

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

WRIT PETITION NO. 14284 OF 2021

Abhay Baburao Ingle and another .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri V. D. Salunke, Advocate h/f Shri Rajdeep D. Raut, Advocate for Petitioners.

Shri D. R. Kale, Incharge G. P. for Respondent Nos. 1 to 3 and 6.

Shri Mahesh S. Deshmukh, Advocate h/f Shri V. B. Deshmukh, Advocate for the Respondent No. 5.

The Respondent No. 4 is served.

**WITH
WRIT PETITION NO. 14311 OF 2021**

Udaysinha Prakashrao Nimbalkar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri S. G. Chapalgaonkar, Advocate for the Petitioner.

Shri D. R. Kale, Incharge G. P. for Respondent Nos. 1 and 2.

Shri Mahesh S. Deshmukh, Advocate h/f Shri V. B. Deshmukh, Advocate for the Respondent No. 3.

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

DATE : 23RD DECEMBER, 2021.

FINAL ORDER :

. The petitioners in both these writ petitions assail the tender notice dated 01st December, 2021 issued by the

respondent/Chief Officer, Municipal Council, Osmanbad for the work of under ground sewage scheme under MSJNMA.

2. We have heard Mr. Salunke and Mr. Chapalgaonkar, the learned counsel for petitioners and Mr. M. S. Deshmukh, the learned advocate for the respondent/Municipal Council.

3. The learned counsel for petitioners submit that, the petitioner in Writ Petition No. 14311 of 2021 is councillor/Member of the Municipal Council, whereas in Writ Petition No. 14284 of 2021 the petitioner No. 1 is Vice President and Petitioner No. 2 is Social worker. According to the learned counsel, the tender notice has been issued flouting the norms and the mandatory requirements. In the tender notice the pre-bid meeting is not contemplated. The same is a requirement under the Government Resolution. Sufficient time is not given to the bidders. Only fifteen days time is given. The same is also improper. Atleast 45 days time ought to have been given. The time is required for deliberations. The pre-bid meeting is required to be conducted so that the queries of the bidders are met with and pursuant to the queries of the bidders suitable changes can be made. The learned counsel further submit that the tender notice has to be published in widely circulated national and local newspapers. The tender notice is published only in two newspapers. It is further submitted that, Section 93 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act (for short "Said Act") also is adhered

too in breach. The estimated cost is increased by thirty crores from the earlier tender. The same is also illegal.

4. It is further contended by the learned counsel for petitioners that, by merely issuing corrigendum, the requirement of pre-bid meeting cannot be substituted. The corrigendum inviting queries is also issued at the eleventh hour thereby not giving any time for the bidders. The petitioners have tried to reason out with the respondents, but to of no avail. According to the learned counsel, the petitioners have also raised their objection in the meeting. The term of the President of the Municipal Council is going to come to an end on 27st December, 2021 and as such haste is made thereby skipping mandatory requirement. As such the tender process deserves to be quashed and set aside. Reference is also made to the standing order No. 36. It is submitted that, as per the standing orders and more particularly standing order No. 21, pre-bid meeting is mandatory. If the value of the tender is more than Rs. 50 Lacs, then as per Clause 19, the tender notice has to be published in widely circulated newspapers.

5. The learned counsel further submit that, as per the government resolution and the standing order, the tender is to be called by adopting two envelope procedure (1) technical bid and (2) financial bid. The tender notice does not contemplate such a procedure. There should be a time lag between opening of the technical bid and financial bid. In the tender notice no such

clarification is given suggesting that technical and financial bids would be opened on the same day. It is further submitted that, as per standing order, unless the technical bids are evaluated and the objections received to the technical bids are dealt with, financial bids can never be opened. Such procedure is not contemplated under impugned tender notice.

6. The learned counsel for petitioners further submit that, because of the aforesaid fallacies in the tender document, the tender process deserves to be quashed and set aside.

7. Mr. M. S. Deshmukh, the learned counsel for the respondent/Municipal Council submits that, it is not a case that President has taken the decision abruptly. This is fourth time tender process has been resorted to. For earlier three times tender process could not be concluded for one or other reason. When third tender process was resorted to, the petitioner in Writ Petition No. 14284 of 2021 challenged the same by filing Writ Petition No. 9257 of 2021. His contention in the writ petition was that there is no necessity to issue third tender process. The first and second tender only ought to have been finalized. The said writ petition was disposed of. The learned counsel further submits that, it is not the unilateral decision of the President of issuing tender. The matter was placed before the Standing Committee and General Body. The Standing Committee and General Body had approved and resolved to issue fresh tender notice and accordingly administrative sanction is also sought. Pursuant to

the decision in the standing committee and General Body, further steps are undertaken. The work to be done is under the Maharashtra Suvarna Jayanti Nagarothan Mahaabhiyan, wherein 75% amount is contributed by the State Government and the 25% amount is to be borne by the local body. Considering the time lag from the first tender notice and that the estimates were on the basis of value in the year 2019, the Standing Committee and General body had taken a decision of enhancing the amount for administrative sanction and the tenders to be issued. If as per the estimate of the year 2019 the tenders are not issued, then major contribution would have been required to be borne by the local body and the Government would not have contributed.

8. The learned advocate further submits that, the tender notice is invited with two envelope system only. The tender document very clearly refers to the same. Under clause 2, it has been clearly mentioned that, after opening envelop No. 1, if it is found that tenderer is not qualified for opening of envelop No. 2, then his bank guarantee will be returned back. This presupposes the factum of inviting the tenders with two envelop bids i. e. technical and financial. No illegality has been committed in it. As far as pre-bid meeting is concerned, the queries have been called for. Pursuant to corrigendum same have been dealt with and answered. The contractor has not objected to the same. The learned counsel further submits that, Section 93 of the said Act has been scrupulously adhered to. Under proviso to Sub Section 6

of Section 93 of the said Act only seven days period is contemplated from the date of publication of advertisement in the newspaper inviting tender and the last date fixed for receipt of tender by the Chief Officer. In the present case 15 days time was contemplated.

9. The revised technical sanction has also been accorded by the Maharashtra Jivan Pradhikaran. The difference in the estimate cost was because of the difference of DSR rates. According to the respondent no illegality has been committed. The learned counsel relies on the judgment of the Apex Court in a case of Michigan Rubber (India) Limited Vs. State of Karnataka and others reported in *(2012) 8 SCC 216* and submits that the scope of judicial review in the matters would be very limited. In the present case, proper administrative and technical sanctions are obtained. The procedure has been followed. The learned advocate also relies on the judgment of the Apex Court in a case of Raunaq International Ltd. Vs. I.V.R. Construction Ltd. And others reported in *(1999) 1 SCC 492*. The learned advocate further submits that the publication of the tender notice was made in six newspapers, two national newspapers of English language and four other local news papers.

10. Upon having considered submissions canvassed by the learned counsel for respective parties, it is manifest that the petitioners are assailing the tender notice on the ground that the procedure as required in publishing tender notice is not followed

and/or the tender notice is not in consonance with the standing orders, the statutory provisions and the executive instructions.

11. It would appear that, the tender notice issued is for the work for Osmanabad underground sewage scheme under the Maharashtra Suvarna Jayanti Nagarothan Mahaabhiyan. It is not disputed that 75% funds are to be contributed by the Government and 25% funds are to be borne by the local body. For such matters certainly the scope of judicial review would be in a narrow compass. The Court only would be required to consider fairness in action and the absence of arbitrariness or malafides. With regard to the enhancement of the estimated cost, it would appear that the estimated cost were based upon DSR rate of the year 2019. The fixation of value of the tender is within the purview of the principal inviting the tender. However, it will have to be shown that the necessary sanctions are obtained before issuance of the tender notice. It has been brought on record that the Maharashtra Jivan Pradhikaran has given the technical sanction. The administrative sanction is also accorded by the competent authority. It is after receipt of technical and administrative sanction, tender notice is floated. From the tender document, it appears that, the respondent has adhered to two envelop procedure i. e. (1) technical bid and another (2) for financial bid. It is submitted at the bar by the learned counsel for the respondent that technical bids are being evaluated.

12. The respondent has also made it clear that, it has issued tender notice in six newspapers and two national newspapers i. e. Indian Express and Business Times. So also in other four local newspapers.

13. It appears that in the tender notice provision for pre-bid meeting was not made. The respondent issued corrigendum inviting query from the proposed bidders. The petitioners are not participants in the tender process. The petitioners are Vice President of the Municipal Council, councillor and social worker. It is for the bidders and contractors to raise such an objection. The petitioners cannot be said to be prejudiced, nor the contractor has raised any query of being prejudiced while filling in the tender document.

14. Before finalizing the estimated cost, the same was placed in the standing committee of the Municipal Council and the Standing Committee has taken decision by majority to proceed ahead for issuance of tender with the estimated cost. The said decision is also ratified by the general body of the Municipal Council.

15. We fail to understand as to what purpose would be served by prolonging public welfare work. The petitioner in Writ Petition No. 14284 of 2021 had earlier also filed writ petition challenging third tender notice. In the said petition his contention was that first or second tender notice only ought to

have been finalized and now fourth tender notice is issued. Same is challenged again. Postponing the public welfare work would be in nobody's interest. By postponing the work the cost of the work would rise. Inflation is the order of the day. It will be loss to the public exchaquer and the same would benefit none. It is submitted that, five tenders are received. Section 93 of the said Act is complied with. We do not find the deviation as alleged by the petitioners to be materially affecting fair process of tender. Fair play in action is required on the part of the local body issuing the tender. We do not find that same lacks in the present case. The decision making process has been adhered too. The technical sanction has been obtained of the competent authority. The administrative sanction is also obtained. The resolution is passed in the standing committee and the general body. All these aspects are complied with before issuing the tender. By filing present writ petitions, the petitioners would be merely obstructing in the development and the public welfare work. The same would not augur well for the citizens of the said region.

16. We do not find malafides in the action. The Apex Court in a case of Michigan Rubber (India) Limited Vs. State of Karnataka and others (supra) has observed as under :

23) From the above decisions, the following principles emerge:

(a) the basic requirement of [Article 14](#) is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a

discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

24) Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”; and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under [Article 226](#).

17. In the present case, by postponing the work, the public interest would be affected.

18. In the light of the aforesaid discussion, we do not find merit in the contentions of the petitioners. The writ petitions as such are dismissed. No costs.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Dec.21