

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION [L] NO.901 OF 2019

M/s Santosh Palav Petitioner
Vs.
Municipal Corporation of Greater
Mumbai & Anr. Respondents

WITH
CHAMBER SUMMONS NO.97 OF 2019
IN
WRIT PETITION [L] NO.901 OF 2019

Phoneix Enterprises Applicant
In the matter between
M/s. Santosh Palav Petitioner
Vs.
Municipal Corporation of Greater
Mumbai & Anr. Respondents

Mr. P.J. Thorat i/by Mr. Ashutosh Shukla for the
Petitioner.
Ms Aarti P. Bhide with Ms Vandana Mahadik, for
the Respondent-MCGM.
Mr. R.M. Haridas for the Applicant in CHSW-97/
2019.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

DATE : APRIL 15, 2019

P.C:

1. The petitioner is aggrieved by the intended award of a contract by the Municipal Corporation. The contract is to maintain a pay & park facility/site. The site is at Mumbadevi, Mumbai.

2. The petitioner says that the conditions in the tender notice are tailor-made and suit only the 3rd respondent. It was the chosen one but somehow a farce has been enacted by inviting bids/tenders. Though the petitioner's tender was compliant and it forwarded the Demand Draft (DD) as per the terms and conditions of the tender, it has been stated that the petitioner's bid is unresponsive. Now a single bidder is identified by eliminating five out of total six bidders. The mandate of the Circulars and the Guidelines issued by the Central Vigilance Commission (CVC) requires the Municipal Corporation to re-tender or to invite fresh bids.

3. Mr. Thorat would argue consistent with the above complaint of the petitioner but we are unable to accept any of his contentions. Firstly, the argument that the terms and conditions are tailor-made and suitable only for the 3rd respondent, has no basis in the pleadings. The successful bidder M/s. Phoenix Enterprises is not even a respondent. That enterprise or entity has intervened. The intervention is by way of Chamber Summons No.97 of 2019. The petitioner, therefore, could not have expected that this enterprise or entity would be a successful bidder. This allegation is made only to overcome the lapses and deficiencies on the petitioner's part itself. We are surprised that the petitioner understood the submission of Packet "A" to mean that this packet should contain even the DD of Rs.5,000/- towards the Earnest Money Deposit (EMD).

4. With the assistance of Mr. Thorat, we have perused the tender documents.

5. The petitioner does not point out that this is a Spot Quotation. The Spot Quotation was to be submitted by 1:00

p.m. on 15-3-2019. This is not a tender of the magnitude which would fall foul of any of the Guidelines in the event there is an alleged irregularity. That apart, we do not find any irregularity as well. The condition for the Spot Quotation is, no EMD will be accepted on the Due Date of the Quotation. The EMD should be paid in the office of the Assistant Commissioner, 'C' Ward and it will not be accepted by cheque. It will be accepted by way of Bank Draft or in cash only. The DD should be in favour of the "M.C.G.M.". Then what the Offer Form should contain is specified and no reliance can be placed out of context or in isolation, for this Offer Form is a format in which the tenderer or bidder has to communicate with the Municipal Commissioner. He has to inform that, according to the requirement for payment of EMD, that has been complied with. That money is paid and even the payment has been in terms of what is contained in Packet "A". The Packet "A" has to contain the relevant documents and the petitioner was fully aware of it. Clause 8.2 of Appendix "A", under the caption Submission of Spot Quotation, reads as under:-

“8.2 The packet “A” shall contain following documents:-

- (a) Certified copy of Latest partnership Deed/Memorandum & Articles of Association of firm in case of Partnership Company.*
- (b) Certified copies of Pan card(s) & latest photographs with signature of individuals, owners, karta of Hindu Undivided Family, partners of partnership firm & Directors in case of Private Limited/Public Limited Companies.*
- (c) Registered Affidavit/Undertaking on Rs.200 stamp to be submitted by agency/person mentioning that, 'There are no any pending dues on the agency and the agency is not debarred/blacklisted. Proforma is attached in tender.*
- (d) The documents/undertaking enlisted in notice.*

Copies shall be certified by officer not below the rank of Assistant Engineer of M.C.G.M..”

6. Thus, Packet “A” was to contain very vital and crucial documents. That has nothing to do with the EMD and if any other requirement is to be referred to, this very Appendix “A”, on page 24, Clause 7, says that, each Spot Quotation must be accompanied by a deposit as earnest money of Rs.5,000/- which shall be in the form of Demand Draft and will be returned to the Spot Quotationist if the tender is not accepted, but if that is accepted the earnest money will be retained as security for the

due signature of contract and for marking contract deposit. It is optional to the contractor to make the contract deposit in the form of a Demand Draft. If the offer of the first highest bidder is accepted by the M.C.G.M. but for one or the other reason, if he does not respond, the EMD will be forfeited and he will be debarred from participation in future Pay & Park Spot Quotation invited during next six (6) months.

7. This fully answers the contentions of the counsel with regard to payment of the EMD.

8. The other argument, that the decision of holding a single bid is contrary to the Guidelines issued by the CVC, as out of the six bidders only one was eligible and all others being held ineligible would mean that the petitioner is aware that it was held ineligible and that there is another person/entity who was held eligible but that was not impleaded as a party respondent. If a certain bidder cannot be awarded the contract in terms of the CVC Guidelines, then, this argument would mean that the petitioner being successful and five others were excluded, it was

also not in a position to obtain the contract. That is not how the understanding of the Corporation is and rightly for the simple reason that the Circular of 10-5-2016 delegates the power to award the tender contract after compliance is made with the terms of the Circular. There is a Tender Committee and in place. If a single bid is received, the opening of Packet “C” will be taken by the Deputy Municipal Commissioner/Director if the contract work is worth upto Rupees Five Crores, and if it is above Rupees Five Crores, it will be taken by the Additional Municipal Commissioner. There are Appeals provided to the bidders against the decision of the authorities. It is in these circumstances, we do not find that there is violation of any mandatory orders and directions, particularly the Guidelines of the CVC.

9. We do not think that the writ petition is filed *bona fide* for the petitioner is aware that it has been declared as ineligible because its packet and bid, as forwarded, was devoid of the undertaking, as mentioned in Appendix “A”/Clause 8.2 and Clause 17 of the Public Notice. It is in these circumstances,

we do not find any merit in the writ petition and it is dismissed.

10. We are disinclined all the more because an affidavit in reply has been filed by the Municipal Corporation in which, in para 7, it is stated as under:-

“7. I say that, there is no impediment to open the Packet B to us as per the Circular of the M.C.G.M. dated 10/5/2016, which provides the procedure to open Tender, even if single Bid is received.”

11. There is no complaint or no objection raised by the petitioner nor any rejoinder affidavit is placed on record.

12. In view of dismissal of the writ petition, Chamber Summons No.97 of 2019 stands disposed of.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)