

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9134 OF 2020**

FAWWAZ Tours & Travels,
Having its office at House No.2-11-45,
Panchkuwa, Killearyk, Aurangabad,
Through its Proprietor,
Mr. Gulam Fayyaz S/o gulam Mohd. Siddiqui,
Age: 44 years, Occ: Business,
R/o House No.1/11/45, Panchkuwa,
Kileyark, aurangabad 431001. ..PETITIONER

VERSUS

1. Aurangabad Smart City Development Corporation
Ltd.,
ASCDCL Office, War Room,
Near Ambedkar Research Centre,
Aam Khaas Maidan, Aurangabad 431 001,
through its Chief Executive Officer,
Who happens to be Municipal Commissioner Ex-
officio, Aurangabad Municipal Corporation,
Aurangabad.
2. The Secretary,
Smart City Development Corporation,
Mantralaya, Mumbai 400 032.
3. The Deputy Chief Executive Officer,
Aurangabad Smart city Development Corporation
Ltd., ASCDCL Office, War Room,
Near Ambedkar Research Centre,
Aam Khaas Maidan, Aurangabad 431 001

..RESPONDENTS

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Mr. Ajay S. Deshpande, Advocate for the Petitioner.
Mr. Ameet R. Vaiday, AGP for Respondent Nos.1 to 3.

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**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

Closed for Orders on : 18.01.2021.

Order Pronounced on : 24.02.2021.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioner impugns the communication of the respondent dated 21.12.2020. Under the said communication, the tender process initiated is canceled for Administrative reasons.

2. Mr. Deshpande, learned counsel for the petitioner contends that respondent no.1 invited the tenders for hiring vehicles for use of officials of Aurangabad Smart City Development Corporation Limited. The petitioner and one Prashant Travel Services were found eligible in the technical bid. The petitioner is the lowest bidder after opening the financial bids. The petitioner was communicated that due to Administrative reason, the tender is canceled. In the interregnum, after the opening of the financial bids and before cancellation of the tender process, the petitioner received a call and was summoned in the office of respondents. It was tried to be demonstrated that the tender of Prashant Travel Services is lower than that of the petitioner. However, the same was improper, the petitioner was the lowest tenderer. Thereafter, one person Mr. Prateek introduced petitioner with Mr. Pushkal Shivam who was said to be the Deputy CEO of respondent no.1. He suggested to bifurcate the tender and to allot the same 50:50 between petitioner and Prashant Travel Services. The petitioner declined.

3. The learned counsel submits that no Administrative reasons are assigned for cancelling

the tender. The act of respondent no.1 in cancelling the tender process is arbitrary. It cannot choose any person it likes. The learned counsel relies on the judgment of the Division Bench of this Court in the case of **Royal Power Turnkey Implements Pvt. Ltd. Pimpri Vs. Maharashtra Industrial Development Corporation, Mumbai & Ors.** reported in 2014 (5) Mh.L.J. 399. The learned counsel submits that no reasons are assigned while cancelling the tender process. The respondents cannot substitute the reasons by way of an affidavit. In the affidavit filed the reason mentioned is that only two bidders were found technically eligible. The reliance on Sub-clause B of Clause No.4.4.3.1 of the Government of Maharashtra procurement policy under Government Resolution dated 01.12.2016 is misplaced. The Government Resolution relied by the respondents is not applicable, as the same is not extended to respondent nos.1 and 3. The respondent nos.1 and 3 are not included in the list of 98 establishment mentioned in the State Government Resolution. The scope and extend of the Rules promulgated alongwith the Government Resolution dated 01.12.2016 has been circumscribed by Rule 2.5 of the said Rule Book. It extends only to the purchase of the commodities and its application has been debarred to services, civil work or transportation etc. As many as 24 Items are mentioned in the BoQ in Exhibit 'B', some of the vehicles mentioned therein have not been manufactured for using the same as Taxi and Taxi

permits are not issued to those vehicles. Verna and Creta as well as SUVs mentioned under Item No.10, 11 and 13 are not issued Taxi permit. Similarly, vehicles like Alto, Kwid etc. which are below 800 CC power do not get Taxi permit, still these vehicles were included in the tender process. The petitioner is deliberately eliminated to favour blue eyed persons like Prashant Travel Services. The learned counsel submits that if there could be negotiations while issuing work order to Prashant Travel Services it is difficult to comprehend as to what dissuaded the respondents from inviting the petitioner for negotiation. This strengthens the belief of the petitioner that, respondent authorities were very much interested and bent upon to allot the tender to the Prashant Travel Services. The delay in tender process would benefit Prashant Travel Services, as it is supplying vehicles to respondent for last 8 months and would continue to do so if the fresh tenders are allotted. The cancellation of the tender by sub-planting reasons of Government Resolution 01.12.2016 is absolutely colorable exercise of powers.

4. The learned counsel further submits that Clause 2 of the Terms and Conditions of the tender states that vehicles to be provided should be as far as possible post 2018 manufactured. The production of Alto and Innova has been stopped by the manufacturer atleast from 2016 and onwards.

Basically, prescription of as many as 24 Items itself is unjust, as some of the vehicles mentioned do not get Taxi permit and production of the some of the vehicles has been completely stopped by the manufacturer in the year 2016.

5. Mr. Vaidya, learned counsel for the respondents submits that the cancellation of the tender process is on account of the fact that:

"A. While 6 bids were received in response to the tender, only two bidders were found to be technically eligible. Thus, as per the standing Government instructions regarding purchase of items for Government which is embodied in the Manual relating to Government purchase of the year 20016, Government of Maharashtra procurement policy issued vide GR dated 01/12/2016 (clause 4.4.3.1, the financial offers of the bidders were opened)

B. As per Sub-clause No.B of said Clause No.4.4.3.1 it is mandatory on the part of the procuring authority that where the price quoted is not between the price band of -10 to 20% to plus 10% of the estimated price, the tender process must be recalled. For the sake of ready reference, I crave and leave and liberty of the Hon'ble Court to reproduce Class B of the Rule No.4.4.3.1 of the revised Manual of Office Procedure for Purchase of Stores and other items issued by the Government of Maharashtra

"ब दोन निविदा तांत्रिक दृष्ट्या पात्र ठरल्यास खरेदीची वास्तविक किंमत व अगोदर ठरलेली अंदाजित किंमत यामध्ये (-) २० टक्के ते (+) दहा टक्के तफावत असल्यास ती मान्य करण्यास खरेदीदार विभागास मुभा राहिल. या किंमत श्रेणी मध्ये (price band) किंमत न आल्यास फेर निविदा काढावी"

As per the GR, the financial offers should be in the price band of -20% to +10% with regard to the estimated rate. In case the offer exceeds, the said price band, the tender may

be recalled. The L1 rates for some category of vehicles such as Swift Desire which are regularly used by the Respondent No.1 and involve significant outgo were found to be exceeding the price band with reference to the rates already being incurred by Respondent No.1 for provisional usage of the same vehicle. The rates therefore were not found to be competitive.

C. Further, the L1 offer for some category of vehicles is quoted to be zero. Thus, the rates are also irregular. On account of prices not being competitive and the irregularity in quoted L1 prices where zero is submitted as the offer, the tender was cancelled on 21/12/2020."

6. The Prashant Travel Services was the lowest bidder. The automated process of E-tendering portal works on the basis of the cumulative value of all the Items provided in tender. While petitioner appears to be lowest bidder for some type of vehicles. In fact cumulative value of the bids by the petitioner and the Prashant Travel Services shows that the Prashant Travel Services is lowest bidder. The cumulative offer of the petitioner's bid is Rs.3,54,980.20/- and that of Prashant Travel Services is Rs.3,44,484/-.

7. We have considered the submissions canvassed by the learned counsel for the respective parties.

8. The petitioner and one Prashant Travel Services were only two eligible bidders in the

fray, though six bids were received. Other bidders were technically disqualified. The purpose of tender process is to get the most competitive rates by competition. If less number of tenderers are qualified, the very purpose of competition and floating the tender stands frustrated. In a case of **Royal Power Turnkey Implements Pvt. Ltd. Pimpri Vs. Maharashtra Industrial Development Corporation, Mumbai & Ors.** (supra) relied by the petitioner, three tenderer were qualified. The petitioner before the Court in that case was admittedly the lowest bidder. The Superintending Engineer and Executive Engineer of MIDC recommended the higher authority that the tender work be given to the petitioner and abruptly the fresh tender notice was published by MIDC. In the said case, in the fresh tender the Terms and Conditions of the earlier tender notice were modified to favour the contractors who were unsuccessful. The petitioner therein was not informed about the result of the tender process initiated earlier. In light of that, the Court came to the conclusion that the action of the respondents therein was arbitrary.

9. In the present case, there are only two qualified bidders. The respondents have disputed the petitioner to be the lowest bidder. In some of the Items the petitioner was the lowest bidder, whereas in other Items the another bidder was lowest and according to the respondents cumulatively Prashant Travel Services was lowest

bidder than the petitioner. The Manual published on 01.12.2016 is relied by the respondents. Even if it is assumed that, the said Government Resolution is not totally applicable, it would transpire that the petitioner was not the lowest bidder in all the Items. In some of the Items Prashant Travel Services was lowest, so also it was found that cumulatively Prashant Travel Services was the lowest bidder. In 3 Items Prashant Travel Services mentioned zero charges meaning thereby he would not be charging for those Items.

10. In the Rejoinder affidavit the petitioner contends that the Clause 2 of the Terms and Conditions appearing in the tender viz vehicles to be supplied should be post 2018 manufactured and that manufacturer of Alto and Innova is stopped from 2016 onwards and that the prescription of as many as 24 Items itself is unjust. In that case, the petitioner is contending that the tender issued is erroneous and if erroneous tender process is cancelled, then the petitioner cannot have a reason to make a grievance. The petitioner on one hand cannot suggest that the Terms and Conditions of the tender are not proper and on the other hand claim his right to get the tender on the basis of the same Terms and Conditions. The same would run counter to each other.

11. In tender matters some leverage is given to the principal. The respondent is entitled to

get most competitive bids and reasons are given as to how both the tenders could not have been accepted.

12. We do not find on the facts on record that the petitioner has made out case of arbitrariness on the part of the respondents, more particularly, when the petitioner is not shown to be the lowest bidder.

13. In light of that no relief can be granted to the petitioner. Writ Petition as such is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE