

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.4195/2016
(Nagpur Shahar Water Tanker Malak Welfare Association, Nagpur and others .vs. Nagpur Municipal Corporation, Nagpur and others.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. M.G. Bhangde, Senior Advocate with Mr. R.M. Bhangde,
Advocate for Petitioners.
Mr. A.M. Quazi, Advocate for Respondent Nos.1 to 3.

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CORAM : B.R. Gavai & V.M. Deshpande, JJ.
DATED : September 30, 2016.

1. The petition challenges the corrigendum issued by the Respondent-Nagpur Municipal Corporation thereby extending the last date for submission of tender from 14.07.2016 to 25.07.2016.

2. The Corporation has invited the tenders for services of water tankers. The nature of work was to supply water to the various areas of the city by water tankers. The last date prescribed for submission of tender was 14.07.2016. Subsequently by the impugned corrigendum, it has been extended to 25.07.2016. Being aggrieved thereby, the present writ petition is preferred.

3. Mr. Bhangde, the learned senior counsel for the petitioners submits that perusal of the tender condition no. 1.9 provides that the last date can be changed only in exceptional circumstances. He submits that the office note sheet would show that there is no exceptional circumstance but the date is extended only on a letter addressed to the Hon'ble Mayor by some tanker owners as per the directions of the Hon'ble Mayor.

4. The learned senior counsel submits that the action of the respondent-Corporation would fall under the ambit of arbitrariness since no exceptional circumstance has been made out. No enquiry has been made as to the correctness of the letter given by some of the tanker owners and that the reason given in the letter itself is false. The learned senior counsel submits that the Mayor had no authority to issue directions to respondent no.2.

5. The learned senior counsel further relies on the judgment of the Apex Court in the case of **State of West Bengal .vs. Debasish Mukherjee** reported in **(2011) 14 Supreme Court Cases 187** in respect of his

submission that when the term "exceptional circumstances" is used, unless the party invoking the powers finds out that exceptional circumstances exist, the extension would not be permissible in law.

6. Mr. Quazi, learned counsel appearing on behalf of the Corporation on the contrary submits that since the representation was received by the Hon'ble Mayor from some of the tanker owners that on account of difficulty in getting R.T.O. Papers, they were not in a position to submit the tender on time, the Hon'ble Mayor with a *bona fide* intention of increasing the competition, has directed the date to be extended.

7. Mr. Bhangde further submits when the tender condition is imposed in a tender notice, the employer has to strictly adhere to the same.

8. It will be relevant to refer to clause 1.9 of the tender conditions:-

"1.9. Last date and submission of EOI- NMC may in exceptional circumstances and as its direction extend the deadline for submission of EOI by issuing an addendum in which case all rights and obligations subject to the original deadline will thereafter be subject to

the deadline as extended."

9. The perusal of the tender condition would show that the wording used therein is NMC in any exceptional circumstances and at its direction extend the date for submission of EOI. It could thus be seen that the power is given to be used in exceptional circumstances and also at its discretion. Assuming for a moment that the learned senior counsel is right in contending that the powers could be exercised only in exceptional circumstances, we will examine the decision making process of the Corporation. By now it is settled principle of law that this Court while exercising the powers under Article 226 of the Constitution of India would not be competent to examine the correctness of the decision but can only examine the correctness or otherwise of the decision making process.

10. It will be relevant to refer to the following observations of the Apex Court in the case of **Tata Cellular .vs. Union of India reported in (1994) 6 Supreme Court Cases 651:**

"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,*
5. *abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment 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 Brind²⁸, 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"

It could thus be seen that the decision making process of the decision making authority can be examined only if it is found to be arbitrary, irrational or taken in order to favour someone. The third category would fall in the ambit of *mala fide* action. Unless the specific averments are made regarding the *mala fide* and the party against whom the *mala fides* are alleged are made party, this Court cannot examine the case of a party on the ground of *mala fide*.

11. The perusal of the office note would reveal that the Hon'ble Mayor as well as the Executive Engineer had received certain representations from some of the tanker owners that the R.T.O. papers were not received. In this factual position, the Hon'ble Mayor appears to have directed the Executive Engineer to extend the date by 10 to 15 days. The perusal of the office note would not show that this has been done by the Hon'ble Mayor in order to favour a particular individual or some named person. The date is extended by the Hon'ble Mayor in order to give an opportunity to the persons who could not get R.T.O. papers, to bid in the tender process. The power appears to have been

exercised in order to increase competition rather than restrict the competition.

12. Insofar as the contention of Mr. Bhangde that there has to be reason regarding exceptional circumstance in the office note is concerned, we may state that the powers exercised are in executive capacity and no detailed judgment is required to be given by the Hon'ble Mayor or the Executive Engineer. The question would be whether the powers so exercised are exercised in a *bona fide* or in a *mala fide* manner. We may state that in the present case the parties against whom the *mala fides* are alleged are not made party. In that view of the matter, the matter cannot be examined with regard to the allegations of the *mala fides*.

13. Permitting a large competition, in our view, cannot be said to be arbitrary or irrational. Insofar as the contention of Mr. Bhangde that enquiry is not held as to the correctness of the representation is concerned, while exercising the administrative powers, the authorities are not supposed to act in their judicial or quasi-judicial capacity and make a detailed enquiry with

regard to the correctness of the representation made by the citizens.

14. Insofar as the judgment of the Apex Court in the case of **State of West Bengal** (supra) is concerned, it will be relevant to refer to Rule 49 which fell for consideration before Their Lordships:-

"32. Rule 49 of WBSR (Part I) relates to premature increments and reads thus:-

Save in exceptional circumstances and under specific orders of the Government, no government employee on a timescale of pay may be granted a premature increment in that timescale."

In the said case as many as 50 employees of the High Court were granted premature increments under the orders of the Hon'ble Chief Justice of the Calcutta High Court. In that factual matrix, the Government of West Bengal had approached the Hon'ble Supreme Court contending therein that such an order granting en bloc premature increments to as many as 50 employees of the High Court was not permissible.

15. As to what amounts to ratio decidendi has been succinctly explained by Their Lordships of the Apex Court in the case of the **Regional Manager .vs.**

Pawan Kumar reported in **AIR 1976 Supreme Court**

1766. It will be relevant to refer to the following observations of the Hon'ble Apex Court:-

"It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

It could thus be seen that Their Lordships have clearly held that the ratio decidendi is the rule deducible from the application of law to the facts and circumstance of the case. It has been held that ratio decidendi is not some conclusion based upon facts which may appear to be similar. It has been further held that one additional or different fact can make a world of difference between conclusions in two cases, even when the same principles are applied in each case to similar facts. We are of the considered view that firstly in the present case there are words "and at its discretion" after the "exceptional circumstances". Secondly we find that in a tender matter, the word "exceptional" cannot be stretched to such an extent as is sought to be

contended by the learned Senior Counsel. In that view of the matter, the action of the respondent-Corporation cannot be said to be arbitrary, irrational or *mala fide* to warrant interfere. Writ petition is rejected.

JUDGE

JUDGE

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