BDPPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.839 OF 2016

Mr. Pravin Kishor Puro and Another ….. Petitioners.

V/s

The Navi Mumbai Municipal
Corporation and Others ….. Respondents.

Mr. M.A. Choudhari for the Petitioner.
Mr. Sandeep V. Marne with Mr. Ramakant D. Patil Respondent Nos. 1 and 2.
Mr. Atul P. Vanarse for Respondent No.4.
Mr. P.P.Kakade, AGP for Respondent No.3.

CORAM: V. M. KANADE &
M.S. KARNIK, JJ.

DATE: 26th April, 2016

P.C.:- ***(Per V.M. Kanade, J.)***

1. Petitioners are seeking an appropriate writ, order and direction for canceling the tender allotted in favour of Respondent No.4 and further to direct Respondent Nos. 1

and 2 to grant tender in favour of the Petitioners herein.

2. Brief facts which are relevant for the purpose of deciding this Petition are as under:-

3. The Navi Mumbai Municipal Corporation floated a tender on 09/02/2015. Tender forms were available on that day and E-tendering formalities were to be completed online. As per tender notice, tenders were to be opened on 21/02/2015.

4. Accordingly, tender was awarded in favour of Respondent No.4. Mr. Choudhari, the learned Counsel appearing on behalf of the Petitioners submitted that the Corporation would not have awarded tender in favour of Respondent No.4 since he did not fulfill the eligibility criteria . He firstly submitted that Respondent No.4 had not paid service tax and therefore could not have been considered in the said tender process. Secondly, he submitted that the Petitioner had obtained certain documents under the Right to Information Act which indicated that Respondent No.4 had not paid service tax regularly to the

concerned authorities. He submitted that one social worker Shri Maschindra Patil also had received information that Respondent No.4 was a regular defaulter in payment of service tax. He has also filed complaints against Respondent No.4. Thirdly, he submitted that the Deputy Commissioner (Vehicle) had given a similar Report. He submitted that in spite of all these complaints, tender was awarded in favour of Respondent No.4.

5. The learned Counsel for the Petitioners further submitted that, on the other hand, Petitioners had fulfilled all the eligibility criteria and had tendered all the documents. However, those documents were not considered and tender was not awarded in favour of the Petitioners.

6. Petition came up for hearing on 19/01/2016 and this Court, by way of ad-interim relief, had directed the Corporation not to issue work order to Respondent No.4 until further orders.

7. Respondent No.4 as well as Respondent No.1 both have filed an affidavit-in-reply. Mr. Marne, the learned Counsel

appearing on behalf of the Corporation invited our attention to the affidavit-in-reply which is filed on behalf of the Corporation. He submitted that after a detailed inquiry was made by the Corporation, it transpired that Respondent No.4 was not a defaulter, as alleged by the Petitioners. He submitted that the Petitioners obtained interim relief after concealing material fact, namely, letter dated 04/11/2015 which was sent to the Petitioners by the Corporation. He submitted that by letter dated 30/03/2015, it was clarified by the Service Tax Department that Respondent No.4 was an active assessee. He submitted that the Petitioners were very well aware of the fact that service tax had been paid by Respondent No.4 regularly which was confirmed by the Service Tax Department vide letter dated 30/03/2015. Our attention was invited to the letter dated 04/11/2015 and also to the letter dated 30/03/2015. He then submitted that the Deputy Commissioner (Vehicle) was not authorized to submit a report on which reliance is placed by the Petitioners.

8. The learned Counsel appearing on behalf of the Corporation then submitted that tender bid of the Petitioners was not accepted since relevant documents were not sent

online by the Petitioners and even if those documents were sent, the documents at the time of uploading were corrupted and therefore Petitioners' tender was not processed and the Petitioners were technically disqualified on the tender process and they became aware of the same on 16/03/2015.

9. After having heard the learned Counsel appearing on behalf of the Petitioners, the learned Counsel appearing on behalf of the Corporation and the learned Counsel appearing on behalf of Respondent No.4, we are satisfied that the Corporation had not acted in an arbitrary manner in awarding tender in favour of Respondent No.4. No mala fides have been alleged against the Corporation since the Petitioners were awarded tender in their favour during earlier tender bid. The entire case of the Petitioners is based on the report given by the Deputy Commissioner (Vehicle). He was, however, not authorized to submit the report and, moreover, the Corporation has disputed veracity of the said Report. The other documents produced on record clearly indicate that Respondent No.4 is not a service tax defaulter. We are therefore not inclined to exercise our writ jurisdiction for setting aside the tender which is awarded in favour of

Respondent No.4.

10. It is a well settled position in law that the power of this Court under Article 226 of judicial review of the tender process is very limited. The Apex Court in *Tata Cellular vs. Union of India*[1] has observed as under:-

> "74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself."
>
> "77. The duty of the court is to confine itself to the question of legality. Its concern should be :
>
> 1. Whether a decision-making authority exceeded its powers?
>
> 2. Committed an error of law.
>
> 3. committed a breach of the rules of natural justice.
>
> 4. reached a decision which no reasonable tribunal would have reached or,

1 (1994) 6 SCC 651

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has

> gone wrong of a nature and degree which requires its intervention."

This Court therefore has to examine whether tender process has been followed in transparent and non-arbitrary manner as mentioned hereinabove. We are satisfied that the said process was properly followed.

11. Petition is therefore dismissed in limine. Interim order stands vacated. Moreover, it has to be noted that the tender was floated for the purpose of hiring of Tourist Permit Jeeps and Cars from Private Operators for the benefit of the Officers of Respondent No.1. On account of the stay granted by this Court, the entire process has come to an halt and, as a result, Officers of the Corporation have suffered during last three months. We are therefore not inclined to extend the stay which is granted by this Court. Request for extension of stay is declined.

(M.S. KARNIK, J.) **(V.M. KANADE, J.)**