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

16 WRIT PETITION NO.11017 OF 2021

**NAGRALL INDIA PRIVATE LIMITED THROUGH ITS
GENERAL MANAGER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr D. P. Palodkar, Advocate for petitioner;
Mr P. S. Patil, A.G.P. for respondent Nos.1 & 2
Mr S. V. Mundhe, Advocate for respondent No.3
Mr A. D. Khot, Advocate h/f Mr P. D. Bachate, Advocate for
respondent No.4

**CORAM : RAVINDRA V. GHUGE
AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 6th June, 2022

PER COURT:

1. By this petition, the petitioner has put forth prayer clauses (B), (BB) (BC) and (C), which read as under :-

“(B) The Hon’ble High Court may be pleased to issue writ of certiorari or writ or order in the nature of writ, and thereby quash and set aside the communication dated 16.09.2021 issued by respondent no.2 to respondent no.3.

(BB) The Hon’ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ and thereby quash and set aside the tender notice dated

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01.10.2021 bearing outward No.2021-22/OW.No/2947 issued by the respondent no.3.

(BC) Pending hearing and till final disposal of the present writ petition, the Hon'ble High Court may be pleased to stay the effect, operation and implementation of tender notice dated 01.10.2021 bearing outward No.2021-22/OW.No/2947 issued by the respondent no.3.

(C) The Hon'ble High Court may be pleased to issue appropriate writ of mandamus or writ or order in the nature of writ, and thereby direct the respondents to issue work order in favour of the petitioner.”

2. Considering the subsequent events, the petitioner sought leave of this Court to add grounds and additional prayers and as such, prayers (BB-1) and (BC-1) were introduced, which read as under :-

“(BB-1) The Hon'ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ and thereby quash and set aside the Corrigendum dated 29.10.2021 bearing outward No.2021/22/Swachata/ Vi issued by respondent no.3.

(BC-1) Pending hearing and till final disposal of the present writ petition, the Hon'ble High Court may be pleased to stay the effect, operation and implementation of the corrigendum dated 29.10.2021 bearing outward No.2021/22/Swachata/Vi issued by respondent no.3.”

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3. The Municipal Council, Gangakhed issued a tender notice for door to door collection and transportation of solid waste including sweeping of streets and cleaning of gutters, etc, in May 2021. The bids were invited by publishing the tender and the petitioner was the lowest bidder identified as 'L-1'. Respondent No.4 was the second lowest bidder identified as 'L-2', who was called for negotiations.

4. On 22/06/2021, the petitioner made a complaint as regards the purported illegal acts of the Chief Officer of the Gangakhed Municipal Council to the District Collector, who ordered an enquiry in the matter. The opinion of the Maharashtra Jeevan Pradhikaran was also sought and the Collector, therefore, directed the Municipal Council, either to proceed with the tender or recall it.

5. On 29/07/2021, the Municipal Council decided to issue the work order in favour of the petitioner, who was the lowest bidder. Subsequent thereto, respondent No.4 preferred Writ Petition Nos.6455/2021 and 7300/2021. This Court directed the Municipal Council to consider the issue and take a decision as regards the lowest bidder, vide order dated 06/08/2021. By the

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said order, this Court noted that the lowest bidder is to be considered on merits and if there are any objections by 'L-1' as regards the merits of the bid of 'L-2', the Chief Executive Officer (in fact the Chief Officer) would consider the said objections and take a decision.

6. What intrigues us is, that the Chief Officer decided to split the tender into two portion to appease both 'L-1' as well as 'L-2' and decided to issue work orders in favour of both these bidders. This was rightly objected to by the District Collector, Parbhani, who conveyed to the Chief Officer that this cannot be done and either the tender has to be cancelled and a fresh tender has to be floated or the lowest bidder has to be considered. It is in this backdrop, that the Chief Officer cancelled the earlier tender presumably on the diktat of the District Collector and decided to float a fresh tender.

7. Being aggrieved, the petitioner approached this Court by preferring this petition and this Court directed the Municipal Council vide order dated 04/10/2021, to proceed with the tender process. Subsequently, by an order dated 11/10/2021, this Court directed that the financial bid should not be opened.

8. We are informed by the learned Advocate for the Municipal Council that, considering the orders of this Court, the Municipal Council did not finalize the tender and the financial bid was not opened. The learned Advocate for the petitioners submits that, as the petitioner was before this Court in this petition, it preferred not to put forth its bid in response to the second tender.

9. The learned Advocate representing respondent No.4 i.e. 'L-2' submits that, 'L-2' has withdrawn its claim as regards the first tender that was floated and has decided to quit the field. This, therefore, leaves the petitioner i.e. 'L-1' as the only bidder, who was the lowest bidder as per the bids opened in pursuance to the first tender.

10. Considering the above, we do not find any reason to permit the Municipal Council to proceed with the second tender, as there is neither any controversy as regards the fact that the petitioner is the lowest bidder, nor is there any contest by 'L-2' on the ground that in the private negotiations, 'L-2' may have scaled down its bid, thereby making it better than the bid tendered by the petitioner.

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11. In view of the above, this petition is allowed in terms of prayer clauses (BB) and (BB-1).

12. Consequentially, we direct respondent No.2 - District Collector, Parbhani, to follow the due procedure in issuing the work order to the petitioner as per the existing tender, in the light of prayer clause (C), for a period of three years, beginning from the date of the work order.

(SANDIPKUMAR C. MORE, J.) (RAVINDRA V. GHUGE, J.)

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