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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4565 OF 2017

R & B Infra Project Pvt.Ltd. ...Petitioner
Vs.
Khopoli Municipal Council & Anr. ...Respondents

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Mr. Atul Damle, Senior Counsel a/w. Raju D. Suryawanshi for the Petitioner

Mr. Rajesh S. Datar for Respondent No.1

Mr. Ram Apte, Senior Counsel a/w. Mr. Datta Mane for Respondent No.2

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CORAM : V.M. KANADE &

C.V. BHADANG, JJ

DATE : APRIL 25, 2017

P.C. :

1. Heard Shri Damle, learned Senior Counsel appearing on behalf of the Petitioner, Shri Datar, learned counsel appearing on behalf of Respondent No.1 and Shri Ram Apte, learned Senior Counsel appearing on behalf of Respondent No.2

2. Respondent No.1 – Municipal Corporation issued a tender notice dated 7.2.2017. Respondent No.1 invited online e-tenders from contractors/ firms/

company (Public Limited/ Private Limited) for door to door collection of solid waste within its municipal area. On 18.2.2017, the pre-bid meeting was held and various points were raised by the bidders in the said meeting and to which explanation was given by the Chief Officer of Respondent No.1. It is submitted that Respondent No.2 quoted a lump sum amount of Rs.19,167,836,9900/-. Whereas according to the Petitioner, an amount of Rs.2007/- per metric ton was the lowest amount.

3. In the meeting held on 3.4.2017, the tender of Respondent No.2 was accepted and a resolution to that effect was passed.

4. Shri Damle, learned Senior Counsel appearing on behalf of the Petitioner submits that in the tender document, Schedule 'B' provided a manner in which the tender amount was to be mentioned. It is submitted that in the Tender Document, clause 10 mentions the schedule of rates and quantities. He submitted that the said condition clearly mentions that the tenderer should insert his cost as contract price/service as described in Schedule 'B'. The chart which is in the form of Schedule 'B' has six columns. The first column is in respect of serial numbers. Second column is in respect of description of items. Third column is in respect of approximate expected quantity. Fourth column is in

respect of unit. Fifth column is in respect of rate per metric ton (in figure) and the last sixth column is in respect of rate per metric ton in words. It is submitted that Respondent No.2 instead of giving its rate per metric ton, has given its rate per year.

5. On the other hand, Shri Datar, learned counsel appearing on behalf of Respondent No.1, after filing his affidavit in reply, has pointed out that the said Schedule 'B' was not an essential condition. It is submitted that the tender condition was prepared on the estimated collection of solid waste which was generated every day. According to the Municipal Council, around 28.39 tons of solid waste was generated on every day and accordingly the tenders were invited from the prospective bidders for collection of garbage/solid waste of 28.39 tons generated every day. It is submitted that though the Schedule 'B' invites rate per metric ton for approximate quantity of 9702 metric tons, the note appended to the said schedule requires the bidders to quote the rate inclusive of all taxes and duties, taking into consideration the scope of the work and according to the provisions of MSWM Rules, 2000. It is submitted that, therefore, the contention that the rate quoted by the bidders per metric ton of garbage is only required to be taken into consideration while analyzing the bids is incorrect.

6. There is much substance in the submissions made by the learned counsel for Respondent No.1- Municipal Council. Upon closer scrutiny of Condition No.10 of Schedule 'B', in our view, the said condition does not appear to be essential condition and the requirement essentially is to quote the rate offered by the bidder for collection of garbage either per metric ton or per year.

7. The note annexed to Schedule 'B' also clearly mentions that the rate should be quoted inclusive of all taxes and duties considering all requirements as specified in the scope of work and according to the provisions of the MSWM Rules, 2000. The said Note (1) reads as under:

> "**Note:- (1)**
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> **(a) The rate should be quoted inclusive of all taxes and duties considering all requirements as specified in the scope of work and according to provisions of MSWM Rules 2000 for period 01/11/2016 to 31/10/2017.**
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> **(b) For further period of contract after 1/11/2017 the compound increment Per M.T. 5% Per year in quoted rate for period 01/11/2016 to 31/10/2017 will be applicable."**

8. It is not in dispute that the Municipal Council has made an estimate of

around 28.39 tons of solid waste generated per day. The estimate, therefore, was not the actual estimate but an estimate which was calculated on the basis of the presumption.

9. In our view, therefore, firstly, it cannot be said that this is an essential requirement and that the tender bid should be only in terms of the contract for the work/service as described in Schedule 'B'. It is an admitted position that as per the bid offered by Respondent No.2, its bid is a lowest bid and this entire process was conducted online. It is well settled position in law that the High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India has a limited power of judicial review. The Apex Court in the case of **Tata Cellular v. Union of India [(1994) 6 SCC 651]** has observed as under:

> "17. Mr. Soli J. Sorabjee, learned counsel for the appellant, Tata Cellular, argues that this is a two-staged tender. In the first stage, the evaluation had to be made on the basis of technical and commercial considerations. The bidders short-listed at the first stage would then compete in the second stage, namely, the financial bid. Chapter II contains general conditions framed into the bid. In paragraph 2.4.7 the financial projection of the proposed cellular mobile service was prescribed. The notes mentioned three criteria:
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> (i) Entire foreign exchange requirement shall be met by the foreign collaborator.

(ii) Minimum reliance on Indian public financial institutions will be preferred.

(iii) Debt equity ratio should not be more than 2:1."

"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 or 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 menas 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[28],Lord Diplock

28 (1991) 1 AC 696

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."

"78. What is this charming principle of Wednesbury unreasonableness? Is it a magical formula? In R.V. Askew[29], Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained greater value two centuries later:

> "It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practice this profession is trusted to the College of Physicians and this Court will not make it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike.""

This Court, therefore, can only examine whether there is a transparency in the tender process or not and cannot sit in review over the decision of the authority.

29 (1768) 4 Burr 2186 : 98 ER 139

10. In the present case, we are satisfied that there is no allegation of malafide in the petition regarding the tender process and the only objection is in regard to the quotation given by Respondent No.2 and, therefore, we are not inclined to interfere with the said tender process. Secondly, it has to be noted that the tenders were invited for collection of garbage and any further delay would cause health injury and inconvenience to the people living in the said area. For all these reasons, we are not inclined to entertain this petition. The writ petition is disposed of.

[C.V. BHADANG, J.] **[V.M. KANADE, J.]**

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