

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

CIVIL WRIT PETITION NO. 11971 OF 2019

Shri Tirupati Waste Management,
Through its Partner,
Vasant S/o Govind Koke,
Age: 55 years, Occ : Business,
R/o : 4967, Iwale Lane,
Maliwada, Ahmednagar.

...PETITIONER

VERSUS

1. State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
2. Ahmednagar Municipal Corporation,
Through its Commissioner,
Ahmednagar Municipal Corporation,
Nagrdeole, Ahmednagar.
3. Medical Officer,
Ahmednagar Municipal Corporation,
Nagaredole, Ahmednagar.
4. Bioclean Systems Pvt. Ltd.,
Through its Director,
Flat No. 6, First Floor,
Building A10, Meeranagar, Lane No. 7,
Koregaon park, Pune 411001.

...RESPONDENTS

Advocate for Petitioner :

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Mr. Sushant V. Dixit.

AGP for Respondent No. 1-State : Mr. S.B. Yawalkar

Advocate for Respondent Nos. 2
and 3 :

Mr. Rajdnara S. Deshmukh
(Senior Advocate) a/w Mr. Kunal
Kale, i/by Mr. Devang Deshmukh

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**Reserved on : 03.08.2022
Pronounced on : 11.08.2022**

JUDGMENT : (PER – SANDEEP V. MARNE, J)

1. Rule.
2. Rule made returnable forthwith. With the consent of the learned advocates for the parties, heard finally at the stage of admission.
3. The petitioner seeks to assail the alleged “extension of work” for collection, disposal, transport and management of Bio Medical Waste granted by the Ahmednagar Municipal Corporation, in favour of respondent No. 4, for 5 years. The petitioner also seeks direction to the Municipal Corporation to take decision on Tender No. 1826/2018 for the period of 15 years. The prayer Clauses (A) and (B) are reproduced below :

“A. For a writ of certiorari, order or direction in the nature of certiorari calling for record and proceedings of extension of five years given in favour of respondent No. 4 on 24.08.2018 and after examining legality, validity and propriety thereof, extension of five years given in favour of respondent

No. 4 on 24.08.2018 be quashed and set aside.

B. For a writ of Mandamus, order or direction in the nature of mandamus directing respondents Nos. 2 and 3 to act and take decision on tender No. 1826/2018 for the period of 15 years as per conditions of tender within period of 7 days or as this Hon'ble Court may deem appropriate."

4. The aforestated prayers of the petitioner, as supported by the pleadings, are based on an assumption that the respondent No. 2/ Municipal Corporation, though had invited tender for award of work for 15 years, abandoned the same and instead issued extension order in favour of the existing contractor (respondent No. 4) for a period of 5 years. The petitioner has proceeded to file the present petition by assuming that the tender process was not finalized and that award of work in favour of respondent No. 4 was not as a result of finalization of the tender process. Even though, the counter affidavits filed by respondent No. 2/Municipal Corporation, as well as by respondent No. 4, made it clear that the assumption of the petitioner is erroneous, the counsel for the petitioner made his submissions before us, once again presuming that the tender process was cancelled and respondent No. 4 has been issued the extension order. We would deal with the factual position little latter. But we must express our anguish about the manner in which the petition is

structured, as well as the way the alleged grievance of the petitioner was pressed before us, during the course of arguments.

5. Let us first examine the pleadings of the petitioner. It claims to be a partnership firm. It contends that on 11.05.2018 respondent No. 2/Municipal Corporation invited e-tender for collection, disposal, transport and management of Bio Medical Waste in Ahmednagar City. It further contends that the petitioner along with three other bidders submitted their bids. There was a specific condition in the tender notice that there should be no outstanding Government dues of any bidder. It is further contended that the technical bids of all firms were rejected and that therefore, the tender process was not proceeded further and it was decided to issue fresh tender. The petitioner has produced a copy of the e-tender notice dated 11.05.2018 at Exh. 'A' of the petition.

6. It is further contended by the petitioner that the General Body of the Municipal Corporation adopted a resolution on 28.03.2018 for the issuance of fresh tender process for a period of 15 years, without giving extension to the existing entity. A copy of the resolution dated 28.03.2018, produced by the petitioner has been annexed at Exh.-'E' to the petition. It is further contended that in pursuance of the said resolution, tender notice was issued bearing

No. 1826/2018 by respondent No. 2/Municipal Corporation on 05.07.2018, with time of 21 days for the submission of bids. The petitioner submitted its bid in pursuance of the said re-tender notice. It is further averred in the petition that the petitioner was awaiting the decision of allotment of e-tender but no status was updated on e-tender portal. The petitioner further averred that it went on approaching the authorities of respondent Nos. 2 and 3, about the information in respect of the e-tender but no information was provided.

7. The petitioner thereafter avers that it made representation dated 16.08.2018 to the Municipal Commissioner stating that since there was no change in the e-tender conditions, the petitioner had filed e-tender for 15 years, but it was willing to perform the work at same date for 5 years. It is contended that petitioner thereafter made representation dated 29.01.2019 raising grievance about the altered tenure of contract from 15 years to 5 years. In the representation dated 29.01.2019 the petitioner also questioned the grant of extension of contract to respondent No. 4 for 5 years.

8. Based on the above pleadings the petitioner has presumed that the tender was not finalized by respondent No. 2 and an illegal execution order was granted in favour of respondent No. 4.

9. During the course of his submissions, Mr. Sushant Dixit, learned Advocate for the petitioner continued with the theory of non finalization of the tender and issuance of extension order in favour of respondent No. 4. He invited our attention to the work order dated 29.08.2018 issued in favour of respondent No. 4 branding the same as extension order for a period of five years. He urged before us that the bid of the petitioner at 27% royalty per month with 1% increment every year was higher than the bid of respondent No. 4, which was for 20% monthly royalty. He invited our attention to the screen shot of online portal to bidders, to contend that almost all the stages were completed but the tender was not finalized. He particularly laid emphasis on the General Body resolution dated 28.03.2018 in which it was resolved that the Municipal Corporation should not grant extension to the existing contract but should invite tenders for the award of work for 15 years. He further contends that though these resolutions were later suspended by the State Government in exercise of powers under Section 451 of the Maharashtra Municipal Corporations Act, 1949, such suspension was done on 13.08.2019 after award of the work order in favour of respondent No. 4 on 24.08.2018. He therefore contends that as on the date of award of work order dated 24.08.2018 the General Body resolution for non grant of extension and for issuance of tender for 15 years adopted on

28.03.2018 was in existence.

10. Mr. R.S. Deshmukh, the learned Senior Advocate appearing for respondent No. 2 Municipal Corporation submits that the work order dated 29.08.2018 awarded in favour of respondent No. 4, was as a result of finalization of tender process and that the same is not an extension order. He has taken us through the entire chronology of events, leading to issuance of the work order with which we would deal it little later. He also raised an objection of delay in filing the present petition by contending that even though the work order was issued on 24.09.2018 the petitioner has filed the present petition more than a year later on 24.09.2019. He further contends that the substantial tenure of the contract is over during the pendency of the present petition. He further contended that the General Body resolution dated 28.03.2018 has been suspended by the State Government vide order dated 13.08.2019, after taking into consideration the complete factual position put up by the Municipal Corporation. He further submits that the Municipal Corporation ensured that respondent No. 4 cleared all the dues of the Municipal Corporation before the award of the work. Mr. Deshmukh, learned Senior Advocate therefore prays for dismissal of the petition.

11. Mr. Narwade, the learned Advocate appearing for Respondent No. 4 has adopted the submissions of Mr. Deshmukh,

has urged before us that no case is made out by the petitioner for interference in the entire process.

12. After hearing the Advocates appearing for the parties, we are convinced that the petition of the petitioner is entirely misconceived. The petition has been filed in a very casual manner without verifying facts and by raising erroneous presumptions. We have already considered the pleadings of the petitioner in the petition. Now we proceed to narrate the factual position :

a) The work of collection, disposal, transport and management of Bio Medical Waste was awarded by respondent No. 2 Corporation in favour of respondent No. 4 for a period of 15 years vide agreement dated 17.06.2004. The tenure of the said contract was coming to an end on 21.07.2018.

b) Initially, the Standing Committee of the Municipal Corporation adopted a resolution for grant of extension in favour of respondent No. 4. However, the Municipal Commissioner disagreed with the proposal for grant of extension and instead proposed initiation of tender process for appointment of contractor. It appears that instead of

considering the proposal placed by the Municipal Commissioner, the General Body considered a letter of Municipal Councilor and adopted a resolution for implementation of tender process for award of work for 15 years.

c) Accordingly the e-tender notice No. 1769 of 2018 was published, in which 6 bidders participated. However none of them were found to be technically eligible and therefore, re-tender notice No. 1824 dated 04.07.2018 was published in which, the period for submission of bids was for 21 days. The said period of 21 days was curtailed to 7 days as a result of decision taken in the meeting held on 04.07.2018. Accordingly re-tender notice No. 1821 was cancelled and a fresh e-tender notice No. 1826, dated 05.07.2018 was published. In the said tender notice No. 1826, the tenure of work was for 15 years. On 06.07.2018 the then Collector/Municipal Commissioner took a decision to reduce the tenure of contract from 15 years to 5 years and to modify the amounts of form fees and EMD. Accordingly a corrigendum was published on 07.07.2018.

d) In the said process of tender notice No. 1826 modified by the corrigendum dated 07.07.2018, 4 bidders

participated and all four were found technically eligible. Out of the said 4 bidders, 3 bidders quoted rates for 5 years, whereas, the petitioner quoted rates for 15 years. Since the petitioner did not quote rates for 5 years as required under the corrigendum, the Municipal Corporation considered financial bids only in respect of balance three bidders. Respondent No. 4 was found to be H-1 and it was decided to award the contract to respondent No. 4. The then Collector – Municipal Commissioner approved the award of contract to respondent No. 4 subject to the condition of clearance of all dues. Respondent No. 4 deposited cheque of Rs. 60,00,000/- with the Municipal Corporation on 23.08.2018 towards its past dues. Thereafter, the work order dated 24.08.2018 was issued in favour of respondent No. 4 awarding the work for a period of 5 years.

13. The above chronology of events indicates that the entire theory of non finalization of tender process and issuance of extension order in favour of respondent No. 4 is totally misconceived. The petitioner was labouring under a complete misconception at the time of filing of the present petition. In this regard, it is pertinent to note that the petitioner had sufficient time to verify the facts before filing the misconceived petition. The work order was issued on 24.08.2018

and the present petition is filed more than a year later, on 24.09.2019. To make things worse, petitioner did not bother to correct its stand by amending the petition at least after gaining knowledge of factual position through counter replies filed by respondents. Rather, the petitioner chose to press the theory of non finalisation of tender and grant of extension even during arguments.

14. What pains us more is that the factum of issuance of corrigendum for reduction of tenure of contract from 15 years to 5 years, though was in the knowledge of the petitioner, has been suppressed in the petition. The petitioner has produced letter dated 16.08.2018 at Exh.-F to the petition, in which, it has not only referred to the corrigendum but also to the factum of reduction of tenure of contract from 15 years to 5 years. The petitioner also referred to the reduction of form fees of the tender effected by the corrigendum. Thus, the corrigendum dated 07.07.2018 was noticed by the petitioner on account of which it submitted the letter dated 16.08.2018 expressing willingness to work on the same rates for 5 years. However, despite the knowledge of the said corrigendum, the petitioner has suppressed the same in the petition.

15. Having participated in the tender process, it is difficult to believe that the petitioner did not get knowledge about the result of

the tender process. We disbelieve the stand of the petitioner that outcome of tender process was not made known by the Municipal Corporation. Ironically the Petitioner who feigns ignorance of outcome of tender process, is however in possession of financial bid of Respondent No. 4. Even though, the work order dated 24.08.2018 was issued in favour of respondent No. 4, as a result of finalization of tender process, the petitioner has filed the present petition by painting a picture as if the respondent Municipal Corporation did not finalize the tender process and extended a favour to respondent No. 4 by extending the earlier contract by 5 years. This entire assumption on the part of the petitioner has turned out to be utterly false.

16. On account of filing of such misconceived petition, we cannot go into the question of the rates quoted by the petitioner and respondent No. 4 and whether the respondent Municipal Corporation was justified in not considering the financial bid of the petitioner. We also do not wish to go into the issue of subsequent suspension of the General Body resolution by the State Government.

17. On the basis of material placed before us, we are satisfied that the work has been awarded by the respondent Municipal Corporation in favour of respondent No. 4 by finalizing the tender process. The award of such work is not an extension of the earlier

contract. If the petitioner was aggrieved by the rejection /non consideration of its financial bid the petitioner ought to have setup a timely challenge to the said action by properly structuring its petition. The petition is based on incorrect assumptions, which was filed more than a year after the award of contract to respondent No.

4. We, therefore, are not inclined to go into the said issue.

18. In the result, we have no hesitation in concluding that the petition is entirely misconceived and a gross abuse of process of law.

19. In the circumstances, the petition is dismissed with costs of Rs. 10,000/- (Rs. Ten Thousand Only).

20. The rule is discharged.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE

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