

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

WRIT PETITION NO. 3055 OF 2022

N.H. Patel Contractor through
its Proprietor N.H. Patel
V/s

.. Petitioner

The State of Maharashtra
thr. Its Principal Secretary Urban
Development Dept and Anr.

.. Respondent

Mr. R.S. Kohli a/w Chandni Bhatt i/b M/s. C.K. Legal for the
Petitioner.

Mr. A.I. Patel, Addl. GP for the Respondent- State.

Mr. Vishwanath Patil for Respondent No. 2

**CORAM: A. A. SAYED &
ABHAY AHUJA, JJ.**

DATE : 31st MARCH 2022

P.C. :-

1. The Petitioner has filed this Petition seeking the following

reliefs :

“a) That this Hon’ble Court after having ascertaining the facts in the hand be pleased to hold and declare that the actions of the General Body of the Respondent No. 2- Corporation in passing the impugned Resolution No. 409 dated 21st January 2022 (Exhibit “J” to the present Petition) and the impugned recall E-Tender Notice No. 2021- 22 dated 11th

March 2022 bearing File No. SMC-28012(19)/74/2021-SMC- CHIEF ACCT (Exhibit "L" to the present Petition) are per se arbitrary, mala fide, illegal and void ab initio;

b) That this Hon'ble Court be pleased to issue a Writ of Certiorari and/or any writ, order or direction in the nature of certiorari thereby quashing and setting aside the impugned Resolution No. 409 dated 21st January 2022 passed by the General body of the Respondent No. 2- Corporation (Exhibit "J" to the present Petition);

c) That this Hon'ble Court be pleased to issue a Writ of Certiorari and/or any writ, order or direction in the nature of certiorari thereby quashing and setting aside the impugned recall E-Tender Notice No. 2021- 22 dated 11th March 2022 bearing File No. SMC-28012(19)/74/2021-SMC- CHIEF ACCT (Exhibit "L" to the present Petition);

d) That this Hon'ble Court be pleased to issue a Writ of Mandamus and/or any writ, order or directions in the nature of mandamus thereby directing the Respondent No. 2- Corporation to complete the Tender process as per the provisions of law and accordingly award the work of the Tender Reference No. CW/SWM/01/2021-22 dated 27th September 2021 in favour of the Petitioner and execute the necessary Work Order and Agreement within such fixed period of time as this Hon'ble Court may deem fit and proper;

2. The Respondent No. 2- Solapur Municipal Corporation issued an e-Tender inviting bids for appointment of a Contractor for providing driver, labour, security guards and technical staff for solid waste management for the departments of the Corporation. According to the Petitioner, as per the technical evaluation, out of 11 bids received by the Respondent-Corporation, 5 bidders stood disqualified at the technical evaluation stage; hence the financial bids of the remaining 6 bidders were opened by the Respondent-Corporation. The Petitioner emerged as L-1 bidder having quoted the lowest price/rate.

3. The rate quoted by Petitioner was Rs.0.001 of service charges per employee. On 18th November 2021, the Respondent-Corporation addressed a communication calling upon the Petitioner to explain as to how the Petitioner was going to perform the contract at such a low rate of service charges. The Petitioner replied assuring the Respondent-Corporation that the work shall be successfully completed as required under the Tender. The proposal was put up by Commissioner before the General Body meeting of the Respondent-Corporation which

vide the impugned Resolution directed re-tendering on the ground that the rate of Rs. 0.001 was low and would be detrimental to the interest of Municipal Corporation.

4. Having heard learned Counsel for the Petitioner and the Respondent-Corporation, we are not inclined to grant any relief to the Petitioner. The decision for re-tendering was of the General Body of the Respondent-Corporation. Learned Counsel for the Petitioner does not dispute that the price quoted by the Petitioner is very low and it is possible that the Petitioner may not make any profit. In our view, the Respondent-Corporation is the best judge to decide whether the granting such tender would be detrimental to the interest of the Respondent-Corporation. The General Body has observed that the administration had recommended the proposal under pressure of somebody. If the General Body has found that at such low rate the quality of service to be provided by the Petitioner would be compromised by observing that it would be detrimental to the interest of the Respondent-Corporation, we, in the exercise of writ jurisdiction would not by a writ of mandamus direct the Respondent-Corporation to grant the Tender to the Petitioner. This is not a

case where the Tender is being granted to another bidder by showing undue favour ignoring the Petitioner, who is the L-1. Bidder. The work order has not been issued nor has any Agreement has been executed by the Respondent-Corporation. If the Petitioner is still aggrieved by the wrongful denial of Tender to him as alleged, it is always open for him to file a suit claiming damages.

5. We are informed that the fresh tender has already been issued and the Petitioner has participated in the pre-bid meeting and last date of the submission of the fresh tender is 4th April 2022. The Petitioner may participate in the fresh Tender, if he so desires.

6. In the circumstances, we find that this is not a fit case to exercise the discretionary and extraordinary jurisdiction of the Court. The Petition is accordingly dismissed.

(ABHAY AHUJA, J.)

(A. A. SAYED, J.)