

psv

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

WRIT PETITION NO.11099 OF 2018

Meghana Enterprises

...Petitioner

Vs.

The Palghar Municipal Council & Ors.

...Respondents

Mr.P.M. Arjunwadkar for Petitioner.

Mr.B.D. Joshi for Respondent No.1.

Mr.Mandar Limaye for Respondent No.6.

**CORAM : NARESH H. PATIL, ACTING C.J. AND
G.S. KULKARNI, J.**

DATE : 17th OCTOBER 2018

P.C.:

Heard the learned Counsel for the parties.

2. By this petition under Article 226 of the Constitution, the petitioner has sought the following substantive reliefs:-

- “a) This Hon'ble Court may be pleased to issue writ of Mandamus or any other appropriate writ or direction in the nature of writ of Mandamus and be further pleased to hold and declare that the Tender process followed by the Respondent Nos.1 to 5 in pursuance to Tender Notice dt. 23.04.2018 is void, arbitrary, illegal and without jurisdiction;
- b) This Hon'ble Court may be pleased to issue writ of Mandamus or any other appropriate writ or direction in the nature of writ of Mandamus and be further pleased to hold and declare that the Tender Document attached to the subsequent Tender Notice dt. 23.04.2018 and allegedly

executed by the Respondent Nos.3, 4 and 6 is void and hence cannot be executed;

c) This Hon'ble Court may be pleased to issue writ of Certiorari or any other appropriate writ or direction in the nature of writ of Certiorari and be further pleased to quash and set aside impugned re-tender notice dt.23.04.2018 alongwith Tender Document which is part and parcel of re-tender Notice dt.23.04.2018;

d) This Hon'ble Court may be pleased to issue writ of Mandamus or any other appropriate writ or direction in the nature of writ of Mandamus and be further pleased to direct the Respondent Nos.1 to 5 to issue fresh Tender Notice for the nature of the work of "Widening and improvement of Hutatma Chowk Stambh Te Vir Sawarkar Chowk, Valan Naka Road Palghar" thereby granting an opportunity to the Petitioner as well as other intending bidders to participate in the said bidding;

e) This Hon'ble Court may be pleased to issue writ of Certiorari or any other appropriate writ or direction in the nature of writ of Certiorari and be further pleased to quash and set aside an Order of allotment of Tender passed by the Respondent Nos.3 and 4 in favour of the Respondent No.6."

3. It is not in dispute that the petitioner has not participated in the tender which was issued by the respondent No.1-Palghar Municipal Council (for short, "Municipal Council").

4. It is the case of the petitioner that in the tender in question conditions were stipulated so as to suit certain bidders. This is an allegation of malafide against the Municipal Council. However, a perusal of the paper book does not show that there is any material, which would support such a serious stand taken by the petitioner. Further it is also not in dispute that there were about five bidders who had participated in the tender process.

The Municipal Council after following the procedure under the tender process accepted the bid of respondent No.6 and awarded contract. It is stated that the contract work has already started. We are shown photographs of the work which is in progress. It is clear that substantial work has already been undertaken.

5. In the facts and circumstances of the case, we are doubtful firstly, of the locus of the petitioner to challenge the tender condition, remaining outside the tender process and that too after completion of the tender procedure. Secondly, it is settled principle of law that the tendering authority is well entitled to prescribe tender conditions and the writ court could not exercise the powers of the judicial review in determining the suitability of tender conditions unless the decision to incorporate such a condition is so arbitrary and unconscionable that a reasonable body of person never reached to such a decision. (see **Tata Cellular Vs. U.O.I.**¹) Surely the petitioner has failed to satisfy the above requirement.

6. The challenge as raised in the petition also cannot be entertained for another reason, namely, that the petitioner if at all had any serious concerns on the norms as prescribed in the tender, the petitioner would have certainly approached the Court immediately on issuance of the tender

¹ (1994) 6 SCC 651

notice. The delay of the petitioner to approach the Court is of immense relevance when a tender and its award is the subject matter of the challenge. Further the court would also consider the nature of such challenge in exercising its discretionary jurisdiction under Article 226 of the Constitution. In the present case, after the entire process is over, the tender having been awarded and the work having already commenced, are issues which overwhelmingly weigh with us not to entertain this petition.

7. For the above reasons, we see no merit in the petition. It is accordingly dismissed. No costs.

G.S. KULKARNI, J.

ACTING CHIEF JUSTICE