

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1045 WRIT PETITION NO.7777 OF 2021

MOHAMMED JUNAID AHMED AEJAZ AHMED
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner: Mr. Thombre S. S.

I/c. G.P. for Respondents No. 1 to 4:

Mr. D. R. Kale

Advocate for Respondent No. 5: Mrs. Usha P. Kale

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CORAM: S. V. GANGAPURWALA &
R. N. LADDHA, JJ.

DATE: 20th AUGUST, 2021

PER COURT:

1. The petitioner in the present writ petition has prayed for following reliefs-

"B) By issuing a writ of Mandamus or any other writ, order or directions in the like nature, the tender notice published by the Chief Officer Municipal Council, Khultabad on 28.06.2021 may kindly be quashed and set aside.

C) By issuing a writ of Mandamus or any other writ, order or directions in the like nature, direct the Chief Officer Municipal

Council, Khultabad, to complete the earlier tender process and for that purpose issue necessary order."

2. Mr. Thombre, learned Advocate for the petitioner strenuously contends that earlier the tender notice was issued. The petitioner fill in the tender. The date for opening the technical bid was fixed as 02.11.2020. The technical bids were not opened nor the financial bids were opened on the given date. The petitioner filed Writ Petition No. 7091 of 2021. After filing of the writ petition the respondent cancelled the tender process as such the petitioner withdrew the said writ petition with liberty to file fresh one.

3. Mr. Thombre, learned Advocate further submits that there is no plausible reason given for cancellation of the earlier tender process. The action of the respondent in cancelling the earlier tender process is arbitrary. Action of the authorities has to be transparent, more particularly, when it concerns the State largesse.

The authorities are also bound by the norms laid down by the Government. In case, the action of the authority is arbitrary, unreasonable then, this Court can exercise it's writ jurisdiction under Article 226 of the Constitution of India. The learned Advocate to buttress his submission relies upon the Judgment of the Hon'ble Apex Court in case of **Ramanna Dayaram Shetty Vs. International Airport Authority of India and Others** reported in (1979) 3 SCC 489. Another Judgment of the Hon'ble Apex Court in case of **Common Cause, A Registered Society Vs. Union of India and others** reported in (1996) 6 SCC 530 and submits that the process has to be transparent, just, fair and non arbitrary, in accordance with the norms, criteria or guidelines. The learned Advocate submits that the respondent authority in flagrant abuse of it's powers cancelled the earlier tender process on frivolous grounds. The reasons mentioned by the respondent is that the Chief Executive Officer was transferred and that the digital signature was not available of the then C.E.O. The C.E.O. was

transferred in December-2020, the technical bids were sought to be opened on 02.11.2020, the reason given is palpably wrong. The learned Advocate further submits that the another C.E.O. of Gangapur Municipal Council was In-charge of the Khultabad Municipal Council. He was having the additional charge. His signature should have been attached. The reason given is absolutely erroneous and does not satisfy the test of reasonableness. The learned Advocate also relies on the Judgment of the Hon'ble Apex Court in case of **Rajendran Chingaravelu Vs. R. K. Mishra, Additional Commissioner of Income Tax and others** reported in (2010) 1 SCC 457, so also, in case of **Indian Oil Corporation Limited and others Vs. Shashi Prabha Shukla and another** reported in (2018) 12 SCC 85.

4. We have considered the submissions canvassed by the learned Advocate for the petitioner and the learned Advocate for the respondent.

5. The tender of the petitioner pursuant to the earlier tender process was not accepted. The

petitioner did not get vested right pursuant to the earlier tender process. No doubt, the petitioner has a legitimate expectation to be treated fairly in just manner. The authority also has to exercise the powers in a reasonable manner. The same should not smack of arbitrariness. Arbitrariness has no role in the society governed by rule of law. Arbitrariness is antithesis to justice, equity, fair play and good conscience. Arbitrary action cannot be sustained.

6. In the present case, the respondent Municipal Council had passed a Resolution on 15.03.2021 detailing the difficulties faced because of Covid-19 and also the digital signature could not be obtained of the then C.E.O. of the Municipal Council. It has been stated in the Resolution that the then C.E.O. in spite of efforts could not be contacted for the signature. Much time had lapsed and because of Covid-19 the attendance of the employees was also very less and the tenders were pending, the same were not opened. After lapse of 6 months the decision is taken to cancell the

same. Almost a year has lapsed since the earlier tender process could not be fructified. The respondents have taken steps to initiate fresh tender process. The initiation of the fresh tender process does not smack of favouritism, malafides and arbitrariness.

7. In case the tenders would have been opened and the petitioner would have been found to be the lowest bidder and subsequently the tenders are cancelled in such a case, though, the petitioner would not get a vested right, still, his arguments would have been worth consideration about arbitrariness and favoritism. In the present case, as none of the tenders were opened the petitioner or for that matter any other tenderer would not get knowledge as to who was the lowest bidder.

8. In the light of that, it cannot be said that the act of the respondent is arbitrary or smacks of *malafides*.

9. In the light of above, writ petition is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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