

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1180 OF 2021

M/s.Aesthetic Land Scaping through
Mr.Rahul Tirthraj Yadav

...Petitioner

vs.

The Navi Mumbai Municipal
Corporation & Anr.

...Respondents

**WITH
WRIT PETITION (STAMP) NO.9548 OF 2021**

M/s.D.B. Infratech

...Petitioner

vs.

The Navi Mumbai Municipal
Corporation & Anr.

...Respondents

.....

Mr.Chirag Kamdar i/b. Mr.Bipin Joshi for Petitioner.
Mr.Sandeep Marne for Respondents.

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**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- APRIL 27, 2021.

ORAL JUDGMENT :

1. Questions of fact and law raised in these two writ petitions are common; hence, we propose to dispose of the same by this common Judgment.

2. The case run by the petitioner in Writ Petition No.1180 of 2021 is that its bid pursuant to a tender has been considered

non-responsive by the Navi Mumbai Municipal Corporation on the ground that it did not submit an undertaking on a stamp paper of Rs.500/- denomination.

3. It is averred in paragraph 15 of the writ petition that due to unavailability of stamp paper of Rs.500/- denomination in the prevailing pandemic, Rs.500/- was paid online through e-challan in lieu of stamp paper together with an undertaking of the required nature on affidavit.

4. According to the Municipal Corporation, the course adopted by the petitioner is contrary to the tender terms and conditions and the deficiency could not have been cured in the manner the petitioner sought to cure; therefore, the petitioner's bid was rightly not considered.

5. We do not find any denial of the averment made in paragraph 15 of the writ petition by the Municipal Corporation in its reply affidavit. Applying the doctrine of non-traverse, we hold that the petitioner was disabled in procuring a stamp paper of Rs.500/- denomination due to the prevailing pandemic. We further hold that the petitioner had been left with no other

option but to comply with the relevant term in the tender notice in the manner it did.

6. That apart, we cannot proceed unmindful of the law laid down in the decision of the Supreme Court in **Poddar Steel Corporation Vs. Ganesh Engineering Works & Ors.**, (1991) SCC 3 273. The relevant passage from such decision reads as follows:

"6. *** As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories — those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. ***"

7. In our opinion, the approach of the Municipal Corporation appears to be in the teeth of the aforesaid proposition of law. Once it is concluded by us that the petitioner was disabled from procuring stamp paper of Rs.500/- denomination, we cannot view the relevant term as imposing an essential condition disregard whereof would entail the bid being declared non-

responsive; on the contrary, literal compliance of such term being impossible, the Municipal Corporation could have done away with rigid enforcement thereof.

8. At this stage, Mr.Marne, learned advocate for the Municipal Corporation submits that the financial bids of the other responsive bidders have been opened and it is only the work order that remains to be issued.

9. Considering the aforesaid facts and circumstances, while directing the Municipal Corporation to proceed to consider the financial bid of the petitioner treating it as responsive, we restrain the Corporation from issuing the work order in favour of the selected bidder till such consideration, as aforesaid.

10. If at all the petitioner is selected, an undertaking of the nature required may be obtained from it prior to issuance of work order in its favour. Also, if there be any other reason for non-issuance of work order to the petitioner despite it being the L-1/H-1 bidder, as the case may be, it ought to be informed of such reason before work order is issued to the selected bidder.

11. Writ Petition No.1180 of 2011, accordingly, stands disposed of. There shall be no order for costs.

12. Writ Petition (St) No.9548 of 2021 also stands disposed of, without costs, in the same terms as above.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)