

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION (ST.) NO. 29764 OF 2019**

Digvijay Enterprises,

Through its Proprietor – Sahebrao Damu Shevale ... Petitioner

Versus

State of Maharashtra & Anr. ... Respondents

Mr.P.S.Pathak i/b. Pravartak & Associates for the Petitioner.

None for the Respondents.

CORAM : S.J. KATHAWALLA, &
B.P. COLABAWALLA, JJ.
DATE : 27TH NOVEMBER, 2019

P.C.:

1. Not on board. Upon mentioning, taken on board.
2. By the above Writ Petition, the Petitioner seeks quashing of the decision dated 18th November, 2019 of the Municipal Commissioner, Nashik Municipal Corporation (**Corporation**) to cancel the tender process initiated through E-Tender No. 5 / 2019 and to issue a fresh tender process by incorporating the terms suggested by the Tender Committee. The Petitioner has also sought quashing of the Tender Committee report of the Corporation dated 14th November, 2019 and has also sought direction to the Corporation to proceed with the E-Tender Notice No.5 of 2019 by opening the price bid and proceed to allot the tender to the successful bidders.

3. The learned Advocate appearing for the Petitioner has mentioned the matter stating that the same be taken up for urgent admission as the tender process has been cancelled and a fresh tender process is being initiated. We have therefore acceded to the request of the Advocate for the Petitioner and forthwith taken up the Writ Petition for Admission.

4. According to the Petitioner, the Corporation proposed to invite tenders from the registered bidders in India for controlling mosquitoes breeding with different methods like fogging / spraying under Urban Malaria Scheme. Accordingly, the draft tender was put up before the General Body of the Corporation. Certain Corporators recommended certain amendments to the terms and conditions. However, the Head of the Medical Health Department opined that the said recommendations may not be accepted. The tender proposal was thereafter forwarded to the Audit Department for verification and the same was approved. The Commissioner of the Corporation approved the tender proposal and accordingly tender document was floated on the website being Tender Notice No. 5 of 2019.

5. According to the Petitioner, a pre-bid meeting was called on 14th August, 2019, which was attended by about 13 contractors. At the said meeting, objections / suggestions were raised which were similar to those earlier raised by the Corporators. The said objections / suggestions were not accepted by the Corporation.

6. On 28th August, 2019, the Petitioner participated in the tender process through on-line application. The last date of submitting the tender was 28th August,

2019. Since only two bidders had participated, the Corporation extended the date by one week. However, there was no further response despite extension of time. In the meantime, by letter dated 27th August, 2019, the Chairperson of the Standing Committee of the Corporation along with certain members of the Standing Committee as well as the Leaders of the house of the Corporation made a request for change of certain terms and conditions. The Head of the Medical Health Department suggested that the request be put up before the Municipal Commissioner of the Corporation.

7. A second extension of seven days was given to the E-Tender Notice No. 5 of 2019. The said notice was published in the newspapers dated 6th September, 2019. On 11th September, 2019 the tender was opened and there were only three participants including the present Petitioner. However, out of three participants, two participants were technically qualified and one participant was disqualified.

8. According to the Petitioner, since the Head of the Medical Health Department as well as the Chief Auditor cum Additional Commissioner also opined that appropriate decision may be taken by the Municipal Commissioner of the Corporation, the matter was put up before the Commissioner who decided to appoint a new Tender Committee consisting of Additional Commissioner, Chief Auditor, Dy. Municipal Commissioner and Head of the Medical Health Department. The new Tender Committee after considering objections / suggestions received and after making enquiries and gathering information came to the conclusion that the tender is

defective and fresh tender process should be initiated. The Tender Committee submitted its report pointing out the defects and recommended initiating fresh tender process.

9. Based on the report of the new Tender Committee, the Municipal Commissioner decided to cancel / withdraw the existing tender notice.

10. The Petitioner has impugned the cancellation of the tender process by the Municipal Commissioner dated 18th November, 2019 and has alleged that the tender has been cancelled only with the intention to favour certain participants due to political pressure.

11. We have considered the submissions made in the above Writ Petition as well as the submissions made by the Advocate for the Petitioner across the bar.

12. We have noted that initially certain suggestions were made by certain Corporators as well as the contractors, which were not accepted by the Corporation. Since only two valid bids were received and once again requests were received to change the terms and conditions of the tender, the Municipal Commissioner did not proceed to cancel the tender process without application of mind but formed a new Tender Committee to look into the issue. The new Tender Committee made certain enquiries, gathered information and after considering the issues before it, came to the conclusion that the tender is defective and a fresh tender process should be initiated.

13. The Corporators who are concerned with the business of the Corporation as well as the contractors have every right to make suggestions qua the tender conditions.

Even if certain officials of the Corporation were initially not inclined to accept the suggestions, in view of the Corporation receiving only two valid bids despite extensions, the said suggestions were considered by the new Tender Committee specially constituted by the Municipal Commissioner of the Corporation, who have submitted their report and suggested that the tender process be cancelled. This was done even before opening of the price / financial bid.

14. We therefore do not accept the allegation made on behalf of the Petitioner that the tender is cancelled because of political pressure or to favour any specific contractor. No interference is therefore called for under Article-226 of the Constitution of India, and the Writ Petition is dismissed.

(B.P. COLABAWALLA, J.)

(S.J.KATHAWALLA, J.)