

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13052 OF 2021

Suraj Vijay Narkhede .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Ganesh Gadhe, Advocate h/f Shri Jitendra V. Patil,
Advocate for the Petitioner.

Shri P. K. Lakhotiya, A.G.P. for Respondent Nos. 1 and 2.

Shri S. P. Brahme, Advocate h/f Shri M. V. Navandar, Advocate
for Respondent Nos. 3 and 4.

**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

DATE : 09TH DECEMBER, 2021.

FINAL ORDER :

. The petitioner is assailing action of respondents in clubbing nineteen works and issuing consolidated tender for all nineteen works.

2. Mr. Gadhe, the learned advocate for the petitioner submits that, the petitioner is a contractor. The petitioner is also issued with the work order by the respondent No. 4 in respect of four small works. It is the policy of the Government that 33% works should be allotted to the unemployed civil engineer contractor. The petitioner is a civil engineer contractor. The learned counsel further submits that, in the tender process various irregularities and illegalities are conducted. The respondents did not publish

the tender notice in three local news papers. The same is the requirement as per Section 470 of the Maharashtra Municipal Corporations Act (for short “said Act”). The technical and administrative sanction has been given by the Collector to each work independently. The tender notice has to be issued in consonance and in tune with the administrative and technical sanction. The tender notice for consolidated nineteen works is not in tune with the administrative and technical sanction, the tender itself is bad in law.

3. The learned advocate further submits that, it is with malafide intention the consolidated tender is issued so as to deprive the small contractors like the petitioner from participating in the tender process. No cogent reasons are given for issuing consolidated tenders. The learned advocate submits that, the work order is to be issued for completion of work in twelve months. The clauses A to C of the tender documents oust the small tenderers in participation of the tender process because it requires minimum work experience of execution of work near about of Rs. 6 Crores. The works mentioned in the tender notice are different works in different wards and those can be executed by the small contractors. By clubbing multiple works, they enlarged the amount of tender along with earnest amount, as a result the small tenderers were thrown out of the race. The said e-tender notice is contrary to the Government Resolutions dated 24.04.2015, 12.04.2017 and 29.06.2017. As per Government Resolution dated 12.04.2017, it was necessary to issue the notification in one Marathi newspaper at District level, two

Marathi newspapers in State level, one Hindi newspaper at State level, so also English newspaper.

4. Mr. Gadhe, the learned advocate further submits that, the impugned E-tender is contrary to the provisions of Section 73(c) of the said Act. As per the said provision, the contract should be previously approved by the Standing Committee of the Corporation, if the contract work exceeds more than Rs. 25 Lacs. In the present case, the Standing Committee has approved the different work with different estimate. The Standing Committee has not given its prior approval for the quantified tender cost of Rs. 7,85,48,484.00.

5. Mr. Brahme, the learned advocate for respondent Nos. 3 and 4 submits that, the amount has to be utilized before March 2022. The tender process and works to be executed are not regulated by G. R. dated 24.04.2015, 12.04.2017 and 29.06.2017 as relied by the petitioner. Those are meant for Public Works Department. There is no prohibition in consolidating nineteen works in one tender. The procedure U/Sec. 73 of the said Act is followed. The Schedule – D, Chapter V of the said Act only requires publication of the notice in newspaper. The tender notice was published in five editions of the newspapers. The petitioner was given work order on 28.07.2021. The work was for duration of nine months. No prompt execution is done by the petitioner. Notice was required to be issued to him. He did not commence the work for two months. Under work order dated 14.09.2021 further work was entrusted to him. Said work order

was for four months, however, till date the petitioner has not commenced the work. There are many small contractors who failed to execute the work. They were given notices by the corporation. As the corporation found that it was disadvantageous to give work to small tenderers because they lack infrastructure and financial capacity to complete the work and they did not possess the modern machinery also, the consolidated tender was floated for nineteen works. The work pertains to amenities for public at large and the same requires execution promptly. The administrative sanction was given to about 73 works and only 19 works were segregated and consolidated. The technical bids are opened. The financial bids also would be opened within a day or two and finalized.

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

7. In tender matters the scope of judicial review under Article 226 of the Constitution of India is in a narrow compass. The Courts are more concerned with adherence to the decision making process. It is also accepted by the learned counsel for the petitioner that consolidation of works is nowhere prohibited. The respondents on affidavit confirmed that works given to small contractors were not satisfactorily done and they were also not completed in time. The works under present tender are public works and they have to be completed promptly and efficiently. The respondents have also commented upon the efficiency of the petitioner. He was earlier given the work, but he was required to

be given notice for not commencing the work. In the present matter we are not dilating on the said aspect. Same would be outside the purview of the contentious issues of the present matter.

8. The Schedule – D Chapter V of the said Act deals with the procedure for the execution of the contracts. The said schedule appears to have been complied with. The tender notice is said to have been published in 5 different editions of the newspapers. The tender process resorted to is E-tender and E-tender has been properly published. The approval before issuance of work order may be given by the Standing committee and/or the corporation.

9. In formulation of terms of tender some leverage has to be given to the principal. The principal is the best judge to notice the requirement and the manner the tender would be issued. The action of respondents does not smack of malafides, nor it can be said to be arbitrary. In such a scenario, this Court would not invoke its power of judicial review in contractual matters.

10. In view of the aforesaid discussion, we are not inclined to entertain the petition. The writ petition as such is disposed of. No costs.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]