IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8788 OF 2018

AG Enviro Infra Projects Private Limited)
through its Director Mr. Shiju Jacob)
having its registered office at 1403/04)
Dev Corpora, Near Cadbury Junction,)
Eastern Express Highway, Thane (West)) ..Petitioner

Versus

1. State of Maharashtra)
Industries, Energy & Labour Department)
thrugh the office of Government pleader)
High Court Bombay (A.S.))

2. Navi Mumbai Municipal Corporation)

3. Municipal Commissioner)
Navi Mumbai Municipal Corporation)
Respondents 2 and 3 both at)
Head Quarter Sec. 15A,)
Near Kille Gaothan, CBD Belapur,)
Navi Mumbai 400 614)

4. Maharashtra Navnirman Kamgar Sena)
Regd. Trade Union bearing Regd. No.)
10185/06 having its address at)
3rd floor, A wing Sai Raj Dharam CHSL)
R. K. Vaidya Road, Sindhudurg)
Hotel jawal, Dadar (W) Mumbai 400028)

5. Samaj Samta Kamgar Sangh Navi Mumbai)
Having its office at Shop No.1 CIDCO)
Shopping Complex, Sector 7, Opp)
Sanpada Church, Sanpada)
Navi Mumbai 400705)

6. Shramik Sena)
Registration No.Thane 272/89)

Ramchandra Niwas, Karune Bonkade)
Koperkhairne, Navi Mumbai) ..Respondents

WITH
WRIT PETITION NO.7151 OF 2018

Maharashtra Navnirman Kamgar Sena)
Regd. Trade Union bearing Regd. No.)
10185/06 acting through Mr. Rajesh)
Bhaskar Ujjainkar having its address at)
3rd floor, A wing Sai Raj Dharam CHSL)
R. K. Vaidya Road, Sindhudurg)
Hotel jawal, Dadar (W) Mumbai 400028) ..Petitioner

Versus

1. State of Maharashtra)
Industries, Energy & Labour Department)
thrugh the office of Government pleader)
High Court Bombay (A.S.))

2. Navi Mumbai Municipal Corporation)
Head quarters Sector 15-A,)
Kille Gaothan,CBD Belapur,)
Navi Mumbai 400614)

3. Municipal Commissioner)
Navi Mumbai Municipal Corporation)
Head Quarter Sec. 15A,)
Near Kille Gaothan, CBD Belapur,)
Navi Mumbai 400 614)

4. AG Enviro Infra Projects Private Ltd)
having its registered office at 1403/04)
Dev Corpora, Near Cadbury Junction,)
Eastern Express Highway, Thane (West)) ..Respondents

WITH
WRIT PETITION NO.10238 OF 2018

Shramik Sena)
A registered Union having)
Registration No.KUA/Thane 272/89)
through its authorized representative)
Mr. Charan Rangrao Jadhav)
Having office at Ramchandra Niwas,)
Karune Bonkade Koperkhairne,)
Dist-Thane, Navi Mumbai) ..Petitioner

Versus

1. State of Maharashtra)
Industries, Energy & Labour Department)
thrugh the office of Government pleader)
High Court Bombay (A.S.))

2. Navi Mumbai Municipal Corporation)
Having address at Head quarters)
Sector 15-A, Kille Gaothan,CBD Belapur,)
Navi Mumbai 400614)

3. Municipal Commissioner)
Navi Mumbai Municipal Corporation)
Having address at Head quarters)
Sector 15-A, Kille Gaothan,CBD Belapur,)
Navi Mumbai 400614)

4. AG Enviro Infra Projects Private Ltd)
having its registered office at 1403/04)
Dev Corpora, Near Cadbury Junction,)
Eastern Express Highway, Thane (West)) ..Respondents

WITH
WRIT PETITION NO.10341 OF 2018

Samaj Samta Kamgar Sangh)
A registered Trade Union,)
Having its office at Shop No.1)
CIDCO Shopping Complex,)
Behind Choudhary Medical,)
Sector 7, Opp Sanpada Church,)
Sanpada, Navi Mumbai) ..Petitioner

Versus

1. Navi Mumbai Municipal Corporation)
through its commissioner)
Having office at NMMC HQ)
Belapur, Navi Mumbai)

2. State of Maharashtra)
through the office of the)
Govt. Pleader, High court A.S.)
Representing the office of the)
Asst. Labour Commissioner, Thane)
Mumbai, having office at 6th floor)
Office Complex Building,)
Mulund Checknaka, Wagle Estate)
Thane (West))

3. AG Enviro Infra Projects Private Ltd)
having its registered office at 1403/04)
Dev Corpora, Near Cadbury Junction,)
Eastern Express Highway, Thane (West)) ..Respondents

Mr. N. H. Seervai, Senior Advocate a/w Mr. T. N. Subramanian, Senior Advocate a/w Shri Saket Mone, Mr. Vishesh Karla and Mr. Vishal Dushing i/b Vidhi Partners for the Petitioner in Writ Petition No.8788 of 2018 and for the Respondent No.4 in Writ Petition No.7151 of 2018 and for the Respondent No.3 in Writ Petition No.10341 of 2018

Mrs. R. M. Shinde AGP for the Respondent No.1 in all Writ Petitions

Mr. Bhavesh Parmar a/w Mr. Vijay Prakash Yadav I/b Mr. Shukla Devmani Jagdish for the Respondent No.5 in Writ Petition No.8788 of 2018 and for the Petitioner in Writ Petition No.10341 of 2018

Mr. S. M.Gorwadkar Senior Advocate I/b Mr. Amul Jawale for the Petitioner in Writ Petition No.10238 of 2018 and for the Respondent No.6 in Writ Petition No.8788 of 2018

Mr. S. V. Marne for the Respondent Nos.2 and 3 in Writ Petition No.8788 of 2018 and Writ Petition No.10238 of 2018 and for the Respondent No.1 in Writ Petition No.10341 of 2018

Mr. Abhishek Prabhu for the Petitioner in Writ Petition No.7151 of 2018 and for the Respondent No.4 in Writ Petition No.8788 of 2018.

CORAM :R. M. SAVANT, &
M. S. KARNIK, JJ
RESERVED ON: 1st OCTOBER, 2018
PRONOUNCED ON: 26th OCTOBER, 2018

JUDGMENT (PER R. M. SAVANT J.)

1 The entity who has been awarded the contract of collection and transportation of Municipal Solid Waste has invoked the Writ Jurisdiction of this Court under Article 226 of Constitution of India inter alia for the following reliefs: for a direction to be issued to the Respondent Nos.2 and 3 to forthwith implement the General Body Resolution No.1668 dated 19-5-2017 and/or any other circular qua the Petitioner at par and in parity with all other similarly placed contractors working in the Solid Waste Department of the Respondent No.2. For a direction to the Respondent No.2 to ensure that the union does not go on strike by making payment to the contract workers / labourers working with the Petitioner which is the additional costs incurred towards the increased minimum wages. For a direction that the Respondent No.2 to forthwith withdraw the letter dated 17-5-2018 addressed to the Petitioner.

2 The above companion Writ Petitions have been filed by the Unions principally for a direction that the Notification dated 24-2-2015 issued under

the Payment of Wages Act by the Respondent No.3 be implemented. In so far as the said Petitions filed by the Unions are concerned, the reliefs sought by them would be contingent upon the relief that would be granted in the Petition filed by the contractor i.e. Writ Petition No.8788 of 2018.

3 The factual matrix giving rise to the filing of the above Writ Petition No.8788 of 2018 can be stated thus:

The Respondent No.2 i.e. Navi Mumbai Municipal Corporation (NMMC for short) in or around 28-6-2014 issued a tender being tender NMMC/SWM/17/2014 for the purpose of appointing a contractor for collection and transportation of the Municipal Solid Waste in the city of Navi Mumbai. The salient features of the said tender were the following:

(i) Under Chapter, paragraph 3.2, the Minimum Wages Act is to determine the benefit to be given to the labourers.

(ii) Under Chapter III, paragraph 6, the tender provided for the minimum requirement of manpower desired for carrying out the work under the tender. As per the tender the total manpower requirement at the start of the tender was of approximately 682 personnel for 513 tonnes which include skilled, unskilled and semi-skilled persons.

(iii) Under Chapter III paragraph 6(m), the tender stipulates penalties on the contractor in the event the contractor does not provide adequate manpower as indicated in the tender. The fines / penalties as indicated for not providing both skilled, semi-skilled and unskilled staff as well as supervisory staff.

(iv) Under Chapter III paragraph 6.3, the tender defines the minimum qualifications which are required for labourers which may be engaged for the purposes for carrying out the work under the said tender.

(v) Under Chapter III Table 14 gives the comparative rates for the same work if may be carried out as per equal work equal pay basis.

(vi) Under Chapter III paragraph 6.4 it is stated that all employees shall be covered under relevant labour laws especially the Minimum Wages Act.

(vii) Under Chapter III paragraph 6.4 it is also stated that the Corporation shall not be liable to take corrective action incur any extra cost expenditure on account of these laws by way of compensation or any other assistance to the workers or bear any legal liability, direct or indirect.

(vii) Under Chapter VI paragraph 3, the tender defines the manner in which escalation is payable to the successful bidder.

It was stated in the preface that the daily estimated waste generated at the time of issuance of tender was to the tune of 642.08 tonnes inclusive of green waste, debris, biodegradable waste, heavy recyclable waste, e-waste and light recyclable waste and it was during the course of the tender, it was estimated that the said waste generation would go up to 783.84 tonnes per day after 7 years.

4 In terms of the said tender, the Petitioner submitted its bid quoting rates per tonne for the Solid Waste to be picked up in the city of Navi Mumbai. The per tonne rate of the Petitioner was Rs.2880/-. The per tonne rate quoted by the Petitioner on the basis of equal work and equal pay was Rs.3750/-. It is the case of the Petitioner that it had quoted the rates as per the wage rates then prevailing under the Minimum Wages Act. It is the case of the Petitioner that the equal work equal pay quotation was based on the basis that the labourers / workers / manpower would have to be paid wages equivalent to Class-IV employees of the Respondent No.2 for the same work done by them. The Respondent No.2 opened the bids on 17-7-2014 and the Petitioner's bid was found to be the lowest. Since the Petitioner's bid was complying with all the technical conditions and the other requirements of the tender, the

Respondent No.2 invited the Petitioner for further negotiations. It seems that on 21-7-2014 the Petitioner submitted details of minimum wages applicable at the time of submission of the bid. The same was done by the Petitioner in view of the fact that minimum wages make the principal premise on which a bidder quotes for the tender as labour / workers wages constitute a major portion of fixed expense which has to be taken into consideration while bidding for the contract.

5 On 28-8-2014 the Respondent No.2 in the course of negotiations made an offer to the Petitioner to carry out the work at the rate of Rs.1700/- per tonne by issuing a letter in that regard. The said letter issued by the Respondent according to the Petitioner clearly states that the amounts being offered by the Respondent No.2 were considering the minimum wages existing on the said day. It is further the case of the Petitioner that the amounts as proposed by the NMMC were as per the prevailing minimum wages and the same is evident on a reading of the letter issued by the Respondent No.2 on 28-8-2014.

6 On 31-10-2014 the Petitioner agreed to the price as proposed by the Respondent No.2 in its letter dated 28-8-2014. Since the Petitioner agreed to a lower rate per tonne than what was quoted in its bid, the Petitioner exercised its option under the tender to use larger trucks for the purpose of

waste pick up. This option was accepted by the Respondent No.2 and it is therefore the case of the Petitioner that it accepted the tender with respect to the tonnage rates based on minimum wages. It is therefore the case of the Petitioner that the Petitioner accepted the bid @ Rs,1700/- per tonne which was on the basis of the minimum wages as prevailing on the said day. It appears that the waste pick up rate with respect to rates for equal work - equal pay, the Respondent No.2 agreed to reimburse the Petitioner the difference in wages to be paid to the labourers / manpower. The Respondent No.2 issued a letter of acceptance on 16-12-2014 and accepted the negotiated bid as submitted by the Petitioner. After the receipt of the letter of acceptance, the Petitioner started mobilization by investing money for deployment of adequate resources to commence the work of solid waste management as awarded under the Tender. It is the case of the Petitioner that after the letter of acceptance and before entering into a contract with the Respondent No.2, the Petitioner had already invested a sum of Rs.34 crores towards mobilization expenses such as procurement of vehicles, investment towards buying bins, GPS and RFID tracking system. The said fact was informed to the Respondent No.2 vide letter dated 30-1-2015.

7 On 24-2-2015 after the contract price had been negotiated the State Government issued a Notification notifying the minimum wages for the employees employed in the employment of any local authority of the State of

Maharashtra. By the said Notification the minimum wages were substantially increased from the minimum wages which were estimated by the contractor as the Petitioner had given estimate on the basis of minimum wages as then existing. It is the case of the Petitioner that at the relevant time the Petitioner was unaware of the Notification and was never informed by the Corporation about the said Notification and its implications on the contractor. It is the case of the Petitioner that the correspondence between the Respondent No.1 and the Respondent No.2 disclose that the Respondent No.2 only learnt about the Notification sometime in January 2016. The Respondent No.2 only started taking steps to implement the said Notification sometime in the year 2017.

8 An agreement was entered into between the Petitioner and the Respondent No.2 on 7-3-2015. The final tonnage rate was Rs.1700/- per tonne for Biordegradable and Recyclable waste and Rs.3000 per trip for green waste. The said rates were fixed after negotiation and much before the notification dated 24-2-2015. The said rates were fixed on the basis of the existing minimum wages as per the letter dated 28-8-2014 issued by the Respondent No.2. The terms and conditions of the agreement which are relevant in the context of the present Petition would be referred to in the latter part of this judgment. Subsequent to the award of the tender it seems that various meetings were held between the Petitioner and the Respondent No.2 to fix the route map for the purpose of execution of the work under the tender.

The said route map assumed importance in as much as it is on the basis of the said route map that the Petitioner and the Respondent No.2 decided in what manner and what frequencies and on what routes, would garbage collection trucks ply to pick up Municipal Solid Waste. It is in terms of the agreement and the route map that the Petitioner employed skilled, unskilled and semi skilled and other man power. The Petitioner commenced its operation on 9-3-2015 and continued to provide services to the Respondent No.2 and the citizens of Navi Mumbai. The Respondent No.1 i.e. the State on 22-1-2016 communicated to all Municipal Corporations including the Respondent No.2 of the Notification dated 24-2-2015 with respect to the new minimum wages. As indicated above it seems that the Respondent No.2 became aware of the Notification only in January 2016 i.e. after execution of the agreement. The Respondent No.3 i.e. Municipal Commissioner on 24-3-2017 issued a circular to all heads of department of the Respondent No.2 directing them to pay minimum wages as per the Notification dated 24-2-2015 issued by the Respondent No.1 to all the contract labour. It was further directed that the said wages are to be considered and applied for all tenders which may be invited in the future. The Petitioner received the said circular dated 24-2-2015 from the Respondent No.2 by which the Petitioner learnt about the decision of the Respondent No.2 to implement the said Notification dated 24-2-2015 in respect of the minimum wages. The Petitioner immediately on 16-6-2017 by a letter informed the Respondent No.2 that the price as fixed per tonne rate were on the basis of minimum wages existing as on the date of the bidding and therefore requested the Respondent No.2 to reimburse the difference in the expenses incurred due to the increased minimum wages. The general body of the Respondent No.2 in the meantime had passed two resolutions being Resolution No.1272 dated 15-2-2017 and Resolution No.1668 dated 19-5-2017. By the said resolutions the Respondent No.2 had principally agreed to provide increased minimum wages to the contract labourers engaged inter alia in the contracts of collection and transportation of solid waste, under the Solid Waste Management Department amongst other departments of the Corporation in line with the Notification dated 24-2-2015. However, the said resolutions in so far as the Petitioner is concerned have not been implemented.

9 It is required to be noted that by Resolution No.1668 of 2017 the Respondent No.2 made budgetary provision from its budgetary expenses towards additional payments to be made to the contract labour on account of the increase in minimum wages as per the Notification dated 24-2-2015. It seems that on 29-5-2017 the Respondent No.2 by internal communication informed the Deputy Commissioner (Solid Waste Management) of the Resolution dated 19-5-2017 passed by the General Body of the Respondent No.2. Inspite of the same the Deputy Commissioner (Solid Waste Management) failed to act as per the Resolution dated 19-5-2017 in so far as the Petitioner is concerned. The Petitioner thereafter made various

representations to the Deputy Commissioner (Solid Waste Management) interalia requesting him to confirm that the Petitioner would be equally benefited by the Resolutions passed by the Respondent No.2. However, depsite such representations, the Respondent No.2 acting through Deputy Commissioner (Solid Waste Management) did not clarify the stand with respect to the Resolutions passed by the Respondent No.2. In fact on 26-10-2017 the Respondent No.2 issued a notice making allegations against the Petitioner for not making payments as per the revised minimum wages as per clause 10(d) of the agreement. In view of the fact that the Respondent No.2 failed to clarify its stand with respect to the reimbursement of additional amount and further failed to act as per the stand taken by the Respondent No.2 in its correspondence dated 26-10-2017, it is the case of the Petitioner that it was not in a position to take any steps with respect to the payment of increased wages to its employees. Due to the said inaction on part of the Respondents there was a labour unrest in as much as the labour working with the present Petitioner along with the other labour in the city of Navi Mumbai went on a strike pressing their demands for increased wages as the same were not granted. It is during the said period that the Petitioner learnt that the other similarly placed contractors who had received contracts from the Municipal Solid Waste Department and other Departments mentioned in the General Body Resolutions were given increased wages as resolved by the Corporation. Since some labour was not given benefits there was further unrest amongst the labour working in the city of Navi Mumbai for the Petitioner.

10 The aforesaid situation forced the Petitioner to once again approach the Deputy Commissioner (Solid Waste Management) of the Respondent No.2 to give clarity on the issue of payment of minimum wages to the labour as there was unrest amongst the labour. During the interaction with the said Deputy Commissioner (Solid Waste Management) the Petitioner learnt that all other similarly placed contractors working in the same department were given increased wages by the Respondent No.2 and the Resolutions were implemented qua other similarly placed contractors. However, the Petitioner was singled out allegedly on the ground that the Petitioner's contract was on tonnage basis and not on manpower basis. The Petitioner made further representation before the Respondent No.2 explaining the waste management system and also the tonnage rates which have been negotiated by the Petitioner. The Petitioner was informed that a Committee was constituted to consider the case of the Petitioner and for the said purpose the Petitioner was asked to submit copies of its record pertaining to labour wages paid by the Petitioner to its employees. The said compliance was made by the Petitioner. In the interim period the Petitioner was called upon to make payments to the workers on the basis of the new wage rates pending the decision of the Committee looking into the Petitioner's contract. The

Petitioner accordingly made payment of 1.68 crores in the month of December 2017 and January 2018 without prejudice to its rights and contentions. Pending the report of the Committee as set up by the Respondent No,.2 and pending the dispute before the Labour Court the Respondent No.2 on 17-3-2018 again issued a notice to the Petitioner alleging that the Petitioner had breached its obligations to pay minimum wages and threatened action against the Petitioner.

11 Being aggrieved by the said action of the Respondent No.2 the Petitioner on 5-4-2018 made detailed representation before the Respondent No.3 i.e. the Municipal Commissioner requesting his intervention and seeking implementation of the General Body Resolution qua the Petitioner. On 20-4-2018 the Petitioner received a reply to its representation wherein the Respondent No.2 has taken a contradictory stand to deny the Petitioner parity with other similarly placed contractors in the matter of reimbursement of the amount on account of increase in minimum wages.

12 The Petitioner made representation also before the Respondent No.1 seeking clarification as regards the stand of the Respondent No.1 on the issue of implementation of the Notification dated 24-2-2015 and or the General Body Resolutions. By communication dated 26-4-2018 the Respondent No.1 has recommended the case of the Petitioner to the Respondent Nos.2 and 3, however, the Respondent Nos.2 and 3 have till date

failed to act on the said recommendation. The filing of the above Petition has been precipitated by the fact that on 17-5-2018 the Respondent No.2 has addressed a letter that in the event of the Petitioner failing to pay the minimum wages to the labour which is otherwise to be paid by the Respondent Corporation, the same will be deducted from the monthly payments to the Petitioner by the Respondent Corporation thereby putting an onerous obligation on the Petitioner. It is on account of the refusal of the Respondent No.2 to reimburse the additional amount i.e. payable by the Petitioner on account of the payment of minimum wages as per the Notification dated 24-2-2015 that the Writ Jurisdiction of this Court has been invoked by the Petitioner for the relief which we have adverted to in the earlier part of this Judgment.

13 On behalf of the Respondent No.2 i.e. the NMMC an Affidavit in Reply has been filed by one Mr. Tushar Pawar, Deputy Municipal Commissioner (SWM) Navi Mumbai. It is stated in the said Affidavit in Reply that the tender documents and the covenants in the Agreement entered into between the Petitioner and the Respondent No.2 make it clear that the entire responsibility of payment of wages in accordance with the relevant labour laws lies solely on the Petitioner. It is alleged that the Petitioner is avoiding to make payments as per the Notification dated 24-2-2015. It is further stated that the reliance placed by the Petitioner on the Resolution No.1668 is

misplaced. The said Resolution according to the Respondent No.1 merely sought to empower the Municipal Commissioner to take a decision at his level for payment of minimum wages to the contract labour mentioned in the said Resolution. The case of the Petitioner that the rate of Rs.1700 per tonne was calculated on the basis of minimum wages prevailing prior to the Notification dated 24-2-2015, is denied. It is stated that the contract was executed between the Petitioner and the Respondent No.2 on 7-3-2015 when the revised minimum wages had already come into effect. It is stated that the Petitioner was fully aware of the consequences of the Notification dated 24-2-2015 at the time of execution of the contract i.e. on 7-3-2015. The entitlement of the Petitioner based on the Resolution No.1668, is denied. It is stated that the said Resolution is restricted to the 4 items mentioned in the said Resolution. Hence the very applicability of the said Resolution to the Petitioner was sought to be denied. A reference is made to the informal Committee set up by the Respondent No.2 to examine the financial effect of payment of minimum wages as per the Notification dated 24-2-2015, on the Petitioner. It is stated that the said Committee made the enhancement and reported that the Petitioner can easily absorb the liability of payment of minimum wages without incurring losses. It s stated that the reliance placed by the Petitioner on the case of Madvi Brothers, is misplaced, as the said contract envisaged the deployment of such number of labourers as was to be decided by the Respondent No.2. It is denied that what has transpired in the

Arbitration proceedings between the Petitioner and the Respondent No.2 has a bearing on the treatment meted out to the Petitioner.

14 An Affidavit in Reply is also filed on behalf of the State Government by one Mr. Rajesh B. Ade Asstt, Commissioner of Labour. It is stated that the responsibility to pay the increased minimum wages as per the Government Notification is of the principal employer and the contractor. It is further stated that the Municipal Corporation was informed vide letter dated 26-4-2018 to pay as per the minimum rates of wages and arrears of the minimum rates of wages to the contract labour in the Solid Waste Management Department.

15 To the Affidavit in Reply filed on behalf of the Respondent No.2 an Affidavit in Rejoinder has been filed on behalf of the Petitioner. In the Rejoinder the case of the Petitioner as set out in the Petition is reiterated. It is reiterated that the Petitioner is entitled to the benefit of the said Resolutions Nos.1668 and 1272 passed by the General Body of the Respondent No.2. It is stated that the Petitioner is being arbitrarily singled out. It is stated that the implementation of the Notification dated 24-2-2015 without assistance from the Respondent No.2 would make the contract totally unviable and unworkable for the Petitioner. The admission of the Respondent N.2 that reimbursement / increased wages have been given to other contractors

working under the Solid Waste Department of the Respondent No.2 is referred to. The case of the Respondent No.2 on the basis of the agreement having been executed after the Notification dated 24-2-2015 has also been dealt with. The fact of mobilization which was required to be carried out within 180 days of the acceptance of the bid, the implementation of the micro plan, the submission of the revised bid of 31-10-2014 and acceptance of the bid by the standing committee has been stated. Thereafter a reference has been made to the award of the tender to the Petitioner on 16-12-2014. It is stated that the Petitioner has worked as per the time lines stipulated in the tender and in fact by 15-1-2015. The Petitioner had carried out mobilization and had spent an amount of Rs.34 crores. The aforesaid steps having been taken prior to 24-2-2015 has been highlighted. The fact that the contractors who have entered into contract post 24-2-2015 with the Respondent No.2, being granted the benefit of the Resolution No.1668, is highlighted. The Petitioner has once again made a reference to the case of Madvi Brothers. It is also stated that about 91 contractors have been granted benefit of the said General Body Resolutions. It is stated that since the tender puts an obligation on the Petitioner to provide minimum man power as well as provide man power as per the route plans failing which the Petitioner would be put to penalties, the tender is clearly dependent on man power employed and therefore the Petitioner cannot be treated differently than the other contractors. Thereafter the case of Mangal Murthy Enterprises with whom the Respondent No.2 has entered into a Comprehensive Contract for operation and maintenance of water supply pump houses along with water supply distribution system is referred to. Thereafter the case of Kishan Contractors with whom contract has been entered into by the Respondent No.2 for transmission mains and feeder mains, Shil and Nerul MBR in the NMMC area, is referred to. It is stated that contracts in respect of the above mentioned contractors are not based on manpower basis and have similar tender conditions as the Petitioner, but have been granted benefit of the General Body Resolutions. It is therefore stated that the actions of the Respondent No.2 are arbitrary. Thereafter the General Body Resolution No.1668 is dealt with. It is stated that assuming that the Municipal Commissioner is conferred with a discretion under the said Resolution No.1668 to grant enhanced wages, the said discretion has to be exercised in a fair and judicous manner. Thereafter findings of the informal Committee have been dealt with. The constitution of the informal Committee is questioned on the ground that the reason as to why the said Committee was required to be constituted only in the case of the Petitioner has not been given. The findings of the Committee are also challenged and it is stated that the Committee did not consider the true and correct facts which were placed before it by various officers of the Respondent No.2. It is lastly stated that the Petitioner has carried out its obligations under the tender.

16 **<u>Submissions on behalf of the Petitioner by the Learned Senior</u>**

Counsel Mr. T. N. Subramanian :-

(i) That the Petitioner is entitled to the benefit of Resolution No.1668 passed by the General Body of the Respondent No.2 in the matter of being given the benefit of increased remuneration to cover the costs incurred due to increase in minimum wages in view of the Notification dated 24-2-2015.

(ii) That by denying the Petitioner the benefit of the said Resolution the Petitioner is being discriminated against by the Respondent No.2 which is a State within the meaning of Article 12 of the Constitution of India.

(iii) That in terms of the tender conditions the Petitioner carried out mobilization within 180 days of the acceptance of the bid of the Petitioner. The Petitioner in the said process spent an amount of Rs.34 crores which is prior to the Notification dated 24-2-2015 increasing the minimum wages.

(iv) That the case of the Respondent No.2 that the benefit of the Resolution cannot be granted to the Petitioner since the contract of the Petitioner is based on tonnage rates, cannot be accepted on the ground that minimum deployment of manpower is mandatory and that if the Petitioner does not fulfill its obligations, the Petitioner can be put to penalties and secondly on the ground that other contractors like Madvi Brothers, Mangal Murthy Enterprises and Kishan Construction, whose contracts are Comprehensive Contracts and not based on manpower, have been given the said benefit.

(v) That the General Body Resolution Nos.1668 and 1272 are all pervading and their application cannot be restricted as is sought to be done by the Respondent No.2.

(vi) That the conduct of the Respondent No.2 as regards the manner in which the Petitioner is being treated can be seen from the fact that an informal Committee was constituted by the Respondent No.2 only in so far as the Petitioner is concerned. No opportunity was given to the Petitioner to participate in the deliberations of the said Committee and neither has the Committee taken into consideration the material relating to the Petitioner which was placed before it by the Nodal Officers of the Respondent No.2.

(vii) That the action of the Respondent No.2 of not extending the benefit of the Resolution No.1668 to the Petitioner is arbitrary and discriminatory and affects the right of the Petitioner to carry on business and is therefore violative of Article 19(1)(g) of the Constitution of India in as much as it makes the contract of the Petitioner unviable and unworkable on account of the increased minimum wages by the Notification dated 24-2-2015.

(viii) That the Petitioner is therefore entitled to increase remuneration from the Respondent No.2 to defray the costs incurred due to increase in minimum wages under the Notification dated 24-2-2015. The obligation of the Respondent No.2 also arises in view of the fact that the Respondent No.2 can be said to be the principal employer. Reliance is sought to be placed on the judgment of a Division Bench of this Court dated 25-4-2018 in the matter of **A2Z Infraservices Limited Vs. Union of India through Chairman Railway Board & Ors.**

(ix) That the State Government vide its communication dated 22-1-2016 has also recommended to the Respondent No.2 to grant the difference to the Petitioner on account of the increased in minimum wages by the Notification dated 24-2-2015. However, notwithstanding the said recommendation the Respondent No.2 is refusing to do so.

17 **Submissions by the Learned Counsel Mr. S. V. Marne appearing for the Respondent No.2 NMMC.**

(i) That since the offer to be made by the intending tenderer in the tender in question was to be on tonnage basis. It was expected that the rate per tonne would be quoted by factoring various aspects including the wages that would be required to be paid to the labour and therefore the Petitioner is not entitled to be paid enhanced remuneration on account of increase in the minimum wages by the Notification dated 24-2-2015.

(ii) That the contract in respect of the Petitioner having been executed after the Notification the benefit of the said General Body Resolution No.1668 cannot be extended to the Petitioner.

(iii) That the contract in respect of the Petitioner being based on tonnage rates and not manpower, the Petitioner is not entitled to the benefits of the said General Body Resolution No.1668.

(iv) That the case of the Madvi Brothers, Mangal Murthy Enterprises and Kishan Construction stands on a different footing as they are based on deployment of labour and hence reliance placed on the said cases by the Petitioner is misplaced.

(v) That the General Body Resolution No.1668 is applicable only to the 4 items mentioned in the said Resolution. The Petitioner is not covered under the said Resolution and is therefore not entitled to the benefits of the said Resolution.

(vi) That in terms of the tender conditions the Petitioner would have to soak in, any increase in the minimum wages that would take place and cannot claim the same from the Respondent No.2.

(vii) That the General Body Resolution No.1668 only empowers the Municipal Commissioner to exercise discretion and grant increase if deemed necessary. The case of the Petitioner was considered and having regard to the tender conditions the Municipal Commissioner came to the conclusion that the Petitioner was not entitled to the increase in remuneration.

(viii) That the Judgment of the Division Bench of this Court in A2Z Infraservices Ltd. (supra) has no application as the facts in the said case are clearly distinguishable from the facts of the present case.

18 **Submission of the Learned Counsel Mr. Bhavesh Parmar for the Respondent No.5 and for the Petitioner in Writ Petition No.10341 of 2018**

(i) That this court may not interfere with the Notification dated 24-2-2015 increasing the minimum wages.

(ii) That the Respondent No.5 Union is interested that its members are paid wages as per the said Notification dated 24-2-2015.

19 **Submission of the Learned Senior Counsel Mr. S. M. Gorwadkar appearing for the Respondent No.6:**

The Learned Senior Counsel submitted that its members are interested in being paid the minimum wages as per the Notification dated 24-2-2015 and therefore supported the submissions urged on behalf of the Petitioner.

20 The Learned Counsel appearing for the Petitioners in the other Petitions which have been filed on behalf of the unions which are operating in the NMMC would also reiterate that the contract labour employed by the Petitioner are entitled to the increase in minimum wages under the said Notification dated 24-2-2015 and that this court should not interfere with the said Notification dated 24-2-2015.

21 **CONSIDERATION**

Having heard the Learned Senior Counsel for the Petitioner and the Learned Counsel appearing for the Respondent No.2, we have given our anxious consideration to the rival contentions. The principal issue that arises for consideration before us is whether the Petitioner is entitled to be reimbursed by the Respondent No.2 on account of the increase in minimum wages which has taken place by virtue of the Notification dated 24-2-2015 issued by the Respondent No.1. In order to address the said issue the facts antecedents to the contract being executed between the Petitioner and the Respondent No.2 which was on 7-3-2015, would have to be revisited, as also the tender conditions and the stipulations mentioned in the contract.

In so far as the tender is concerned, the tender as indicated above was for collection and transportation of the Municipal Solid Waste which was invited by the Respondent No.2 by issuing the tender notice dated 28-6-2014. The Petitioner submitted its tender on 17-7-2014. The bid placed by the Petitioner was under two heads i.e. per tonne rates and per tonne rates on the basis of equal pay for equal work. The tenders were opened and the Petitioner's bid was found to be the lowest. On 20-8-2014 a counter offer was made by the Respondent No.2 quoting the rate of Rs.1700 per tonne based on minimum wages. The Petitioner made an offer of Rs.1700 per tonne on the basis of minimum wages and a provision was made for reimbursement for wage difference in the event equal pay for equal work is implemented. On 16-12-2014 letter of acceptance was issued to the Petitioner by the Respondent No.2. In terms of the tender conditions the Petitioner was required to carry out mobilization within 180 days of the acceptance of its bid. The Petitioner accordingly carried out mobilization and by 30-1-2015 the Petitioner had invested an amount of Rs.34 crores towards the mobilization costs. Thereafter the agreement was entered into between the Petitioner and the Respondent No.2 on 7-3-2015 and work under the contract was commenced by the

Petitioner. However, prior to the agreement being executed between the Petitioner and the Respondent No.2, the State Government on 24-02-2015 notified the change in minimum wages for the employees working with any local authority in the State of Maharashtra. On account of the Notification there was a substantial change in the minimum wages payable by the Petitioner and the said increase is as mentioned in the table reproduced herein below:

Type of Labour	Minimum Wages prior to 24.02.2015 (Rs.)	Minimum Wages Post 24.02.2015 (Rs.)	Difference per Year per Labourer (Rs.)	Increase in Percentage of Minimum Wages (%)
Skilled	12,178/-	26,507/-	1,71,948/-	117.60%
Semi – skilled	11,569/-	24,992/-	1,61,076/-	116.02%
Unskilled	10,962/-	22,722/-	1,40,940/-	107.00%

As per the D.A. prevailing in December 2017 the total difference in respect of all types of workmen would be to the tune of Rs.1,06,18,759/- per month and annually would be Rs.12,74,25,108/- per year. The aforesaid table indicates that there is a perceptible increase in minimum wages which is to the tune of more than 100%.

22 It appears that the Respondent No.1 in or around 22-1-2016

communicated the increase in wages which has taken place on account of the Notification dated 24-2-2015 to the Respondent No.2 and directed the Respondent No.2 to implement the same. The Respondent No.2 in turn issued a circular dated 24-3-2017 addressed to the various departments in the Respondent No.2 to implement the increase minimum wages as per the Notification dated 24-2-2015.

23 In the aftermath of the said Notification dated 24-2-2015 the General Body of the Respondent No.2 passed Resolution No.1272 dated 15-2-2017 and Resolution No.1668 dated 16-5-2017. The text of the said Resolutions (translation) is reproduced hereinunder:

> **<u>Resolution No..1272:</u>**- It is proposed to resolve as per the Resolution granted in General Body Meeting dated 06/08/2017, regarding the payment of minimum wages to contractual workers that as per Notification dated 24/02/2015, all contractual workers, (including skilled / semi skilled / unskilled) be granted the proposed basic pay and other related things as per different labour laws and the said policy regarding minimum wages be executed at an administrative level with the consent of Hon'ble Commissioner as well as the above minimum wages be applied as proposed and suggested in the proposal (Translated)
>
> **<u>Resolution No.1668:-</u>** As per the payment of minimum wages to the contractual workers, it is proposed in point No.1 that a single SWM (Solid Waste Management) worker will receive Rs.8,021/- as an additional increment in his monthly payment which will estimate to Rs.25 crores, 46 lacs 82 thousand and 792 towards the

> payment of 2646 contractual workers as their yearly additional payment. Also as proposed in Point Nos.2, 3 & 4, the 82 daily SWM labours and House Keeping workers who come under Solid Waste Management Department will get Rs.8,021/- as their monthly increment as per the Minimum Wages Scheme, which estimate to Rs.78 lacs, 92 thousand and 664 yearly. The different Department of Municipal Corporation like 1) New Headquarter Solid Waste Management – SWM Transport Department, 2)Garden Department, 3) Education Department, 4) Sports Department, 5) Vishnudas Bhave Auditorium (Natyagruha), 6) Estate Department, 7) Health Department, a) Maleria, b) Hospital c) Health Centre d) Veteranary Department, 8) Executive Engineer (Morbe), 9) Executive Engineer – Civil / Water Supply / Sewage Zone / Electricity Zone I and-amp;2 10) Crematorium (all Departmental Officers), Navi Mumbai Municipal Corporation (including skilled / half skilled / unskilled workers) who are working in all the above offices as well as extra contractual workers, be paid as per minimum wages scheme and the proposed estimated expenditure be granted and the right be granted as proposed to implement the action at the Hon'ble Commissioner level.
>
> The proposed Resolution relating to the present Immediate Action Tax-15 is passed as per the Rule 1(N) of House conducting regulations.

24 It seems that the said Resolutions were passed unanimously. As per the said Resolution No.1272, the Respondent No.2 resolved to pay the increase minimum wages to all the contract workmen working with the NMMC. In so far as the said Resolution is concerned, no distinction was drawn between any department or contractor by the General Body whilst approving the said Resolution.

In so far as the Resolution No.1668 is concerned, a reading of it discloses that the Respondent No.2 approved the increase in expenditure on account of the Notification dated 24-2-2015. The Municipal Commissioner was authorised to implement the decision and that the department of Solid Waste Management is a part of the said Resolution. There is no distinction made in the Resolution on the basis of the type of tender or the nature of the work to be carried out under the contract entered into with the Respondent No.2. Hence by the said Resolution the Respondent No.2 who is the principal employer under the Minimum Wages Act, had decided to grant the contractors the difference in wage rates and incurred the additional expenses on account of the increase in minimum wages. There is no dispute about the fact that Madvi Brothers, Mangal Murthy Enterprises and Kishan Construction have been given the benefit of the said Resolution No.1668. It is also the case of the Petitioner that about 91 contractors have been given the benefit of the said Resolution No.1668 which fact has not been denied by the Respondent No.2. Hence the said Resolution has superimposed itself on the Agreement entered into between the Respondent No.2 and the contractors in respect of the payment of minimum wages to the contract labour.

25 The Respondent No.2 seeks to deny the benefit of the said Resolution No.1668 to the Petitioner on the ground that the contract of the Petitioner is based on tonnage rate and not manpower, the contract entered

into between the Petitioner and the Respondent No.2 is after the Notification dated 24-2-2015 and therefore the Petitioner ought to have taken into consideration the increase in minimum wages which has taken place by the said Notification and that the Resolution No.1668 was only for departments of the Corporation such as house keeping and Solid Waste Management Department.

In so far as the first ground is concerned, it is required to be noted that the Petitioner in terms of the tender has to submit a micro plan which is as regards the manner in which the Petitioner would execute the work under the contract. The said micro plan encompasses within itself the manpower that would be deployed by the Petitioner. The said micro plan is required to be approved by the Respondent No.2 and thereafter the work can be commenced. The tender conditions contemplate the minimum deployment of manpower which is mandatory, if the Petitioner fails to fulfill its obligations of providing minimum manpower under the tender. The Petitioner is susceptible to a penalty which can be imposed upon the Petitioner in terms of the said tender conditions. The relevant tender conditions which are an indicia in respect of the deployment of manpower are reproduced hereinunder and underlined for the sake of ready reference:

1) **Clause 6.2.2:**

Detailed Minimum Manpower Deployment Desired for Miscellaneous Waste collection services on demand shall be 88 operating personnel and Two Supervisors, one in Each shift for all nodes. The Table 12 below outlines the detailed requirement.

2) **<u>Clause 6.3 Manpower qualifications and Wages</u>**

a. <u>In order to provide efficient and effective services, certain level of qualifications are desired. The service provider shall deploy such manpower on their role with all statutory benefits given to them.</u>

b. Further sub outsourcing for availing manpower for this project on hire from labour supplied shall not be permitted. The service provider themselves shall have to recruit the manpower through a well designed process approved by NMMC.

c. Repairs and Reconditioning services of Equipment, Accessories and Assemblies can be given to reputed and experienced service provider, preferably authorized dealer of the manufacturer of the Equipment, Accessories and Assemblies. In deviation of this a specific consent of NMMC shall be necessary to give Repairs & Maintenance Work to outside agencies.

c. Since this is the contract for garbage collection which is to be done by NMMC itself, wages to be paid to the work force on outsourcing shall be minimum required to paid as detailed below including those for supervisors and managers.

d. <u>Qualifications and experience of various levels of Manpower are also specified below in Table 13</u>

e. The Table 14 specifies the wages to be paid at minimum with certain benefits at starting of the project.

3) **<u>Penalties :</u>**

Condition No.	Fault	Penalty per day
1	Not providing of required Refuse compactors for operation	Rs.5000/- per vehicle per day (12 Hours)
2	Not providing feeder vehicle i.e. tipper	Rs.1000/- per vehicle per

	or not providing four wheeler vehicle for inspection or not providing Dumper / Truck as directed by NMMC officials	day (12 Hours)
3	**Not providing sufficient Manpower**	**Rs.250/- per person per day of the labour grade Rs.500/- per person of Supervisor grade**
4	Employees not in uniform	Rs.50/- per person per day
5	Maintenance of records (log book, daily operation reports, attendance registers etc)	Rs.200/- per record per day
6	Not collection of garbage from the bins/door to door collection / containers as per the time schedule submitted to the corporation.	Rs.100/- per location of housing society
7	As directed by NMMC Non collection of Miscellaneous Waste & green waste from the location assigned by the Corporation	Rs.500/- per location
8	Not Wasting &Cleaning of bins and surrounding area (Washing to be done at least once in a week cleaning of the surrounding area to be done on a daily basis)	Rs.100/-per bin.
9	Not attending complaints within 4 hrs	Rs.200/- per complaint per day
	Not maintaining the community bins / container/vehicle as per the schedule (to be submitted in the micro level plan)	Rs.100/- per bin per day
10	Complaints from Residence or Cooperators about existing works	Rs.500/- per complaint after confirmation

4) **Chapter V**

Planning and implementation of the Collection, Transfer and Transportation of MSW in Navi Mumbai City

1.0 **Preparing Micro Operations Plan**

a. The collection, transfer and Transportation system desired under work plan is on build, Own, Operate and Maintain for 7 years,

b. Payment for work of C T & T of Biodegradable and Recyclable waste is on Rs per Tonne basis specified in the tender.

c. The Miscellaneous waste and green waste payment shall be paid based on the rate in Rs. Per trip of minimum 1 Tonne for green waste and per ton basis for miscellaneous waste.

d. The Macro plan is given in the tender above , Based on the macro plan the successful bidder shall prepare a micro plan which is a streetwise plan of doorstep collection indicating generators collection points (Premises), stop for collection , waste expected, type of vehicle, vehicle route, timing of collection, no. of bins located, <u>manpower allotted to each vehicle and output expected</u>.

e ....
f ....
g ....
h ....
I …..
j ....
k. The Corporation shall identify the places at the time of giving L o I as mentioned in the table below with the inventory of Infrastructure and Facilities provided, giving details of that desired from the Service Provider.

Clause 2.4: Operational Records and Operations Control

a. The successful Bidder shall keep all the statutory documents and registers duly recorded for inspection of NMMC 10 days before commencement on regular basis.

b. The successful Bidder should also keep operational

records:
. Attendance cars / <u>Register of the manpower deployed and Separate zone wise record of daily operations.</u>
. Log Book of Vehicles
. Register of issue of the disinfectant liquid
. Register of stock of implements, and other materials and their issue
. Record of Deployment of Personnel carriers for inspection with registration Numbers and timings.
. Register for issue of uniforms and protective gears defined in the specifications.
. Performance Evaluation Record in separate form for each zone.
. Operations & Maintenance records of all vehicles.

c. ....

d. ....

e. ....

f. Project Managers and Overall Operations Managers and Node wise supervisors capable of understanding work plan, organizing the work accordingly, and capable of directing, disciplining and controlling work force shall be appointed before commencing the work.

g. <u>The successful Bidder shall furnish the details of the work force employed for the work defined in this document –</u> details of the workers including those for supervision before commencing the work.

h. ....

i. <u>The driver/operators and supervisors shall keep all basic operational records and submit all reports desired at the end of the shift to operate the plan as stipulated in the Tender Conditions.</u>

j. The Contractor's supervisors shall keep close liaison with the Corporation staff of NMMC who is charge of the work of organizing joint inspection daily as desired for ascertaining work performance.

k. ....

5) **<u>Clause 3.0 : Escalation of the Rates Quoted (Cumulative basis)</u>**

3.0 Price Adjustment

3.1 The contract price fixed at the first year shall hold good throughout the period until the commencement of the second year.

3.2 Tariff Escalation

The tariff escalation as indicated above shall subjected to escalation from the second year every six months equal to change in Consumer Price Index (Labour & Fuel & Miscellaneous)

3.3 **<u>The escalation shall be calculated as follows:</u>**

<u>Labour escalation component (A)= Previous Tariff x 4.0 x (consumer index of Industrial labour of one month before the date on which increase is to be done – consumer price index of Industrial workers seven months prior) (Consumer price Index of Labour seven months prior)</u>

<u>For consumer price index of Industrial Labour: The consumer price index for industrial labour for Maharashtra center as published by labour bureau, Ministry of Labour,Govt. Of India is to be used.</u>

Fuel escalation component (B)= Previous Tariff x 0.38 x (consumer index of fuel of one month before the date on which increase is to be done – consumer price index of fuel seven months prior) (Consumer price Index of fuel seven months prior)

For consumer price index of Industrial Fuel: The consumer price index for fuel for Maharashtra center as published by the centre statistics office of the Ministry of Statistics and Programme Implementation, Government of India is to be used.

Miscellaneous (spare parts and repairs and

> Maintenance) escalation component (C)= Previous Tariff x 0.10 x (consumer index of Miscellaneous of one month before the date on which increase is to be done – consumer price index of Miscellaneous seven months prior) (Consumer price Index of Miscellaneous seven months prior)
>
> For consumer price index of Industrial Miscellaneous: The consumer price index for Miscellaneous for Maharashtra center as published by the centre statistics office of the Ministry of Statistics and Programme Implementation, Government of India is to be used.

The above said tender conditions are made part and parcel of the Agreement.

26 The Petitioner is currently employing 910 workmen, out of the said 910 workmen 750 workmen are working as Drivers, Labourers, Waste collection and 160 workers are other skilled manpower engaged as Supervisors, Technical Staff, Administrative Staff as per the tender. Hence though in terms of the tender the rate per tonnage is quoted, the fact that the Petitioner has to employ a large compliment of workers cannot be denied. In fact in terms of the contract the Nodal Officers of the Respondent No.2 are to report to the Respondent No.2 in respect of the deployment of workmen by the Petitioner. Hence it would not be correct to deny the Petitioner the benefit of the Resolution No.1668 on the ground that the contract of the Petitioner is on tonnage rates and not manpower.

27 In so far as the second and third grounds are concerned, they can be said to be interrelated. As indicated in the earlier part of this Judgment, the Petitioner was informed of the acceptance of its bid on 16-12-2014 in terms of the tender conditions the Petitioner was required to carry out mobilization within 180 days. The Petitioner had accordingly carried out mobilization and had invested an amount of Rs.34 crores towards mobilization costs by 30-1-2015. The said mobilization included placing of orders for purchase of vehicles which is an important component in so far as the work under the contract is concerned. The contract was thereafter entered into on 7-3-2015 i.e. after the issuance of the Notification dated 24-2-2015. Though the execution of the contract between the Petitioner and the Respondent No.2 was after 24-2-2015, one fact cannot be lost sight of, is that the offer was submitted by the Petitioner on 17-7-2014 and the counter offer was made by the Respondent No.2 on 31-10-2014 that is much before the Notification dated 24-2-2015. Pertinently the Respondent No.2 had made a provision of reimbursement of wage difference in the event of equal pay for equal work being implemented. It is therefore not expected on the part of the Petitioner whilst offering its bid to take into consideration the increase in minimum wages that would take place. Hence the Notification dated 24-2-2015 can be said to be an unforeseen circumstance which was not in contemplation either of the Petitioner or the Respondent No.2. It is to deal with the situation arising out of the said Notification dated 24-2-2015 that the General Body of

the Respondent No.2 passed the said two Resolutions being Nos.1272 and 1668 providing for payment of enhanced remuneration to the contract labour. Hence in our view the benefit of the said Resolution No.1668 cannot be denied to the Petitioner on the ground that the contract between the Petitioner and the Respondent No.2 was entered into on 7-3-2015 i.e. after the Notification dated 24-2-2015 came into force.

28 The issue of whether the benefit of the Resolution No.1668 can be granted to the Petitioner has another facet. It is the case of the Respondent No.2 that by the said Resolution only the departments of the Respondent No.2 are covered and especially the departments which are mentioned in the 10 items of the Resolution. The same is countered on behalf of the Petitioner by contending that the benefit of the said Resolution has been granted to about 91 contractors amongst whom are one Madvi Brothers, Mangal Murthy Enterprises and Kishan Construction. In so far as the said 3 contractors are concerned, the Petitioner has placed the information in respect of the 3 contractors which the Petitioner has obtained under the Right to Information Act. The said information discloses that the tender in respect of Mangal Murthy Enterprises is for a Comprehensive Contract for Operation and Maintenance of Water Supply Pump Houses with Water Supply Distribution System in Sector 34, 38, 40, 42A, 44, 44A, 46, 46A, 48,48A, 50, 52, 54, 58 of Killegothan and Karave at Nerul (Zone-3) and the Tender of Kishan

Construction was for a Comprehensive Contract for Repair and Maintenance of Transmission mains, Feeder mains, Shil and Nerul MBR Zone-19 in NMMC area.

Schedule B of the said Tender is reproduced hereinunder:

SCHEDULE B

Mangal Murthy Enterprises

Description of Services	Annual contract price in Rupees
1. Operation and Maintenance of Water Supply System in Zone-3	
(in words Rupees________)	

SCHEDULE B

Kishan Construction

Description of Services	Annual Contract price in Rupees
1.(a) Comprehensive contract for Repair and Maintenance of Transmission mains, feeder mains,Shil and Nerul MBR Zone-19 in NMMC area – Scope of work is as specified in Section C of the Conditions of contract	
1.(b) Power consumption – Units @ Rs.4.00 per unit	
Total (1a + 1b)	
2. Cost of operation for three years (1a + 1b) x 3	
Total evaluated Cost Rs.	
(in words Rupees -----)	

29 In so far as Madvi Brothers is concerned, the contract was executed on 3-3-2015. However, the tender and the letter of acceptance was issued much prior to the date of Notification. The said contractor can be said to be similarly placed as the Petitioner as in the said case also the contract was entered into on 3-3-2015 i.e. after the said Notification dated 24-2-2015.

In so far as Mangal Murthy Enterprises is concerned, as can be seen from the information reproduced hereinabove, the contract entered into with the contractor is a Comprehensive Contract for operation and maintenance of water supply pump houses, the contract was executed on 22-2-2016 after the tenders were opened on 15-9-2014.

In so far as Kishan Construction is concerned, the contract entered into with the said contractor is also a Comprehensive Contract for operation, repairs and maintenance of transmission main, feeder main at Shil and Nerul MBR (Zone-19) NMMC area. The tender in respect of the said contract were opened on 11-9-2013 and the contract was executed on 23-1-2018.

The processed bill for the period 1st June 2017 to 3rd November 2017 of the said Kishan Construction obtained by the Petitioner under the RTI discloses that the contractor has been granted increased payments stating that the same is for the purpose of labour.

30 Hence the aforesaid facts disclose that even in cases where the contract was entered into after the Notification dated 24-2-2015 as also where there was a Comprehensive Contract, the said contractors were given the benefit of the said Resolution No.1668. So much for the case of the Respondent No.2 that it is only for the contracts entered into after 24-2-2015 and contracts which are manpower oriented, that the benefit is given. It is also significant to note that the tender conditions in respect of the aforesaid contractors in respect of all claims under various labour legislations which include the Payment of Wages Act, is the same as in respect of the Petitioner. The said tender conditions in respect of the said Mangal Murthy Enterprises is reproduced hereinunder for the sake of ready reference:

> 21.8 :- At all times during continuance of the contract the operator and its sub contractors shall abide by all existing and future labour enactment and rules made thereunder, regulations, notifications and bye-laws of the central, state or local government. The operator shall keep the corporation indemnified in case any action is taken against the corporation by any authority on account of contravention of any of the provisions of any acts or rule made thereunder, regulations or notifications including amendments.
>
> 37.2:- The operator shall at all time indemnify the Corporation against all claims, damages or compensation under the provisions of ,
>
> i. Payment of Wages Act, 1936;
> ii. Minimum Wages Act, 1948;
> iii. Employees Liability Act, 1938;
> iv. The Workmen's Compensation Act 1923;

v. Industrial Dispute Act 1947;
vi. Indian Factories Act 1948 and
vii. Maternity Benefit Act 1961

or any modifications thereof and rules made there under from time to time or as a consequence or any accident or injury to any workman or other persons in or about the Operations, whether in the employment of the Operator or not, save and except where such accident or injury have resulted from any act of the Corporation, their agents or servants, and also against all cost, charges and expenses of any suit, action or proceedings arising out of such accident or injury and against all sum or sums which may with the consent of the operator be paid to compromise or compound any such claim without limiting its obligations and liabilities as above provided. The Operator shall insure against all claims damages or compensation payable under the various acts mentioned above or any modifications thereof or any law relating thereto.

31 Hence even where the Tender Conditions in respect of payment of wages under the Minimum Wages Act were the same as in the case of the Petitioner, the said contractors have been given the benefit of the Resolution No.1668. As indicated above, it was also asserted on behalf of the Petitioner that as many as 91 contractors working with the Respondent No.2 have been given the benefit of the said Resolution, whereas the Petitioner has been denied the same. In our view, for the reasons aforestated, the grounds on which the Petitioner has been denied the benefit of the said Resolution No.1668 are unsustainable. The Committee which was constituted was only in respect of the Petitioner. The Petitioner was also not allowed to participate in the deliberations of the Committee and neither has the Committee taken into

consideration the material in respect of the Petitioner. The action of the Respondent No.2 is therefore discriminatory and consequently violative of Article 14 of the Constitution of India. Since the right of the Petitioner to carry on business is seriously prejudiced on account of the said action of the Respondent No.2, the same is also violative of Article 19(1)(g) of the Constitution of India. In the context of the relief sought in the above Petition what is relevant to note is that the Respondent No.1 i.e. the State vide its communication dated 22-4-2016 has also recommended to the Respondent No.3 to bear the difference in wages arising out of the Notification dated 24-2-2015 to the Petitioner. However, the said recommendation has not been considered by the Respondent No.2 for which there is no valid reason forthcoming from the Respondent No.2. There appears to be substance in the case of the Petitioner that the Petitioner is being treated in this manner by the Respondent No.2 in view of the developments in the Arbitration proceedings relating to an earlier contract with its sister concern in which proceedings the Respondent No.2 is directed to deposit the entire awarded sum i.e. Rs.20 crores by this Court.

32 Now coming to the judgment of the Division Bench of this Court in A2Z Infraservices Ltd (Supra). In the said case the Petitioner therein i.e. A2Z Infraservices Ltd was awarded the tender for work of mechanized cleaning of coaches, watering of rakes, including cleaning of depot premises and

provision of On Board Housekeeping Services (OBHS) at three stations in Mumbai Division. The contract amount was Rs.19,76,69,647/- for a period of three years commencing from 11th February 2016. The Petitioner commenced the work and for the said purposes employed 1350 employees. The contract entered into between the Petitioner and the Railways contained a Price Variation Clause (PVC) which provided that in the case of increase in Consumer Price Index (CPI), the reimbursement payable to the Petitioner is suitably increased, so that the Petitioner is not put under financial distress. By Notification dated 19-01-2017 the minimum wages applicable to the employees employed in the schedule employment of sweeping and cleaning have been increased by 40%. The controversy in the Petition was whether the PVC as contained in the agreement would insulate the Petitioner on account of the increase in minimum wages. Since the minimum wage fixation orders are based on the same CPI. The Petitioner i.e. the Contractor made repeated representations pursuant to which a four member Committee was constituted to recommend a suitable alternative for compensating the increase in the minimum wages. The Committee comprising of highly ranked railway officers formulated 5 options, one of which was the existing price variation be frozen till 19-1-2017 and be kept at a base price, and the subsequent increase to be adopted by using minimum wages paid on actual basis as per Notification dated 19-1-2017. Inspite of the said recommendation the proposal was rejected by the Chief Rolling Stock Engineer, CST. The said rejection was on the ground that owing to the provisions of the contract and in the back drop of the legal provisions there is no basis for the claim that the railways should reimburse / neutralize full compensation for the increased minimum wages. The said action of the railways was challenged on the ground of being arbitrary.

33 The Division Bench observed that the notification dated 19-1-2017 suddenly changed the scenario as a result of which the minimum wages have been increased by 40% which was an unpredicated increase and also unanticipated. The said hike according to the Division Bench was not covered by the CPI for Industrial Workers and issuance of the notification itself reveals that it is issued as an extraordinary notification. The Division Bench turned down the objection raised as regards the maintainability of the Petition on the ground that a Writ Court in contractual matters is entitled to go into the decision making process especially in cases where there is an allegation of arbitrariness and discrimination. The Division Bench in the facts of the case before it deemed it appropriate to invoke the principles of "business efficacy to the transaction" and relied upon the judgment of the Apex Court in case of **Nabha Power Ltd. (NPL) Vs. Punjab State Power Corporation Ltd. (PSPCL) and Anr reported in 2017 SCC online page 1239** and held that the PVC in the said case cannot be restricted only to the formula prescribed in clause (12) of the agreement but it also covers the escalated minimum rates of wages. The

Division Bench concluded that though the Respondent railways would be at liberty to put an end to the existing contract of the Petitioner by following the prescribed mode, but as long as the said contract continues the Petitioner company cannot be deprived of the neutrilization for the increase in the cost of labour owing to the extraordinary notification dated 19-1-2017. The Division Bench accordingly held that the railways are liable to continue to compensate the Petitioner for the increase in cost of labour in terms of the notification dated 19-1-2017 as long as the contract subsists.

Paragraph 26 of the said judgment is material and is reproduced hereinunder:

> 26 We are conscious of the observations made by the Hon'ble Apex Court in para 74. The business efficacy test, therefore, should be applied only in cases where the term that is sought to be read as 'implied' is such which should have been clearly intended by the parties at the time of making of the agreement. However, it is not to be applied as a routine test to read something into the contract on a disguise that the parties intended it to be so. However, perusal of the contract agreement in the present case, it is amply clear that the railway itself intended to benefit the contractor by including the PVC, with the avowed object to provide a buffer, to deal with the hike in price variation in labour and material charges. The Railway abided by this clause till 18/1/2017 and the contractor continued to receive the benefits of the PVC in terms of the difference in the wages. However, the petitioner contractor felt the heat only when the minimum wages was escalated by 40%, and then the railway authorities concluded that the PVC clause related itself to CPI and

would not cover enhancement in the minimum wages. By applying the principle of "business efficacy" as laid down by the Hon'ble Apex Court, the irresistible conclusion that can be drawn is that the PVC cannot be restricted only to the formula prescribed in clause (12) of the agreement, but it also must cover within its ambit the escalated minimum rate of wages. Clause 14 of the agreement mandates the contractor to abide by the statute like the Minimum Wages Act, Workmen Compensation Act etc which are instances of beneficial legislation in the larger interest of the labour class and it is rather a bounden duty of the Railway in ensuring that such statutory mandates are strictly adhered to. In such circumstances, we are of the considered view that the respondent railways though are at liberty to put an end of the existing contract of the petitioner by following the prescribed mode, but as along as the said contract continues, the petitioner company cannot be deprived of the neutralization for the increase in the cost of labour owing to the extra-ordinary notification dated 19/1/2017, revising the minimum wages applicable to the industry of mechanized sweeping and cleaning with effect from the date of coming into its force. We are of the considered view that the railway is duty bound to neutralize the said cost of labour to the petitioner under clause (12) of the PVC contract by applying the principles of 'business efficacy', and by including the stipulation of payment of wages as per the Minimum Wages Act as an implied stipulation in the PVC. The respondent Railway is also liable to continue to compensate the petitioner for the increase in cost of labour in terms of notification dated 19/1/2017 as long as the contract subsists. However, we are not restraining the respondents from proceeding with the finalization of the bids which they might have received in pursuance of the floating of the two new tenders for the mechanized cleaning and Onboard Housekeeping services in the passenger coaches. Needless to say that the petitioner would be at liberty to participate in the said process, if he so desires.

34 In the instant case also there is an escalation clause which we have

reproduced in the earlier part of this judgment. However, the Petitioner in the instant case in our view stands on a better footing in as much as the General Body of the Respondent No.2 Corporation has already passed Resolutions to cover the situation arising out of the issue of the Notification dated 24-2-2015 increasing the minimum wages. The benefit of the said Resolutions is given to contractors who are similarly situated as the Petitioner, but the Petitioner has been deprived of the same. Hence even if the "business efficacy principle" is not invoked, the Petitioner is entitled to the benefit on the basis of parity. It is required to be noted that the terms of the contract obligates the Petitioner to comply with various social welfare legislations amongst which is the Minimum Wages Act. It is therefore the responsibility of the Respondent No.2 as a principal employer to see to it that its agent i.e. the Petitioner is not put to financial distress in the matter of complying with the said Notification dated 24-2-2015. The Respondent No.2 as a Municipal Corporation is also required to ensure that the contract labour which is engaged in the collection of solid waste is kept satisfied so that there is no unrest and thereby the city of Navi Mumbai is kept clean and hygienic. In our view therefore the Petitioner is entitled to be reimbursed by the Respondent No.2 in respect of increased remuneration that is payable to the workmen on account of the Notification dated 24-2-2015.

35 As indicated above the Respondent No.1 i.e. the State Government

understanding the situation arising on account of the said Notification has accordingly in the case of the Petitioner recommended to the Respondent No.3 vide letter dated 26-4-2018 that the difference of minimum wages as per the Notification dated 24-2-2015 and the wages paid by the contractor at present is to be paid by the NMMC. However the Respondent No.2 is refusing to take into consideration the said recommendation, for which we do not find any jusitifiable reasons. We therefore find the action of the Respondent No.2 to be both arbitrary and discriminatory. In terms of the principles culled out by the Apex Court in **Tata Cellular Vs. Union of India**[1] in the matter of exercise of Writ Jurisdiction in contractual matters and having regard to the facts and circumstances of the present case exercise of the Writ Jurisdiction of this Court is warranted.

CONCLUSION

36 For the conclusion that we have reached the above Writ Petition is required to be allowed and is accordingly allowed and the following directions are issued:

i) The Petitioner would be extended the benefit of the Resolution No.1668 dated 19-5-2017 in the manner and extent granted to the other contractors in the matter of reimbursing the Petitioner the difference between the increased minimum wages payable under the Notification dated 24-2-2015 and the wages being now paid to its workmen.

1 **AIR 1996 SC page 11**

ii) For the period for which the increased minimum wages have not been paid by the Petitioner, or have been paid and not reimbursed by the Respondent No.2, the Petitioner to calculate the amount and submit a statement to the Respondent No.2 within 4 weeks from date. The Respondent No.2 would consider the same and if found in order make the payment to the Petitioner within 8 weeks of receipt of the said calculation.

iii) For the remaining period of contract, the Respondent No.2 would continue to pay the difference to the Petitioner from month to month by reimbursing the Petitioner latest by 15th of each month.

iv) The Petitioner through its Director Mr. Shiju Jacob undertakes to this court that the Petitioner would comply with the Notification dated 24-2-2015 subject to the aforesaid clauses.

37 Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

38 In view of the order passed in Writ Petition No.8788 of 2018, the grievance of the Petitioners in Writ Petition No.7151 of 2018, Writ Petition No.10238 of 2018, Writ Petition No.10341 of 2018, would not survive, the said Writ Petitions to accordingly stand disposed of as having turned infructuous.

[M. S. KARNIK, J] **[R.M.SAVANT, J]**

After pronouncement

Date: 26th OCTOBER, 2018

The Director of the Petitioner Mr. Shiju Jacob is personally present in court at the time of pronouncement and gives the undertaking in terms of clause (iv) above. Undertaking accepted.

[M. S. KARNIK, J] **[R.M.SAVANT, J]**