

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 383 OF 2017**

Shri Nandakumar Naik,
Son of Damu Naik,
aged 40 years, married,
businessman, resident of
House No.393-C, Bebquegal,
near Railway Gate,
Curchorem Goa.

.... Petitioner

V e r s u s

1. Curchorem Cacora Municipal Council,
Through its Chief Officer,
Curchorem Goa
 2. The Directorate of Municipal Administration,
Collectorate Building,
Panaji Goa.
 3. State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim Goa.
- ... Respondents

Mr. S. S. Kakodkar, Advocate for the petitioner.

Mr. A. D. Bhobe, Advocate for the respondent no.1.

Ms. Priyanka Kamat, Addl. Government Advocate for the
respondent nos. 2 and 3.

**Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date:- 4th May, 2017

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. S. S. Kakodkar, learned counsel appearing for the petitioner, Mr. A. D. Bhobe, learned counsel appearing for the respondent no.1 and Ms. Priyanka Kamat, learned Addl. Government Advocate appearing for the respondent nos. 2 and 3.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respective respondents waive service.

4. Briefly, it is the case of the petitioner that an auction notice was published in the local newspaper Navhind Times dated 25.03.2017 for collection of occupation fee (sopo tax)

within the Municipal limits of the respondent no.1. The tender form was issued on payment of Rs.5000/- to the petitioner on 31.03.2017 and accordingly, the tender form was submitted in enclosed sealed envelope with E.M.D. for a sum of Rs.37,175/- by bank draft on 03.04.2017. It is further contended by the petitioner that he was informed to give an identity proof which the petitioner accordingly submitted by producing his Adhar Card, voter card and signature and was declared as the highest bidder on 03.04.2017. The respondent no.1 thereafter called upon the petitioner to remain present on 06.04.2017 with a written explanation regarding the name and residential address of the petitioner. Thereafter, another letter was addressed on 06.04.2017 to the petitioner by the respondent no.1 to remain present with a written explanation regarding the name and the residential address. The written explanation was submitted on 07.04.2017 and by a letter dated 08.04.2017 the petitioner forwarded his written explanation to the respondent no.1 by registered post A.D. According to the petitioner, on 10.04.2017 an auction notice was published in the daily newspaper Navhind

Times dated 12.04.2017. Being aggrieved by such decision, the petitioner has filed the above petition inter alia praying that the petitioner being the highest bidder be awarded the contract and for quashing and setting aside the re-auction proceedings to be conducted by notice dated 10.04.2017. By an interim order dated 19.04.2017 this Court has passed an order that any further action taken by the respondent no.1 on the subject tender shall be subject to further orders in the above petition and that the respondent no.1 shall not issue the work order before the next date of hearing. The respondents have filed their reply inter alia contending that the bid of the petitioner was rejected as his form was incomplete. It is further pointed out that the second highest bidder raised an objection to the acceptance of the bid of the petitioner which resulted in rejection of the bid of the petitioner by the tender committee. It is further pointed out that as such as there was a right reserved for the respondent no.1 to reject the bid without giving any reason, such action of rejecting the bid of the petitioner was taken by the respondents.

5. Mr. S. S. Kakodkar, learned counsel appearing for the petitioner has pointed out that the petitioner being the highest bidder was entitled to be awarded the contract of collecting the occupation fee (sopo tax). It is further pointed out that the base price fixed by the respondent no.1 was Rs. 16,08,753/- whereas the petitioner has submitted a bid for Rs.25,72,753/- which is nearly 50% more than the upset price. The learned counsel further pointed out that the other bidders have given a much lower amounts and as such the petitioner is entitled to be awarded the contract. It is further pointed out that on account of inadvertence, the name and address of the petitioner remained to be filled up in the tender form and in fact, the respondent no.1 did not raise any objection with that regard and accepted the bid submitted by the petitioner. It is further submitted that the respondent no.1 also entered into correspondence with the petitioner as the identity of the petitioner was not in doubt and as such the question of rejecting the bid merely on the ground that the name and address was not mentioned inadvertently cannot be accepted. It is further pointed out that the tender form was

purchased by the petitioner after furnishing his name and address on payment of Rs.5000/- and that the petitioner has also signed the tender form which clearly discloses the identity of the petitioner. It is further submitted that the name and address of the petitioner was duly recorded on the envelope of the tender form and as such according to him, the decision of the respondent no.1 to reject the bid of the petitioner is malafide, contrary to and unsustainable in law. The learned counsel further submits that it is well settled that the respondent no.1 has to act fairly while taking a decision in tender matters and in the present case, only after the financial bid of the petitioner was opened, the respondent no.1 proceeded to direct the re-auction of the tender on malafides, unreasonableness and arbitrariness ground. It is further submitted that once the bid of the petitioner was opened, the sanctity of holding tender gets affected and as such the decision to re-tender the work is arbitrary and without any justification. The learned counsel in support of his submissions has relied upon the judgments of the Apex Court reported in **(2007) 14 SCC 517** in the case of **Jagdish Mandal v/s State of**

Orissa and others, and (2000) 2 SCC 617 in the case of AIR India Ltd., v/s Cochin International Airport Ltd. and others.

6. On the other hand, Mr. A. D. Bhobe, learned counsel appearing for the respondent no.1 has pointed out that there are no particulars of malafides pleaded by the petitioner. It is further submitted that as the name and address of the petitioner was not disclosed in the tender form, the form of the petitioner was non responsive and as such the respondent no.1 was justified to reject the tender bid of the petitioner. It is further pointed out that initially the respondent no.1 had accepted the tender form of the petitioner and proceeded to examine the financial bid and only thereafter, the second highest bidder raised objection which led to the impugned decision to reject the tender bid of the petitioner. It is further submitted that in order to give equal opportunities to the bidders, the respondent no.1 proceeded to hold a re-tender in order that all bidders had equal opportunity to submit their bids. The learned counsel further pointed out that during the pendency of the petition, the tender process was conducted wherein the

highest bidder has offered a sum of Rs.28 lakhs and odd. The learned counsel as such submits that the petition be accordingly rejected.

7. We have considered the submissions of the learned counsel and we have also gone through the records. The only point for determination in the above petition is whether the respondent no.1 is justified to reject the tender bid of the petitioner merely on the ground that the name and address was not disclosed in the tender application form. In the present case, it is not in dispute that the petitioner had disclosed the identity in the envelope stating the name and address while submitting the tender form to the respondent no.1. Apart from that, the name of the petitioner was also disclosed while obtaining the tender form on payment of Rs.5000/- and the demand draft of E.M.D. amount was also paid and forwarded to the respondent no.1. In fact, when the tender was opened in the presence of the petitioner and other tenderers, the respondent no.1 chose not to reject the form of the petitioner on the ground that the name and address

was not disclosed. In fact, the records also reveal that immediately thereafter, the respondent no.1 sought details of the identification of the petitioner which was duly submitted by forwarding the Adhar card and other requisite documents. The respondent no.1 never doubted the identity of the petitioner and only because the second highest bidder raised an objection, the respondent no.1 proceeded to take the impugned decision. In the present case, considering that the identity of the petitioner was not doubted and that the respondent no.1 themselves have proceeded to enter into a discussion with the petitioner with regard to his identity, the decision of the respondent no.1 in disqualifying the petitioner or rejecting the bid of the petitioner on the ground of non-disclosure of the name on the form cannot be sustained. There is no material produced by the respondent no.1 that the tender committee has rejected the bid of the petitioner on the ground that it was a non-responsive bid. In fact the respondent no.1 has addressed a notice to the petitioner with regard to his identity which itself would show that the identity of the petitioner was not disputed by the respondent no.1.

8. In such circumstances, considering that the petitioner has otherwise meticulously revealed his name and address while submitting the financial bid, we are of the opinion that the respondent no.1 was not justified to disqualify the petitioner of such tender process.

9. Having taken the above view that the bid of the petitioner was wrongly rejected on account of non disclosure of the name and address in the tender document, we shall now proceed to examine what relief can be granted in the above petition. It is pointed out by Mr. Bhobe, learned counsel appearing for the respondent no.1 that a fresh tender process was ordered after the petitioner was disqualified. In such circumstances, we find that the Chief Officer of the respondent no.1 shall proceed to take a fresh decision in the subject tender process which proceeded based on the advertisement dated 24.03.2017 after examining the bids of the petitioner as well as the other tenderer in such process.

10. As far as the second tender process conducted during the pendency of the above petition, such process would be subject to the decision which may be taken by the Chief Officer in respect of the subject tender process.

11. In view of the above, we pass the following :

O R D E R

(i) The impugned decision disqualifying the petitioner for failure to state the name and address in the tender form dated 07.04.2017 is quashed and set aside.

(ii) The Chief Officer of the respondent no.1 shall proceed to take a decision on the bids submitted by the petitioner and other bidders to the subject tender in the light of the observations made herein above.

(iii) Rule is made absolute in the above terms.

(iv) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J

F. M. REIS, J

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