

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

WRIT PETITION NO. 12806 OF 2017

Onkareshwar Sushikshit Berojgar Seva Sahakari
Sanstha (Ltd.), through its Chairman
Vitthal Karbhari Wagh ... Petitioner

VERSUS

City & Industrial Development Corporation
Maharashtra Limited & Ors. ... Respondents

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Mr R. N. Dhorde, Senior Counsel i/b Mr R. B. Narvade Patil,
Advocate for the petitioner

Mr A. S. Bajaj, Advocate for respondents No. 1 and 2

Mr D. P. Palodkar, Advocate for respondent No. 3

Mr L. S. Shaikh, Advocate for respondent No. 5

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 14TH MARCH, 2018.

ORDER:

1. The petitioner seeks directions against the respondents to consider the offer of the petitioner - Sanstha in second call. It also further seeks directions against respondent No. 2 to verify adherence of the statutory mandatory provisions of law with regard to Minimum Wages Act, GST and EPF.

2. Mr Dhorde, the learned Senior Counsel for the petitioner submits that, initially the tender was floated by the respondents No. 1 and 2 for collection of solid waste material from Waluj Mahanagar. The petitioner had participated in the said tender proceeding and was successful bidder as he had quoted the minimum rates. The learned Senior Counsel further submits that, though the petitioner had quoted the minimum rates, the respondents No. 1 and 2 entered into voluminous correspondence raising frivolous queries as to how the petitioner would be in a position to perform the work by adhering to the provisions of the Minimum Wages Act. The tender was not accepted *mala fide*. The respondents arbitrarily did not consider the tender of the present petitioner, instead floated a fresh tender in September-2017. In the second tender, a separate provision of driver was put forth and also about the applicability of the GST. According to the learned Senior Counsel, the respondents No. 1 and 2 are trying to favour the other contractors and are illegally eliminating the petitioner. The learned Senior Advocate submits that, though the rates quoted by respondent No. 3 are lower, it does not qualify the test of Minimum Wages Act. The mere expenditure on minimum wages would come to Rs. 11988306/- whereas the rate offered by the respondent No. 3 is Rs. 9935963.35/-. The respondent No. 3 by no stretch would adhere to the minimum wages. The learned Senior

Advocate submits that, the calculations provided by the respondents are *per se* illegal. The threadbare calculations are provided by the petitioner which would falsify the claim of the respondents. The petitioner has, during the first tender, quoted the same rates as are quoted by respondent No. 3 and it was suggested by the respondents No. 1 and 2 that it would be practically impossible for the petitioner to perform the work at that rate. Now, when the respondent No. 3 in the second tender has quoted the same rates as were quoted by the petitioner at the time of first tender, the respondents no. 1 and 2 are coming with the case that the same would confirm to the standards of Minimum Wages Act. Contrary stand is taken by respondents No. 1 and 2. The respondents No. 1 and 2 being the public authority are expected to act fairly. According to the learned Senior Counsel, even GST would be applicable. The said aspect is also not considered by respondents No. 1 and 2. The action of the respondents No. 1 and 2 being arbitrary deserves to be interfered with in the present petition.

3. Mr Bajaj, the learned counsel for respondents No. 1 and 2 submits that, there is a change in the special allowance and dearness allowance as per the minimum wages fixed. In view of that, the rates quoted by respondent No. 3 would be feasible and the rates of the petitioner would be on the higher side.

4. The learned advocate submits that, the GST would not be applicable and it is the respondents No. 1 and 2, who have to bear the charges of GST, even if applied. The learned counsel submits that, the calculations placed on record would show that even after applying Minimum Wages Act, still the respondents would have sufficient sum for spending on fuel and other charges also. The learned counsel for respondent No. 3 also accepts the arguments canvased by Mr Bajaj, the learned counsel for respondents No. 1 and 2.

5. In matters of tender/contract, the jurisdiction of this court would not be akin to an appellate jurisdiction. This Court would be more concerned with the adherence to the decision making process and not the eventual decision. The respondents No. 1 and 2 are the experts who would consider the rates quoted, adherence to the Minimum Wages Act and the other conditions. There is no dispute with the proposition that, the tenderer should confirm to the Minimum Wages Act, the authorities certainly have to satisfy themselves that rates quoted by the tenderers would be in tune with the provisions of the Minimum Wages Act without which the tender certainly cannot be accepted.

6. In the present case, the respondents No. 1 and 2 on affidavit tendered the calculations and have given the rates to suggest that the same would confirm to the Minimum Wages Act. It appears that the difference in rates is because of the reduction in special wages and dearness allowance and because of which the disparity in the minimum wages had arisen as submitted by the respondents No. 1 and 2. The gravaman of the challenge of the petitioner is only on account of non-adherence to the minimum wages act and the taxes viz. GST. The respondents No. 1 and 2 have on affidavit stated that the GST is not applicable to it and if it is made applicable, the same would be borne by respondents No. 1 and 2 and not by the Contractor.

7. Considering the above, the decision making process does not appear to have been faulted with.

8. As observed above, the jurisdiction of this Court under Article 226 of the Constitution of India in such matters would be in limited sphere, which would be restricted to the decision making process. In contractual matters, some leverage is always given to the principal with regard to the terms of the contract and adherence thereto.

9. Considering the above, no case for interference is made out. Writ Petition is dismissed. No costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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