

BASAVRAJ
GURAPPA
PATIL

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8273 OF 2021

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Vets Society for Animal Welfare
and Rural Development,
Haing office at BN-414, Road No.5,
Balaram Nagar, Safil Guda,
Malkajgiri, Hyderabad-27
Through its Authorized Representative Petitioner

Vs.

- 1 The State of Maharashtra
To be served through
Government Pleader,
High Court, Mumbai
- 2 Kalyan Dombivli Municipal Corporation
Through its Commissioner,
Shankarrao Chowk, Bazarpeth Road,
Kalyan, Dist. Thane
- 3 The Medical Officer of Health,
Kalyan Dombivli Municipal Corporation
Through its Commissioner,
Shankarrao Chowk, Bazarpeth Road,
Kalyan, Dist. Thane
- 4 Jeev Raksha Animal Welfare Trust
Pune, Having its office at
407, Building No.2, Gera Garden,
Koregoan Park, Main Road,
Pune - 411001 Respondents

Mr. Sandesh Deshpande for the Petitioner
Ms. K. N. Solunke, AGP for the State
Mr. A. S. Rao for Respondent Nos.2 and 3
Mr. Sanjeev Kadam for Respondent No.4

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

DATED : JANUARY 13, 2022

P.C.

Heard.

Rule.

Learned Counsel for the Respondent waives service.

By consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2 The Petitioner is aggrieved by the declaration of Respondent No.4 as one of the eligible bidders along with the Petitioner in the tender floated by second Respondent with respect to the sterilization and immunization of stray dogs.

3 Petitioner's case is that by order / decision dated 22.10.2021 which held Respondent No.4 (as well as Petitioner) as technically qualified and eligible for the commercial bid of Respondent No.2 Corporation with respect to the Animal Birth Control Program (ABC) is a result of favouritism and partiality shown by Respondent No.2 to Respondent No.4.

4 According to Petitioner, Respondent No.4 does not possess the eligibility criteria of having carried out at least 10,000 sterilizations in the last 3 years inasmuch as it does not have such certificate of expertise from the Authority which according to Petitioner, is Respondent No.2 Corporation. Learned counsel for the Petitioner submits that the most important criteria in the field of sterilization and immunization of dogs is experience and Respondent No.4 has not obtained the certificate from the Authority but has only given a self declared experience certificate according to which Respondent No.4 carried out 9621 operations of dogs sterilization and 7488 sterilization of dogs within the limits of Pimpri Chinchwad Municipal Corporation (PCMC).

5 Learned counsel for Petitioner Trust has drawn attention of this Court to the earlier decision of the Kalyan Dombivali Municipal Corporation dated 20.08.2021 in respect of an earlier tender and submits that after the opening of said tender, Respondent No.4 was found not to be complying with the condition of sterilization of 10,000 dogs as it had experience of sterilization of 7,488 dogs within the limits of Pimpri Chinchwad Municipal Corporation whereas

the condition was minimum of 10,000 dogs. The said Trust had produced a self declared experience certificate stating that they had carried out 9621 operations of dogs' sterilization in addition. However, the Kalyan Dombivali Municipal Corporation (the "KDMC") had rejected the same as not being in compliance with the tender conditions. He further submits that the said Corporation is seeking to favour the Respondent No.4 and also alleges bias.

6 Learned counsel for Petitioner Trust also invites attention of this Court to the tender notice NO.08/2021-2022 dated 13th .July 2021. He refers to clause 2 of the Request for Proposal (RFP) and Instructions to Bidders where under the Head Details of Project, he submits, that the name of the Authority therein is referred to as Kalyan Dombivali Municipal Corporation. He also refers to clause 3 with respect to the eligibility to submit that in Clause 3.7 one of the conditions for eligibility is that the agency should have carried out 10,000 dogs' sterilization in the last 3 years and that the Agency shall provide experience certificate issued by the said Authority for conducting the Animal Birth Control program.

7 Learned Counsel for Petitioner further draws attention of this Court to the decision of the Hon'ble Supreme Court in the case of ***Animal Welfare Board of India Vs. People for Elimination of Stray Troubles & Ors. in SLP (C) No.691 of 2009*** and submits that under section 2(e) of the Prevention of Cruelty to Animals Act 1960 (the "SPCA Act"), "local authority" has been defined to mean "municipal committee, district Board or other Authority for the time being invested by law with the control and administration of any matters within a specified local area." He, therefore, submits that the Authority referred to in the tender documents is KDMC - viz the Respondent No.2 in the petition. He, submits that therefore Respondent No.4 is technically disqualified inasmuch he does not possess a certificate from the KDMC of having conducted minimum 10,000 dogs' sterilization in the last 3 years and therefore, not eligible to participate in the commercial / financial bidding. He submits that Respondent No.2 Corporation has not only deviated from the tender conditions accepting the self certification by Respondent No.4, but which also shows that Respondent Corporation has acted in a manner showing favouritism to Respondent

No.4, therefore, this Court should quash and set aside the order / decision dated 22.10.2021 finding Respondent No.4, to be technically qualified and eligible to participate in the commercial bid.

8 An Affidavit in Reply dated December 2021 has been filed on behalf of Respondent NO.4 Trust denying favouritism or illegality. Mr. Sanjeev Kadam, Learned counsel for Respondent No.4 would submit that the Trust has vast experience in the field of animal birth control and not just in respect of dogs but also other animals. He submits that the Trust has been awarded work for dogs under the said program by the PCMC, which is one of the largest corporations in the State and the said Corporation has certified the Trust as having completed sterilization of 7488 dogs till date. Learned counsel submits that the tender notice published by Respondent No.2 Corporation has prescribed eligibility criteria under Clause 3. Clause 3.7 mentions that the bidding agency should have successfully carried out 10,000 dogs' sterilization in the last 3 years and the agency is directed to provide experience certificate issued by the said authority. He submits that however the said tender notice does not prescribe the definition of "said

authority” under Clause 5 laying down definitions. He would submit that the said authority need not be a statutory authority. He further submits that in the last 3 years, the Trust has completed more than 17000 sterilizations for corporations and other organizations in the field of Animal Birth Control and considering the same, the Corporation has taken a conscious decision to consider the Respondent No.4 also eligible and thereafter to open the commercial bid. He further submits that in the absence of the requirement of providing sterilization certificate from a particular authority, in view of information and certificates provided on record, the impugned order dated 22/10/2021 is perfectly legal and valid and the Petition ought to be dismissed. Learned Counsel takes us through various certificates and commendations received by the Trust, which are on pages 82 to 98 of the Reply for the work done in the field of Animal Birth Control. He submits that since the tender does not define the phrase “said Authority” in Clause 5 laying down the definition, there was nothing wrong in the Corporation accepting the self certification by Respondent No.4 considering that the Trust has done considerable work in the field of animal welfare and that the

same was founded by none other than Ms. Claude Leela Parulekar, a well known animal rights activist who was a pioneer in the formation and implementation of the policy of Animal Birth Control Program in the State of Maharashtra. He also submits that she was awarded with Lord Mahavir Award in the year 2001, the Venu Menon Animal Allies Award in the year 2002 and has received several awards and accolades for taking care of and protecting not only dogs but also other animals such as, cows, bullocks, donkeys, buffaloes, birds, cats, goats and horses. Learned Counsel for the Respondent No.4 Trust submits that the Trust provides ABC services to several NGOs in India by way of Free Sterilization Camps for dogs having infrastructure such as vehicles, special teams and expertise to carry out surgeries in various camps on a weekly, fortnightly, monthly basis. It is also submitted that Respondent No.4 Trust has also provided dog food for generously feeding street dogs during the pandemic and fodder to several hundred horses during the lockdown. It is contended that the Respondent No.4 is known for its work of welfare of dogs and other animals. He submits that therefore the Petition is liable to be dismissed and the same

be finalized and allotted.

9 Affidavit in Reply on behalf of Respondent No.2 and Respondent No.3 (Corporation) has also been filed. Learned counsel for the Corporation Mr. Rao would submit that the allegations made by Petitioner are baseless, unfounded, misconceived and ought to be rejected. The commercial bids have already been opened and the Corporation is yet to take decision with regard to the allotment of the tender. He submits that with a view to reduce the menace of stray dogs but without causing harm to them as per the provisions of the Animal Welfare Protection Act and the guidelines by Hon'ble Supreme Court of India as well as the Animal Welfare Board of India, the Respondent Corporation has the duty to implement sterilization and immunization of dogs and also a duty under the Society for Prevention of Cruelty to Animals Act to provide infrastructure for the removal of street dogs. Accordingly, the Corporation from time to time issues tenders for appointment of agencies for ABC program. He further submits that Petitioner has earlier been awarded the said contract for the period which expired in 2019. However, since no tender could be issued, Petitioner had been continued with ABC services for more

than 2 years without any tender. He submits that the Hon'ble Supreme Court has also emphasized the urgent need for sterilization and immunization of stray dogs and therefore tender notice No.08/2021-22 with RFP was issued for inviting an agency for carrying out the ABC program for sterilization and immunization of stray dogs in the limits of KDMC. He submits that as per the Tender, the eligibility criteria is that the bidder shall be registered company under the Companies Act or a society registered under the Societies Registration Act and should have permission from the Animal Welfare Board of India for conducting Animal Birth Control program and Anti Rabies Vaccination and further they should have annual turnover of Rs.50 Lakhs per annum for the last 3 years and the agency should have at least 5 years with the certificate of registration as Animal Welfare Organization from Animal Welfare Board of India. The Agency should have WVS Trained Doctors as per the Standard Operating Procedure (SOP) and further should have recognized institute trained dog catchers and should have carried out 10,000 dog sterilizations in last 3 years and also should have experience certificate issued by the said authority for conducting Animal Birth Control

Program.

10 He further submits that the said authority does not have to be a statutory authority. He submits that in response to the said tender 4 bids were received viz. from (i) Petitioner (ii) Respondent No.4 (iii) Navodaya Vet Society, Hyderabad, Telangana and (iv) Utakarsha Star Mitra Mandal, Mulund, Mumbai. Thereafter on 29.07.2021 the technical bids were opened and after opening the technical bids it was found that except Utkash Sagar Mitra Mandal, Mulund, three of the bidders were found eligible. Accordingly, the Utkash Star Mitra Mandal's bid came to be rejected. Thereafter, the scrutiny report was placed before the Scrutiny Committee. The Scrutiny Committee found that the Petitioner is the existing agency and is fulfilling all the criteria of the tender and so far as the Respondent No.4 was concerned, it was found that the Respondent NO.4 had annexed a certificate issued by the Pimpri Chinchwad Municipal Corporation stating that he Respondent No.4 has conducted 7488 dogs sterilization and further submitted his certificate that the Respondent No.4 has carried out about 9621 dogs sterilizations totaling to 17109 during the last 3

years. It is submitted that though Respondent No.4 has not annexed certificate issued by the authorities in respect of 9621 dogs' sterilization, however taking into consideration that the Respondent No.4 is one of the oldest and experienced organizations in the field, the technical bid of the Respondent No.4 was accepted. Thereafter, the commercial bids have been opened and it was found that Respondent No.4 is the lowest bidder.

11 It is submitted that Respondent No.4 has conducted the ABC program in respect of 7488 dogs under PCMC but for the balance 9621 dogs it has done the same for many other organizations but not under any other authority such as Municipal Council / Corporation, etc and hence the NGO's certification and self declaration by Respondent No.4 has been accepted. He further submits that as the said authority does not have to be a statutory authority, the contention that Respondent No.4 has not adhered to the tender conditions is incorrect.

12 It is submitted on behalf of the Respondent KDMC that neither under the Act nor under the guidelines or circulars

issued by the Animal Welfare Board of India, is there any definition of authority for certification of the ABC program, which submission has not been disputed by the Petitioner. He submits that a slew of guidelines for conducting Animal Birth Control Program and for appointment of the agencies and eligibility criteria for recognition of agencies etc were issued by the Animal Welfare Board of India but there is no such definition. It is further submitted that therefore there is no merit in the contention of Petitioner that the Respondent No.4 has been wrongly qualified for opening of commercial bid. With respect to the contention of Petitioner that the Respondent No.4 has not complied the condition contained in clause No.3.7 of the tender document, it is submitted that wherever Animal Birth Control Program were conducted under a particular authority, Respondent No.4 has submitted the certificate of that authority, but where the Animal Birth Control Program is not conducted under any authority the NGO certification and self declaration certificate should be sufficient compliance of the tender condition. It is submitted that hence there is no merit in the contentions of the Petitioner.

13 He submits that the Petition is therefore devoid of

merits and liable to be dismissed and this Court direct award of contract as per law.

14 We have heard the Learned Counsel for the parties and with their able assistance perused the papers and proceedings.

15 The only issue to be considered by this Court is whether the Respondent No.2 Corporation was right in accepting the self certification in respect of 9621 operations of dogs' sterilization holding it technically qualified and allowed to participate in the commercial bidding process where it has been declared as the lower bidder.

16 The Hon'ble Supreme Court in the case of **TATA Cellular Vs. Union on India, (1994) 6 SCC 651** has elaborately discussed the scope of judicial review in government contracts/tenders. The Hon'ble Supreme Court has observed that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it has been stated that there are inherent limitations in the said exercise of that power of judicial review. Government is the guardian of the finances of the

State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. It has been observed in the said judgment that judicial quest in administrative matters is to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy. Therefore, though they may not be essentially justifiable, the need is to remedy any unfairness which can be set right by judicial review. Like in England observation of judicial restraint is also the mood in India. The power of judicial review is to be exercised to rein in any unbridled executive functioning. The power of judicial review is concerned with the decision making process, but not reviewing the merits of a decision, in support of which the application for judicial

review is made. In short, judicial review does not imply an appeal of a decision, but a review of the manner in which the decision was made.

17 It is evident that Clause 5 of the Tender condition nowhere defines the phrase “said Authority” from whom a bidder is required to provide experience certificate though there is a reference to the authority as KDMC under the head, Details of Project. But that by itself cannot be a definition of authority. True also that in the case of Animal Welfare Board (supra) under Section 2(e) of the SPCA Act, local authority has been defined to mean “municipal committee, district board or other authority” being invested for the time being with the control and administration of any matters within a specified local area but that is not the case here with reference to the said tender. Moreover, there is no authority defined under the Act or under the guidelines for certification of the ABC program nor is there any such requirement. It is not in dispute that Respondent No.4 has met all the eligibility criteria such as being a registered trust, having been registered with the Animal Welfare Board of India with permission for conduct of ABC

etc programs, the required turnover, WVS Trained Doctors etc. With respect to the condition of 10,000 dogs' sterilization, we observe that Respondent No.4 has received certification from PCMC in respect of sterilization of 7,488 dogs and also certificates of completion from various NGOs in respect of the balance 9621 dog sterilization, has the necessary infrastructure of vehicles, equipments, resources and the funds as stated in its Affidavit in Reply, which has not been controverted by Petitioner.

18 In the facts of the present case and considering the nature of the tender, the Respondent No.4, a more experienced and proficient bidder, cannot be excluded simply because it does not possess an experience certificate from the Corporation which is not a requirement even according to the Corporation. This Court also cannot step into the shoes of the Respondent Corporation to decide on the technical criteria authored and assessed by the Corporation in the assessment and award of a contract based on a public tender. Unless there is a proved fraud or malafides or perversity, a tendering body is best placed to understand, appreciate, interpret and decide on the same.

The Respondent Corporation is best placed to assess the technical expertise of the bidders in the stray dogs sterilization and immunisation process and in the implementation of the ABC program. In this context, paragraph 23 to 26 of the Hon'ble Supreme Court's decision in the case of **State of Madhya Pradesh and Anr Vs. U.P. State Bridge Corporation Ltd. and Anr. 2020 SCC OnLine SC 1001** are apt and are quoted as under:

23 In Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622, this Court held as follows:

“47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in [Ramana Dayaram Shetty \[Ramana Dayaram Shetty v. International Airport Authority of India, \(1979\) 3 SCC 489\]](#) the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in [Tata Cellular \[Tata Cellular v. Union of India, \(1994\) 6 SCC 651\]](#) there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision “that no responsible authority acting reasonably and in accordance with relevant law could have reached” as held in [Jagdish Mandal \[Jagdish Mandal v. State of](#)

Orissa, (2007) 14 SCC 517] followed in Michigan Rubber [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216] .

48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] . However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot.”

24. Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818, puts the proposition extremely well when it states:

“14. We must reiterate the words of caution that this Court has stated right from the time when Ramana Dayaram Shetty v. International Airport Authority of India [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] was decided almost 40 years ago, namely, that the words used in the tender documents cannot be ignored or treated as redundant or superfluous – they must be given meaning and their necessary significance. In this context, the use of the word “metro” in Clause 4.2(a) of Section III of the bid documents and its connotation in ordinary parlance cannot be overlooked.

15. We may add that the owner or the employer of a project, having authored the tender

documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

25. This view of the law has been subsequently reiterated and followed in [Montecarlo Ltd. v. NTPC Ltd.](#), (2016) 15 SCC 272 (see paragraph 25 at page 287) and *Caratel Infotech (supra)* (see paragraphs 38-39 at pages 92-93).

26. Judged by these parameters, it is clear that this Court must defer to the understanding of clauses in tender documents by the author thereof unless, pithily put, there is perversity in the author’s construction of the documents or mala fides.....”

19 We note that Petitioner has not been able to place before us any material which demonstrates fraud or malafides or perversity and on the basis of mere allegations, tenders of this nature and the tender process cannot be interfered with.

20 Keeping in mind the principles with respect to the scope of Judicial review under Article 226 of the Constitution of India laid down in the case of *Tata Cellular*

(supra), in the case at hand, the Respondent-KDMC has chosen to go ahead with Respondent No.4 in the implementation of the ABC program which in its opinion is the best person and, therefore, no fault can be found with the exercise of choice made by Respondent-KDMC.

21 Petitioner has alleged bias against the Respondent-KDMC. Before dwelling on this allegation, it would be important to appreciate that the rule of bias is founded on the well-known maxim '*nemo debet esse judex in propria causa*' which means that no person can be a judge in his own cause. As observed in the case of **TATA Cellular (supra)** bias means a real likelihood of an operative prejudice, whether conscious or unconscious. Vague suspicions of whimsical, capricious and unreasonable people should not be made a standard to regulate judicial action.

22 In the facts of this case, we are unable to comprehend as to how the Corporation would be biased in favour of Respondent No.4. Prima facie, if at all any bias could have been alleged that would have been in favour of Petitioner, as Petitioner was already having a contract earlier and despite

the completion of term in 2019, continues to render the services till the new contract is awarded.

23 In view of the above discussion and in the absence of any malafides or perversity and keeping in mind the urgency and the thrust of the Hon'ble Supreme Court in the implementation of the ABC program, as observed in the decision in the case of Animal Welfare Board of India (supra) and considering the law enunciated in the case of State of Madhya Pradesh & Anr. (Supra), we defer to the interpretation of the tender conditions by the Respondent Corporation.

24 In this view of the matter, we are not inclined to interfere. Petition is dismissed. Rule is discharged. The Respondent Corporation is directed to award the tender in accordance with law. No order as to costs.

(ABHAY AHUJA,J.)

(A.A.SAYED,J.)