.**

..Respondents

Mr. S. S. Hande for the Petitioner

Mr. R.S. Apte, Senior Advocate, i/b Mr. D. R. More for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 16th SEPTEMBER, 2015

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 8-5-2015 passed by the Learned Ad-hoc District Judge-4, Pune, by which order the Misc Civil Appeal No.212 of 2014 filed by the Respondent No.1 Municipal Corporation, came to be allowed and resultantly the order dated 12-3-2014, passed by the Trial Court allowing the application for temporary injunction numbered as Exhibit 5, came to be set aside.

2 The Suit in question being Special Civil Suit No.179 of 2014 came to be filed by the Petitioners for a declaration that the process carried out by the Respondent No.1 Municipal Corporation pursuant to the E-tender which was invited for cleaning the Acharya Atre Sabhagriha, was illegal. The Petitioner was one of the participants in the said tender and had quoted

Rs.348.57 per person per day for the said work. One Shivmudra Society who was also a participant in the said tender had quoted Rs.402.80 per day for 6 persons for carrying out the work under the said tender. It is after the opening of the said tenders that the tender of the Petitioner society was not found to be meeting the requirements of the Minimum Wages Act as the Petitioner had quoted it Rs.348.57 per day per person for the said work. The Tender of the said Shivmudra Society @ Rs.402. 80 per day per person was found to be acceptable apprehending that the Respondent No.1 Corporation would process the tender by accepting the offer of the said Shivmudra Society which offer according to the Petitioner /Plaintiff was wrongly calculated that the Suit in question was filed as also the application for temporary injunction for restraining the Respondent No.1 Corporation from further processing the tender. The Trial Court considered the said application and by its order dated 12-3-2014 granted an injunction against the Respondent No.1 Corporation and restrained the Respondent No.1 Corporation not to proceed with the process of granting approval to the tender which it has found acceptable which has been received pursuant to the tender notice dated 14-6-2013. The Trial Court was of the view that there was some illegality committed in the matter of inviting the tenders as the tender conditions postulates a weekly off to the the workers, the Trial Court was therefore of the view that the said would result in the work carried out for 26 days and that since there was no mention of who would carry out the work for the remaining 4 or 5 days. The Trial Court found the

tender invited as illegal and therefore restrained the Respondent No.1 Corporation from proceeding with the process of approval.

3 The Respondent No.1 Corporation aggrieved by the said order dated 12-3-2014 allowing the application Exhibit 5 filed Misc Appeal No.212 of 2014. The Lower Appellate Court was of the view that the Respondent No.1 was within its right to accept the tender of the said Shivmudra Society quoting Rs. 402.80 per day per person and that the non acceptance of the tender of the Plaintiff i.e. the Petitioner herein and in the acceptance of the tender of the said Shivmudra Society no right of the Plaintiff is violated. The Lower Appellate Court held that the Trial Court has erred in observing that there is an illegality when in fact the tender of the said Shivmudra Society was in consonance with the Minimum Wages Act. The Lower Appellate Court was of the view that since the Standing Committee which is the one of the statutory committee of the Municipal Corporation has resolved to accept the tender of the said Shivmudra Society, the same does not warrant interference of the Civil Court in the Suit filed by the Plaintiff. The Lower Appellate Court accordingly has set aside the order passed by the Trial court dated 12-3-2014.

4 The Learned Counsel appearing for the Petitioner sought to re-urge the case of the Petitioner / Plaintiff which was urged before the Trial Court. The Learned Counsel would contend that in acceptance of the tender of

the said Shivmudra Society, the Respondent No.1 Corporation has committed illegality as the offer of the said Shivmudra Society is higher than the offer of the Petitioner / Plaintiff.

5 In my view, it is not possible to accept the contention urged by the Learned Counsel for the Petitioner. It is well settled that the authority inviting tenders is not bound to accept the lowest tender and has the freedom to accept the tender which it deems appropriate considering the nature of the work which is to be carried out under the tender. In the instant case, the Competent Authority of the Respondent No.1 Corporation i.e. the Standing Committee has resolved to accept the tender of the said Shivmudra Society @ Rs.402.80 per person per day which according to it meets the requirements of the Minimum Wages Act. The Plaintiff cannot claim a right on the basis that its tender was required to be accepted. The Plaintiff having claimed damages, the Lower Appellate Court having regard to the said claim was therefore right in vacating the injunction granted by the Trial Court as the Plaintiff can obviously be compensated if ultimately it is held that some right of the Plaintiff has been infringed. The Lower Appellate Court has therefore for cogent reasons set aside the order passed by the Trial Court.

6 The learned Senior Counsel appearing for the Respondent No.1 on instructions of Mr. Yogesh Kaduskar Assistant Commissioner, Assessment,

Skysign Department, Pune Municipal Corporation, states that an agreement has been executed with the said Shivmudra Society on 11-9-2015 and the work order to the said Shivmudra Society has been issued on 15-9-2015.

7 In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order