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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4900 OF 2018

NDC Diagnostic Centre Pvt. Ltd. ... Petitioner
Versus
Navi Mumbai Municipal Corporation & Anr. ... Respondents

Mr. Ashutosh R. Gole, for the Petitioner.
Mr. Sandeep V. Marne, for Respondent Nos. 1 and 2.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATE: 3RD JULY, 2018.

ORAL JUDGMENT (Per Riyaz I. Chagla J.)

1. The Petitioner by the present Petition is challenging the cancellation of the Re-tender Notice No. NMMC/Health/76/2017 and has sought directions against the Respondents to forthwith withdraw and cancel the fresh tender process initiated by the Respondents.

2. The Petitioner is a diagnostic centre established in 2011. The Respondents were desirous of procuring the services from a third party vendor for providing sonography and x-ray in the hospitals owned by the Respondents. The Respondent No.1 floated the first tender No.5166 on 17th March, 2017. This tender process was cancelled according to the Petitioners without

furnishing any reason. Subsequently, a second tender was floated on 9th May, 2017 being tender No. 5545 vide Re-Tender Notice No. NMMC/health/55/2017. The second tender according to the Petitioner was also cancelled without assigning any reason. Thereafter on 30th October, 2017 a third tender was floated being Tender No.7416 vide Re-Tender Notice No. NMMC/health/76/2017. It is the case of the Petitioner that the Petitioner had participated in all three tenders. The terms and conditions, including the annual tender price, period of tender, services provided etc. in the three tenders were the same. The Petitioner claims that it was declared as L-1, the lowest tenderer for the third time. The Petitioner has stated that the Respondents did not enter into contract with the Petitioner and the Petitioner accordingly addressed a letter dated 14th March, 2018 to the Respondents requesting for further updates with respect to the tender process. The Petitioner thereafter received an email dated 16th March, 2018 from nexttenders.com regarding cancellation of the third tender. The Petitioner addressed a letter dated 3rd April, 2018 to the Respondents to confirm the authenticity of the said email and to explain the reason for cancellation of the tender. The Petitioner was not communicated the reason for cancellation of the third tender. The Petitioner has stated that it has recently

come to know that a fourth tender notice was published on 22nd March, 2018 for identical services to be provided in the hospitals of the Respondents. Being aggrieved by the cancellation of the third Re-Tender, the Petitioner has challenged the fresh tender process.

3. Shri Ashutosh Gole, the learned counsel for the Petitioner has submitted that despite the Petitioner being declared as L-1 i.e. lowest tenderer, the Respondents have neither entered into a contract with the Petitioner nor furnished reasons as to why the tender for the third time was being cancelled. He has submitted that all three tenders had identical terms and conditions including estimated annual price and that the Petitioner being declared as lowest tenderer was ready to provide services at a much lesser price than that estimated. He has submitted that there was no reason furnished to the Petitioner by the Respondents as to why they had initiated a fresh tender process. He has submitted that the repeated cancellation of the tender process is *malafide* and for extraneous consideration i.e. to favour a particular vendor. He has submitted that the Petitioner had participated in the three previous tender processes which included the devotion of substantial time, cost and manpower. He has submitted that the fresh tender process ought to be withdrawn and cancelled and that the

Respondents be directed to enter into a contract with the Petitioner as the lowest bidder in the third Re-Tender.

4. Mr. Sandeep Marne, the learned counsel appearing for the Respondent Nos. 1 and 2 relied upon an Affidavit of Dr. Dayanand Ningappa Katke, Medical Officer of Health of the Respondent No.1 – Corporation. He has submitted that Dr. Katke in the said Affidavit has furnished the reasons as to why the previous three tenders were required to be cancelled. He has submitted that the first tender had to be cancelled as only two tenderers submitted their bids in the e-tender process. The said Affidavit refers to Government Resolution (for short. 'GR') dated 1st December, 2016 issued by the State Government. By the GR, the revised guidelines for procedure to be adopted for the office purchases by the Government department were issued. Under paragraph 4.4.3.1 of the said guidelines, it is provided that the minimum of three bids are required to be received to ensure fair competition in process. It was as a result of the said guidelines in the GR that the first tender had to be cancelled. The deponent of the said Affidavit also states that the Petitioner has not contended that it had submitted a bid pursuant to the first tender. As regards the second tender, it is admitted by the deponent of the said Affidavit that the Petitioner had participated in the tender process but had

failed to submit the requisite documents of CA positive net worth certificate and work orders of past contracts. As a result, the bid of the Petitioner was disqualified. Only 2 out of 5 bidders were eligible on technical evaluation. The price bids in respect of the two eligibles were opened in which one M/s. Way 2 Health Diagnostic Centre was found L-1, but it had quoted a rate which was below the estimated price by less than 20%. The deponent of the said Affidavit has referred to paragraph 4.4.3.1 of the guidelines in the G.R. which provides that if the rate quoted was outside the price band of Rs. (-) 20% or (+) 10%, then fresh tenders are to be issued. The rate quoted by M/s. Way 2 Health Diagnostic Centre was found to be 39.36% below the estimated price. Hence, the third tender came to be issued. In the third tender process, the Petitioner was found to be L-1 but the rate quoted was once again outside the price band of Rs.(-) 20% and (+) 20% i.e. 25.43% outside the estimated price. The deponent of the said Affidavit has stated that the Petitioner was informed by email dated 16th March, 2018 that the tender process was cancelled. It is stated therein that the Petitioner chose not to raise any grievance regarding the cancellation of the tender and the Respondent No.1 – Corporation immediately issued fresh re-tender notice No. NMMC/Health/100/2018 on 17th March, 2018.

The Petitioner did not participate in the said fourth tender process. The learned counsel has submitted that the Petitioner has incorrectly stated that he had participated in the tender process on all three occasions. He has submitted that it was only once i.e. in the third tender process that the Petitioner was found qualified and declared L-1 but did not meet with the guidelines issued vide GR dated 1st December, 2016. He has submitted that as mentioned in the said Affidavit, bids have already been received in the fourth tender process and the Respondent No.1 – Corporation is in the process of finalizing said tender. He has submitted that the Respondent No.1 – Corporation has in the fourth tender process received a much lesser rate than that quoted by the Petitioner and these bids are within the price band of Rs.(-) 20% and (+) 10% of declared estimated cost. He has submitted that the cancellation of third process is in public interest.

5. We have considered the submissions. We find that a perfectly satisfactory explanation for cancellation of the previous tenders and issuance of fresh tender process has been furnished by Dr. Dayanand Katke, Medical Officer of Health of the Respondent No.1 Corporation in the Affidavit in Reply to the Petition. We find from the said Affidavit that the Respondents were only acting in conformity with the guidelines for procedure to

be adopted for office purchases by the Government Department which were issued vide G.R. dated 1st December, 2016 by the Government of Maharashtra. We find that there is no challenge to these guidelines. We find from said guidelines that in paragraph 4.4.3.1 it is provided that a minimum of three bids are required to be received to ensure fair competition in the tender process. Since only two bids were received pursuant to the first tender process, the said tender had to be cancelled. We find regarding the second tender that the Petitioner in fact was disqualified as he had failed to submit the requisite documents viz. CA positive net worth certificate and work orders of past contracts. We find that the Petitioner has suppressed in the Petition the fact of it having been disqualified. Regarding the third tender process, it is an admitted position that the Petitioner was found to be L-1 with quoted price of Rs.4,36,69,744/-. However, the rate quoted by the Petitioner was 25.43% outside the estimated price. Under paragraph 4.4.3.1 of the said guidelines if the rate quoted was outside the price band of Rs.(-) 20% or (+) 10%, fresh tenders are required to be issued. Since the Petitioners quoted price was outside the stated price band, the Respondent No.1 – Corporation was left with no choice but to cancel the third tender process and issue a fresh tender. We find that the fourth tender notice was

issued one day after the cancellation of the third tender, and that despite the Petitioner having been informed on the day of the cancellation of the third tender, it did not participate in the fresh tender process. We find that the cancellation of the third tender process and the decision to issue fresh tender by the Respondent No.1 – Corporation is legal, valid and in accordance with the guidelines issued by the Government of Maharashtra vide GR dated 1st December, 2016 and in larger public interest.

6. In view of the above finding, we find no merit in the Petition and accordingly dismiss the Writ Petition with no order as to costs.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)