

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12450 OF 2017

Gautam Mangilal Katariya

Petitioner

Versus

The State of Maharashtra
& another

Respondents

Mr. A.K. Gawali, advocate for petitioner.

Mr. S.B. Yawalkar, A.G.P. for respondent no.1.

Mr. S.S. Tope, advocate for respondent no.2.

CORAM : R.M.BORDE &

SMT. VIBHA KANKANWADI, JJ.

DATE : 11th OCTOBER, 2017

PER COURT:

1. Petitioner is objecting to tender process initiated by respondent - Municipal Corporation in respect of work of improvement and white topping of 31 roads in Aurangabad.

2. The objection raised by petitioner is in respect of clubbing of various roads in four categories. Petitioner also contends that clubbing of roads is to facilitate big contractors and, the terms of tender notice are framed so as to suit participation of only big contractors and to eliminate participation of small contractors. It is also contended that earlier policy of notifying each road separately for the purpose of development has been changed. The change effected has no reasonable nexus with the object to be attended i.e. improvement and development of roads.

3. Affidavit-in-reply has been presented on behalf of respondent

wherein it is stated that clubbing of roads and change in the policy is with a view to ensure maintenance of proper quality. It is contended that past experience of the Corporation in respect of involvement of small contractors and getting the work done by them, is not very encouraging. Since the work involved consists of huge quantity, participation of big contractors who are equipped with required plant, machinery and manpower is expected. Participation of big contractors having expertise and also having resources to complete the work would ensure maintenance of quality of work. It is contended that before taking decision for clubbing of roads for the purpose of publishing tender notice, opinion of Public Works Department and Urban Development Department was sought. Public Works Department communicated the Municipal Corporation that it would be open for the Municipal Corporation to take proper decision about clubbing of roads if, it so desires. It is made clear in Point no. 3.4 of the Government Circular, Public Works Department, that the circular does not prohibit the Commissioner to take decision in regard to clubbing of work. So far as urban development is concerned, by communication dated 28.09.2017, the said department had accorded approval to the proposal of the Municipal Corporation for clubbing 31 works in four compartments.

4. The decision taken by the Municipal Corporation is not liable to be judicially examined since there does not appear to be any unreasonableness in the decision making process. Administrative review is permissible as regards decision making process. However, there is nothing on record to indicate that the process adopted is non-transparent or flawed. The objection raised by

petitioner that the terms of tender are framed so as to ensure participation of big contractors and to eliminate small contractors does not appear to be sound in view of reasons recorded above. There does not appear to be any inconsistency or error in change in policy and the decision in that regard has been taken with due approval of the Public Works Department and Urban Development Department. It also does appear that in order to maintain the quality of construction and to ensure participation of contractors who possess requisite expertise and resources, the decision has been taken and such administrative decision need not be interfered in exercise of writ jurisdiction.

5. Learned counsel for respondent-Corporation invites our attention to the terms of tender to controvert the contention that participation of small contractors is totally ruled out. Paragraph no. 4.3 of the tender notice makes it clear that it would be open for the contractors to form joint venture and participate in the process. It is also pointed out that the pre-registered consortium registered in stamp office will be acceptable as joint venture. Thus, the participation of small players is not at all ruled out. It is further pointed out that the contractors having capability to either own or acquire on lease the critical equipments for carrying out the work can also participate in the tender process. Thus, the objection raised by petitioner as regards framing of terms to suit a particular category of contractors does not appear to be sound.

6. Learned counsel for respondent - Corporation relying upon the decision of the Honourable Supreme Court in the matter of Jagdish Mandal Vs. State of Orissa reported in **2007(14) SCC 517**,

contends that a contract is a commercial transaction, evaluation of tender and awarding of contracts are essential commercial functions. If decision relating to awarding of contract is bonafide and is in public interest, the Courts should not exercise the power of judicial review. In the instant matter, it has not been pointed out that the tender is not in public interest. In the matter of Tata Cellular Vs. Union of India reported in **1994(6) SCC 651**, the Honourable Supreme Court has laid down following principles :

- i) there should be judicial restraint in review of administrative action;
- ii) the court should not act like court of appeal; it cannot review the decision but can only review the decision-making process;
- iii) the court does not usually have the necessary expertise to correct such technical decisions;
- iv) the employer must have play in the joints i.e. necessary freedom to take administrative decisions within certain boundaries.

7. In view of principles laid down by the Honourable Supreme Court as referred to above and for the reasons recorded above, we do not find any reason to cause interference in the matter. The petition is devoid of substance hence stands rejected.

SMT. VIBHA KANKANWADI
JUDGE

R.M.BORDE
JUDGE