Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1924 OF 2016

M/s.Mahendra Realtors and Infrastructure Pvt.Ltd. .. Petitioner
Vs.
The Municipal Commissioner and anr. .. Respondents

Mr.Ramesh Ramamurthy, for the Petitioner.
Mr. A.Y. Sakhare, Senior Advocate a/w Ms.Pallavi Thakar, for BMC.

CORAM : NARESH H. PATIL AND M.S.KARNIK, JJ.
RESERVED ON : 24th NOVEMBER, 2016
PRONOUNCED ON : 07th DECEMBER, 2016

JUDGMENT (PER M.S.KARNIK, J.) :

. Rule, returnable forthwith. Heard finally by consent of the parties.

2. The petitioner's challenge in this Petition is to the action on the part of the respondents – Mumbai Municipal Corporation treating the petitioner's bid in respect of tender No. 7100058905 as non-responsive on the ground that till the last date of submission of the bid i.e. 27/11/2015, the name of the

petitioner was not removed from blacklisting done by Maharashtra State Police Housing and Welfare Corporation Limited (for short 'Police Housing Corporation'). The petitioner is also challenging the consequential order dated 29/01/2016 informing the petitioner regarding the reason for treating the petitioner's bid as non-responsive.

3. The petitioner had applied under tender notice which was published on 19/08/2015 being tender No. 7100052390. The packet 'A' was opened on 26/08/2015, packet 'B' was opened on 31/08/2015 and packet 'C' was opened on 09/09/2015 and work order was issued on 17/02/2016. Learned Counsel for the petitioner, however, stated that he is not pressing the present Petition insofar as challenge to tender No. 7100052390 is concerned.

4. This Petition is therefore confined only to the challenge as regards tender No. 7100058905. The same was issued by the respondents – Corporation for the work of

proposed interior and allied work at New R Central Municipal Ward Office at FP No. 44 TPS – I at Chandavarkar Road, Boriwali (West). The tender was for the amount of Rs.3,46,43,022/- and the Earnest Money Deposit (for short 'EMD') Rs.3,46,430/-. The date of issue of tender (NIT) was 20/11/2015 and the last date of submission of bid was 27/11/2015. The packets 'A', 'B' & 'C' were opened on 27/11/2015, 02/12/2015 and 09/12/2015 respectively. The petitioner's bid, however, was treated as non-responsive as till the last date of submission of the bid i.e. 27/11/2015, the name of the petitioner was not removed from blacklisting done by Police Housing Corporation.

5. According to the petitioner, the order dated 12/06/2015 passed by the Police Housing Corporation blacklisting the petitioner was challenged by them by filing Writ Petition (L) No. 3055 of 2015 in this Court. On 24/11/2015, this Court was pleased to dispose of the Petition by passing following order as under :

"1. This petition is directed against the order passed by the respondent No.2 dated 12th June, 2015 (Exhibit KK to this Writ Petition). The second respondent is the Managing Director, Maharashtra State Police Housing & Welfare Corporation Limited, which is a Government of India enterprise that undertakes housing schemes for policemen. The construction of quarters for the Maharashtra police is undertaken by this Corporation and at various places. At once such place, a contract was awarded by the Corporation to the petitioner.

2. The petitioner is aggrieved and dissatisfied with an order passed, blacklisting the petitioner and directing that for a period of minimum five years till June, 2020, the Corporation will not award any contract or assign any works to the contractors, a list of which is appended to this order as Annexure-1.

3. This matter was called out in the morning session and we requested Mr. Saluja, learned AGP, to take instructions from the second respondent.

4. On instructions, Mr. Saluja informs the Court that the second respondent will withdraw the order, copy of which is at page 79 of the paper-book dated 12th / 22nd June, 2015, qua the petitioner.

5. In the light of this statement made on instructions by Mr. Saluja, the petitioner need not have any apprehension of the order being implemented and detrimental to the interest of the petitioner in any other contract or future works of the said Corporation.

6. In view of the statement made by Mr. Saluja, nothing survives in the Writ Petition and it is, accordingly, disposed of."

6. The petitioner by letter dated 28/11/2015 addressed to the respondents requested that the price bid submitted by the petitioner may be opened. It appears that the copy of the order

dated 24/11/2015 passed by this Court was submitted by the petitioner to the Corporation some time on 28/11/2015. Thereafter by an Advocate's notice dated 01/12/2015, it was again pointed out that by virtue of the order passed by the High Court, the blacklisting of the petitioner is no longer in force and therefore, there is no reason why petitioner's bid should be treated as non-responsive. It was requested that the petitioner may be allowed to participate in the tender process. By communication dated 21/12/2015, the petitioner informed the respondents – Corporation that a letter has been received from the Police Housing Corporation dated 16/12/2015 stating therein that petitioner's name has been deleted from the blacklisting list. The petitioner continued to correspond with the respondents by way of communication dated 04/01/2016, 09/01/2016, 12/01/2016 & 28/01/2016 requesting that the petitioner's bid may be opened.

7. The respondents by a letter dated 29/01/2016 informed the petitioner that as the petitioner had failed to

submit the documents till 27/11/2015 to prove that the petitioner's blacklisting has been revoked by concerned authority i.e. Police Housing Corporation, the bid of the petitioner was made non-responsive and 100% EMD/ASD of petitioner is being forfeited. This communication is also under challenge in this Petition which was filed on 22/03/2016. Prior to filing of this Petition and consequent to the issue of communication dated 29/01/2016, the petitioner had also sought redressal from the respondents by addressing letters dated 23/02/2016 & 25/02/2016.

8. The respondent No.2 has filed two affidavits in reply opposing the Petition. Respondent No.2 relied upon the chronology of dates and events to indicate that there has been gross delay on the part of the petitioner in filing the Petition and packet 'A' cannot be reopened at this stage as same would cause loss to the respondent – Corporation. The relevant dates which as tabulated by the respondents are reproduced as under :

Sr.No.	Date	Paritculars
1	20/11/15	Tender Published.
2	27/11/15	Packet “A” opened at 4:00 pm and petitioner treated as non-responsive.
3	28/11/15	Petitioner letter to respondent intimating H.C. order dated 24.11.2015 received on 30.11.2015 by respondent.
4	02/12/15	Packet “B” opened (petitioner not considered)
5	09/12/15	Packet “C” opened.
6	29/01/16	Decision of 27/11/2015 of respondent informed to the petitioner.
7	23/02/16 to 25/02/2016	Petitioner's letter to the respondent.
8	30/01/16	Tender Committee
9	06/02/16	D.L. put up.
10	28/03/16	Delay in filing of the W.P.Packet A,B, C opened on 27/11/2015 and petitioner was informed.
11	20/05/16	Reported to M.C. for approval.
12	30/06/16	M.C.approval received.
13	02/09/16	Fresh D.L.to M.S.for approval of Standing Committee.
14	07/09/16	First time order passed, when tender process is at last stage.

9. In the affidavit filed by respondent on 02/05/2016, it is submitted that out of five numbers of bids submitted, one bid was of the petitioner. Since the said bidder was blacklisted in the above mentioned case and the petitioner has not submitted any document proving blacklisting being revoked, the

petitioner's bid has been made non-responsive at the time of opening of packet 'A on 27/11/2015. As per tender notice clause their packets were not opened. According to the respondent, the petitioner vide their letter dated 28/11/2015 has informed them regarding the Court order dated 24/11/2015 along with copy of the Court order.

10. Before considering the submissions advanced on behalf of the learned Counsel for the respective parties, a profitable reference can be made to the decision of the Apex Court in the case of **Maa Binda Express Carrier and anr. Vs. North-East Frontier Railway and ors., (2014) 3 Supreme Court Cases 760.** The Apex Court in paragraphs 8, 9, 10 & 11 has held thus :

> "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 recognize 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.

9. Suffice it to say that in the matter of award of contracts the Government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the court which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest. (See: *Meerut Development Authority v. Association of Management Studies and Anr. etc. (2009) 6 SCC 171 and Air India Ltd. v. Cochin International Airport Ltd. (2000) 1 SCR 505)*.

10. The scope of judicial review in contractual matters was further examined by this Court in *Tata Cellular v. Union of India (1994) 6 SCC 651, Raunaq International Ltd. and in Jagdish Mandal v. State of Orissa and Ors. (2007) 14 SCC 517* besides several other decisions to which we need not refer.

11. *In Michigan Rubber (India) Ltd. v. State of Karnataka and Ors. (2012) 8 SCC 216* the legal position on the subject was summed up after a comprehensive review and principles of law applicable to the process for judicial review identified in the following words:

> "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 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 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 fundamental right to carry on business with the Government.

20. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law

> could have reached"; and (ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226." (emphasis supplied)"

> 11. As pointed out in the earlier part of this order the decision to cancel the tender process was in no way discriminatory or mala fide. On the contrary, if a contract had been awarded despite the deficiencies in the tender process serious questions touching the legality and propriety affecting the validity of the tender process would have arisen. In as much as the competent authority decided to cancel the tender process, it did not violate any fundamental right of the appellant nor could the action of the respondent be termed unreasonable so as to warrant any interference from this Court. The Division Bench of the High Court was, in that view, perfectly justified in setting aside the order passed by the Single Judge and dismissing the writ petition.

11. A useful reference can also be made to the decision of the Apex Court in the case of **Sanjay Kumar Vs. Bharat Petroleum Corporation Limited and ors. (2014) 3 Supreme Court Cases 493** thereby striking a note of caution with regard to the exercise of the extraordinary jurisdiction vested in the High Court under Article 226 of the Constitution of India in contractual/tender matters and has observed in paragraphs 15, 16 & 17 thus :

> 15. We cannot help observing that in the present case exercise of the extraordinary jurisdiction vested in the High Court by Article 226 of the Constitution has been with a somewhat free hand oblivious of the note of caution struck by this Court with regard to such exercise, particularly, in

contractual matters. The present, therefore, may be an appropriate occasion to recall some of the observations of this Court in the above context.

16. In Raunaq International Ltd. Vs. I.V.R. Construction Ltd. (paragraphs 9, 10 and 11) this Court had held as follows :-

> "9. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations. These would be:
>
> (1) the price at which the other side is willing to do the work;
>
> (2) whether the goods or services offered are of the requisite specifications;
>
> (3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;
>
> (4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;
>
> (5) past experience of the tenderer and whether he has successfully completed similar work earlier;
>
> (6) time which will be taken to deliver the goods or services; and often
>
> (7) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services.

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

10. What are these elements of public interest? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work — thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.

11. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.”

17. In Air India Ltd. Vs. Cochin International Airport Ltd. , there was a further reiteration of the said principle in the following terms:-

“7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in Ramana Dayaram Shetty v. International Airport Authority of India, Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India, CCE v. Dunlop India Ltd., Tata Cellular v. Union of India, Ramniklal N. Bhutta v. State of Maharashtra and Raunaq International Ltd. v. I.V.R. Construction Ltd. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.”

12. Learned Counsel for the petitioner submits that the date of the notice inviting tender in the present case was 20/11/2015 and the last date for submission of bid was 27/11/2015. Packets 'A', 'B', & 'C' were opened on 27/11/2015, 02/12/2015 and 09/12/2015 respectively. The petitioner put in their bid under the said tender and paid EMD (earnest money deposit). According to the learned Counsel for the petitioner, the action on the part of the respondent treating the bids submitted by the petitioner as non-responsive on the ground that till last date of submission of bids i.e. 27/11/2015, the name of the petitioner was not removed from the blacklisting done by the Police Housing Corporation, is illegal and arbitrary mainly because on 24/11/2015, which was 3 days prior to the last date of submission of bids, this Court had already passed order regarding withdrawal of the name of the petitioner from the blacklisting.

13. Learned Counsel for the petitioner would thus contend that once there is order of this Court on the issue of

removal of the name of the petitioner company from the blacklisting, after that date it cannot be said that there is any blacklisting of the petitioner in existence in law. According to the learned Counsel for the petitioner though the order was passed by the High Court on 24/11/2015, which fact was intimated to the respondent, however, the copy of the order was furnished to the respondent only on 28/11/2015 after it was made available. Learned Counsel for the petitioner would submit that the respondents have committed a grave error in not taking note of order of this Court on the issue of blacklisting and thus, have erroneously treated the bids submitted by the petitioner as non-responsive. In any case, the copy of the order of the High Court was made available to the respondent much prior to 02/12/2015 when packet 'B' was opened and 09/12/2015 which was date for opening of packet 'C' of the said tender and for finalising the bid and therefore also, the decision of the respondents in treating the petitioner's bid as non-responsive is arbitrary and unjustified. Learned Counsel for the petitioner would further submit that the action of the respondents is completely illegal as the same has been passed without issuance of any show cause notice and without hearing the petitioner and is in total violation of principles of natural justice.

14. Countering these submissions, Mr.A.Y.Sakhare, learned Senior Counsel appearing on behalf of the respondents has argued that there has been gross delay on the part of the petitioner in filing this Petition. He invited our attention to the relevant dates which has been tabulated in paragraph 8 of this order to contend that the packet 'A' of the petitioner cannot be re-opened at this stage as the same will cause prejudice and loss to the respondents – Corporation. According to the learned Counsel, the tender has currently reached its final stage and if at this stage, packet 'A' is allowed to be re-opened, the same would cause further delay of six months in issuing the work order.

15. The learned Senior Counsel contended that reading of paragraph 4 of the order of this Court dated 24/11/2015

clearly indicates that the effect of blacklisting of the petitioner is wiped off only after order of blacklisting is withdrawn; in this case as the Police Housing Corporation has withdrawn the blacklisting order of the petitioner only on 16/12/2015 much after packet 'C' was opened, no fault can be found with the decision of the respondents – Corporation treating the bid of the petitioner as non-responsive.

16. According to the learned Senior Counsel as on the date when packet 'A' was opened i.e. on 27/11/2015, the petitioner had not submitted any document proving blacklisting is revoked and therefore, in the absence of there being any material, the petitioner's bid was made non-responsive.

17. The learned Senior Counsel invited our attention to the law laid down by the Apex Court in matters concerning tenders and contracts which are extensively dealt with in the case of **Tata Cellular Vs. Union of India, (1994) 6 Supreme Court Cases 651.** He therefore contends that the modern trend points to judicial restraint in administrative action.

18. The learned Senior Counsel also relied upon the decision of the Apex Court in the case of **Air India Vs. Cochin International Airport, 2000(2) Supreme Court Cases, 617** to contend that even when some defect is found in the decision making process, the Court must exercise its discretionary power under Article 226 with great caution and should exercise it in furtherance of public interest and not merely on the making out of a legal point. The learned Senior Counsel would submit that the scope of judicial review in matters of tenders and contracts is considerably narrowed down. Thus, according to him, the Apex Court has in the case of **Jagdish Mandal Vs. State of Orissa, 2006 14 SCALE 224** laid down the tests which should be applied by a Court before interfering in tender or contractual matters.

19. Learned Senior Counsel further submits that apart from the delay in filing the Petition, the petitioner had not disclosed the order of blacklisting to the respondents while making the bids and on this ground also the petitioner is not

entitled to claim any relief under Article 226 of the Constitution of India.

20. Having considered the submissions advanced by the learned Counsel for respective parties, we are of the view that the action on the part of the respondents- Corporation treating the petitioner's bid as non-responsive is unjustified and unwarranted. This Court in the Petition filed by the petitioner against the order dated 12/06/2015 of blacklisting, the petitioner, in paragraph 4 recorded the statement of the learned Counsel for respondents that the respondents will withdraw the order of blacklisting dated 12th / 22nd June, 2015 qua the petitioner. Furthermore, this Court, in the light of the statement made on instructions of the learned Counsel for the Police Housing Corporation in paragraph 5 has recorded that the petitioner need not have any apprehension of the order being implemented and detrimental to the interest of the petitioner in any other contract or future works of the said Corporation. In our opinion, the order passed by this Court is very categoric.

Not only this Court had recorded the statement that the order of blacklisting will be withdrawn but further clarified that the petitioner need not have any apprehension of the order being implemented and detrimental to the interest of the petitioner in any of the contract or future works of the said Corporation. The contention of the learned Counsel for the respondents - Corporation that the said order of the High Court is applicable only as regards tenders and contracts of the Police Housing Corporation cannot be accepted as the same mitigates against the letter and spirit of the order. Further, the submission of the learned Counsel for the petitioner that the order of withdrawal would take effect only from the date it is actually withdrawn by the Police Housing Corporation i.e. 16/12/2015 is also devoid of any merit. Having recorded the statement in paragraph 4 of the order that blacklisting will be withdrawn, it is implicit that order of blacklisting ceases to be in operation and/or having any force at least from the date when the statement was recorded on 24/11/2015. The contention of the learned Senior Counsel that the statement in paragraph 4 coupled with the clarification in clause 5 of the order dated 24/11/2015 is applicable qua Police Housing Corporation only is very hyper-technical and can only be stated to be rejected.

21. Admittedly, when packet 'A' was opened on 27/11/2015, the blacklisting as regards the petitioner was no longer in force. Admittedly, on 28/11/2015, the petitioner intimated the High Court's order dated 24/11/2015, the copy of which was supplied to the respondents – Corporation after it was received by the petitioner. In any case, before packet 'B' was opened on 02/12/2015, the respondents – Corporation was well aware about the order passed by this Court and had also received the copy of the order.

22. The petitioner was informed by the communication dated 29/01/2016 about the decision of 27/11/2015 as regards treating the petitioner's bid non-responsive. Pursuant to the grievance made by the petitioner about order dated 29/01/2016, the Petition came to be filed on 28/03/2016. The

respondents, however, had not issued any work order even till then and therefore, according to us, there is no delay on the part of the petitioner in approaching this Court. The interim order was passed by this Court only on 07/09/2016 restraining the respondents from proceeding further with the tendering process, till which date also the tender process was not finalized.

23. After the arguments were advanced by the respective parties, we indicated to the learned Senior Counsel for the respondents as to whether the bid of the petitioner can be re-opened. The learned Senior Counsel for the respondents – Corporation submitted that in view of the passage of time and consequent issue of cost escalation etc. , it may not be possible for the Corporation to open the bid of the petitioner at this stage, as the same would cause loss to the respondents – Corporation. In any case the Corporation is always free to continue with the existing tender process or otherwise depending on the fact situation and subsequent developments in accordance with law.

24. According to us, in these facts, when pursuant to the order passed by this Court on 24/11/2015, the order of blacklisting was no longer in force, it is absolutely arbitrary and unjust on the part of the respondents – Corporation to have treated the petitioner's bid as non-responsive only on the ground that copy of the order passed by this Court was not made available to the respondents when packet 'A' was opened on 27/11/2015. The limited right that petitioner can claim in the matters of tenders is a fair, equal and non-discriminatory treatment in the matter of evaluation of his tender. As indicated earlier, before opening of packet 'B' on 02/12/2015, the respondents – Corporation was well aware of the order passed by this Court, therefore, in our view action on the part of the respondents – Corporation treating the petitioner's bid as non-responsive on 27/11/2015 on the ground that the petitioner was blacklisted is completely arbitrary and unfair to the petitioner.

25. Consequently, we allow this Petition. Hence,

following order.

i) The respondents – Corporation is directed to consider the bid of the petitioner insofar as tender No. 7100058905 as responsive with the EMD treated as live and open the bid of the petitioner in accordance with the terms and conditions of the tender.

ii) No order as to costs.

26. Rule is made absolute in the above terms.

(M.S.KARNIK, J.) **(NARESH H. PATIL, J.)**