

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 766 OF 2019

Super Plastic Corporation

.. Petitioner

Vs.

The Municipal Commissioner
Municipal Corporation of Greater
Mumbai and ors.

.. Respondents

Mr.Kishor Patil a/w Mr.Tushar N. Sonawane, for the Petitioner.
Mr. J.F.Reis, Senior Counsel a/w Ms.Rupali Adhate, for
Respondent – MCGM.
Mr.Sukanta Karmarkar, AGP for State.
Mr.Annadate S.V., Dy. Chief Engineer (Central Purchase
Department) I/c CPD present.
Mr.R.B.Meshram, Asst. Engineer CPD present.

**CORAM : S.C.DHARMADHIKARI &
M.S.KARNIK, JJ.**

DATE : 30th APRIL, 2019

P.C. :

. This Petition filed under Article 226 of the
Constitution of India challenges a communication at Exhibit 'E'
to the Writ Petition.

2. By Exhibit 'E' to the Writ Petition, the Municipal Corporation has informed the Petitioner as under :

“ MUNICIPAL CORPORATION OF GREATER MUMBAI
Central Purchase Department

To,

M/s.Super Plastic Corporation

Sub : Your tender for the Supply of Raincoat and Umbrella for MCGM School Students. – Tender Sample Report

Bid No. 7100136897

Gentlemen,

With reference to above subject matter, this is to inform you that tender samples submitted for above tender by all bidders were sent to two different laboratories by secret code. The test reports are now received from both the laboratories. After decoding the secret code, it is observed that tender samples submitted by you are **not found as per MCGM specifications, in both the laboratories**. Therefore your C packet (price packet) will not be opened.”

For your information please.

Regards,

AE -3 (CPD)”

3. The only contention raised before us is that the tender for supply of the raincoat and umbrella for the Municipal Corporation of Greater Mumbai School students was submitted and the tender sample report could have been obtained in terms of the tender conditions, only from an agency specified in the notice to invite tender/termed as general conditions/instructions to vendors participating in E-tendering process.

4. Our attention is invited to the clause titled as “Supply Testing”. That clause No. 28 reads under :

“Supply Testing

1) Sample from supply lot from **schools/bidders storage facility** will be drawn on random basis, jointly by the representative of CPD, representative of user Dept. and the representative of supplier for testing through Govt./Govt. approved Lab having NABL – accreditation.

2) Probability of sample testing should be

- (i) Three times during the one year contract period
- (ii) Six times during the two year contract period

3) If the test report of the supply sample is not found in consonance with the pre-tested sample submitted along with the tender, or in-house testing, the supply shall be rejected and

(i) If the default committed by the tenderer/supplier is of first time he is liable for penalty upto 20% of the total purchase cost and

(ii) If the default committed is of second time, the firm shall be blacklisted for a period of three years and

(iii) If the default committed is of third time or more than that, the firm shall be permanently blacklisted.

4) The supplier shall quote lot number for his supply.

5) Test report of Government/ Government approved laboratory/ having NABL accreditation of supply sample sent for testing by M.C.G.M. will be considered as final and no correspondence will be entertained in this regard.

6) The supply sample will be used for testing etc. and therefore, will not be returned to the Tenderer and the cost thereof will not be reimbursed.

7) The sample from the supply lot will be got tested at Municipal Cost and in the event of failure, the testing charges will be recovered from the contractor's bill pending with the Corporation.

- 8) The test results will be circulated to all departments who have received material from the supplied lot.
 - 9) The Sample from the supply destroyed in testing is to be replaced free of cost by the supplier.
 - 10) Necessary action regarding defective supply/incomplete supply/delay supply and dispute if any, with the vendor shall be resolved by the user department with the help of the competent authority.
 - 11) No payment should be made to the contractor unless the samples from the supplied lot are found as per MCGM specifications and requirements.”
5. According to the Counsel, the test report of the Government/Government approved laboratory / having NABL accreditation would be considered as final and no correspondence will be entertained in this regard. Thus, supply sample would have to be tested only by Government/Government approved laboratories / having NABL accreditation and in the instant case, the sample was tested by two different laboratories, both lacking in the above

qualifications.

6. It is not possible to accept this contention for more than one reasons. The argument is that the samples were tested by the Municipal Corporation by forwarding the packets to a laboratory which has very bad reputation and has been blacklisted by the Government entity. Moreover, it does have a highly debatable NABL accreditation. The rule, therefore, has not been followed and rather relaxed to favour other bidders.

7. The second laboratory where the samples were dispatched for testing is M/s.Testtex India Laboratories Pvt. Ltd. There, the argument is this that the laboratory does not feature in the list of the laboratories mentioned in the Maharashtra Government Publication. Thus, the action of the Municipal Corporation smacks of malafides.

8. We have perused the necessary allegations in paragraphs (iii)& (iv).

9. We found that the communication of the Municipal Corporation impugned in this Petition clearly says that the test reports have been received and the tender samples are not found as per MCGM specifications in both the laboratories.

10. The petitioner's speculation and much less assumption is that the laboratory which tested the samples did not satisfy the standards prescribed in clause 28 - page 46 of the paper-book. The clause is very clear in as much as supply sample can be taken by representative of CPD, representative of user department and the representative of supplier for testing through Government/ Government approved laboratories having NABL accreditation. This sub-clause does say that test report of the Government / Government approved laboratories having NABL accreditation of supply sample will be considered as final. The argument is not that there is no approval of the Government or if that is lacking, the NABL accreditation is also not granted. The argument is very guarded, in that it is urged that the NABL accreditation has been obtained under highly

debatable circumstances. This does not mean that there was no accreditation. The impugned communication does not name the laboratory or laboratories where the sample has been tested by MCGM. It is the petitioner's presumption that the samples have been tested by such laboratories who have either no accreditation or whose name does not feature in the laboratories mentioned in the Maharashtra Government G.R. though such laboratories have necessary accreditation. We do not think that the Municipal Corporation was prevented in relying upon the test report. The reports have been obtained not from any laboratory but only such laboratory who satisfy the description of the clause No. 28 reproduced above.

11. As a result of above discussion, we do not find any merit in the Petition. The Writ Petition is dismissed. There shall be no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)