

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

WRIT PETITION NO. 9407 OF 2021

Sumit Sports Pvt. Ltd. ... Petitioner
Versus
Pimpri Chinchwad Municipal Corporation & Ors ... Respondents

Mr. Suryajeet P. Chavan a/w. Adv. Shyam K. Singh i/b. One Legal
for the Petitioner.

Mr. A. M. Kulkarni a/w. Adv. Akanksha Helaskar for the Respondent
No. 4-COEP

Mr. Y. D. Patil, AGP for State.

Mr. Kedar Dighe for Respondent Nos. 1 to 3-Corporation.

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

DATED : 16th FEBRUARY, 2022

P.C.:

The Petition is filed challenging the decision of the Respondent-Corporation dated 17th December, 2021 disqualifying the Petitioner in the technical bid.

2. On 19.07.2021 the Respondent-Corporation had published a tender notice for supply of machinery for open Gymnasium. The Petitioner's name was not included by the Respondent-Corporation in the list of bidders who had qualified. According to the Respondent-Corporation, as per the inspection Report of the Respondent No. 4-College of Engineering, Pune (COEP) and NABL

Report, the Petitioner's machinery/equipment did not meet with the specifications in the tender document.

3. The grievance of the Petitioner is that inspection and tests were not conducted on the equipment/machinery of the Petitioner and no evaluation was done. According to the Petitioner, this is evident from the photographs which shows that even the packaging was not removed from the equipment/machinery of the Petitioner.

4. Reference may be made to Clause 2 and 17 of the tender document. They read thus:

Clause 2 -

In respect of the aforesaid documents, persons who have applied for tender and who are qualified for Technical Evaluation (first packet) shall deposit with the Sports Division, within a period of 7 days, 1 set of 13 equipments mentioned in the schedule of the tender with specifications as provided for in the schedule of the tender along with test report of NABL lab certifying that the items are as per the specification provided in the schedule of the tender and provide acknowledgment to the Central Store Department of the fact that the equipment have been deposited.

Clause 17 -

The equipment supplied shall be subjected to technical inspection by Government Engineering College, Pune as per requirement.

5. On 23rd December, 2021, we had passed the following order:

"1. Learned Counsel for the Respondent has tendered

Affidavit-in-Reply. Rejoinder, if any, to be filed before the next date.

2. Our attention is invited to the photographs annexed at pages Nos. 39 to 49 of the Petition. It is contended that the tests which are said to have been conducted, could not have been conducted on the gymnasium equipment of the Petitioners which are in packaged condition.

3. List the Petition on 12th January 2022, high on board.

4. Until the next date, no work order shall be issued.”

6. The Respondent-Corporation has filed Affidavit-in-Reply. In the Affidavit-in-Reply, it is pointed out that in all 19 bidders had participated in the bid and after the scrutiny of the documents, 8 bidders were selected in the bidding process. At this stage, the Petitioner had qualified. Thereafter, the Petitioner submitted 13 sample equipments alongwith NABL Report to the Sports Department. Six other bidders also submitted their equipment to the Sports Department. Out of the 8 bidders which were shortlisted after scrutiny of documents, only 7 bidders submitted their equipment and NABL Report supporting the technical specification of their equipment.

7. After hearing the matter on couple of occasions, we had directed the Respondent No. 4-COEP to file Affidavit-in-Reply. In

the Affidavit-in-Reply which has been tendered today by the Respondent No. 4-COEP in paragraph nos. 4, 8, 9 & 10 it is stated as follows:

4. The Respondent is College of Engineering Pune (hereinafter referred to as 'COEP') is an autonomous institute of the Government of Maharashtra, situated in Pune, Maharashtra, India. Established in 1854 it is the 3rd oldest engineering college in India, after Guindy College of Engineering Chennai and IIT Roorkee). It was the first technical institution in India to offer Mechanical Engineering.

8. Thereafter on 02.12.2021 and 10.12.2021 the technical evaluation/inspection was carried out by the COEP team by actually visiting the sight namely Meenatai Thackerey Yamuna Nagar Skating, Yamuna Nagar sector 21, Nigdi. At this juncture, I may submit that the Petitioner has challenged the evaluation done by the COEP on the alleged sole ground that inspection/evaluation was carried out without removing packaging material on the samples. At the cost of repetition, I say that on no other ground the inspection/evaluation by the COEP is challenged by the Petitioner. I most emphatically deny the said allegation as not at all true and correct. In this regard I may clarify that all the samples of all the bidders were examined by the COEP team removing/tearing off the packaging material as was sufficient and necessary. I say that there are various parts/assemblies which are common in all the gym equipment of the particular the manufacturer of which samples were submitted by the respective bidders. Therefore, it is sufficient to remove or tear off required portion of the packaging material from such part or assembly for the purpose of carrying out technical inspection. In such case it is not necessary to remove entire Packaging material as there cannot be any change or difference in the said part or assembly in the entire equipment. Thus, the said exercise was duly

carried out by the COEP team. There is no merit in the allegation of the Petitioner that the inspection was carried out without removing packaging material. This aspect is clear from the photographs available on record of this Petition.

9. Accordingly, the COEP submitted its report dated 14.12.2021 to PCMC with its findings to the specific mandate.

10. I further say that although the Petitioner has not raised this ground, there is reference to one earlier report from COEP in the letters issued by Petitioner to PCMC on 17.12.2021 and to COEP on 18.12.2021. In this regard I would clarify the Petitioner has not come to the court with clean hands. I say that although it was not necessary as per the tender conditions the Petitioner approached COEP on 04.10.2021 with a request to conduct technical inspection of the gym equipment purportedly required as per the E-tender. It is most important to note that the said samples were kept available in the company premises of the Petitioner, meaning thereby that the said samples were and are not the same which are inspected by the COEP team on 02.12.2021 and 10.12.2021. I further say that as per the request of PCMC the COEP had appointed me to carry out the technical inspection. However, the job in terms of Petitioner's letter dated 04.10.2021 was not brought to my notice and the HOD of mechanical engineering department assigned this job to Professor S. S. Mohite and Dr. M. P. Khond, considering the same to be routine job. Thus, the different team carried out the inspection and submitted its report to the Petitioner on 29.10.2021. Upon perusal of the said report, it is clear that the Petitioner had given only 26 reports to the said committee while the reports given to PCMC which were forwarded to COEP were in all 55. The reason of this difference is that all 55 reports are not issued by NABL accredited laboratory. It is important to note that in respect of same assembly or equipment the same laboratory has given report for certain

aspects which are in tune with the NABL specification. In respect of some other aspects, the same laboratory has given reports with a clear-cut disclaimer that the same are not covered under the scope accredited by NABL. On the other hand, in 8 reports out of these 26 were found to be incomplete when compared with NABL reports submitted to PCMC. In other onwards had the Petitioner submitted even those reports which are not as per NABL specifications before this committee the result would not have been the same as now sought to be relied upon by the Petitioners. Thus, the Petitioner has misled the COEP, firstly by independently approaching COEP under the garb of tender condition and secondly by submitting inadequate certificates. Even otherwise the inspection report of this committee clearly states that the said report is valid only for the equipment available at the destinations i.e., Petitioner company premises. It further records that physical inspection is done and found as per the tender specifications with tolerance of $\pm 5\%$, meaning thereby that the same were not as per the tender conditions. Even in the concluding remarks no observations/ comments about the authenticity/ compliance of class/ grade/ compositions are mentioned. Under these circumstances the Petitioner is not entitled to rely upon such a report.

8. Learned Counsel for the Respondent-Corporation has invited our attention to copy of the Report of the Respondent No. 4-CEOP. The observations in the said Report of CEOP about the 'dimensions' and 'NABL certificates' of the Petitioner's machinery/ equipment are extracted hereunder:

"1. The certificates for overall dimensions of all the Open Gym equipments issued by 24K MECH Laboratories as per Table 'A' above are observed oversize than specified in tender document.

2. The reports issued by 24K MECH Laboratories entitled 'Calibration Certificates' in support of the overall dimensions are observed to be inconsistent. These certificates themselves assert, "The certificate only refers to instruments and gauges submitted for calibration" (refer Terms & Condition number 1 on the certificates, pg. no. II/12 to 24).
3. All the Calibration Certificates are issued by 24K MECH Laboratories without NABL logo or without any evidence of NABL accreditation, and these certificates detail the dimensions of the Gym equipments submitted for inspection.
4. The test reports and calibration certificates issued by 24K MECH Laboratories are printed on two different letter heads with and without NABL logo respectively.
5. The test reports submitted for chemical composition issued by ELCA Quality Systems & Calibrations Pvt. Ltd. are observed to be incomplete (without conclusive remark to ascertain the chemical composition as specified in tender document) & inconsistent. (Refer to pg. No. II/31 to 92)
6. The participant has submitted Calibration Certificates in support of the specification; issued by 24K MECH Laboratories as mentioned in 1 and 2 above are not observed to be NABL accredited. Moreover, the participant has also submitted inspection reports issued by COEP (refer to pg. no. II/03 to 11) out of own interest which also report the overall size as 'oversize'.
7. The overall dimensions recorded at site as cited in Table 'A' above are also observed to be oversized
8. Test reports issued by 24K MECH Laboratories (NABL accredited) for powder coating and square GI pipe only are consistent with tender document and fulfill the criteria. (refer to pg. no. II/25, 27 to 30 and Sr. No. 1 and 3 in Table B above).
9. The Bearing of one of the Gym Equipments has been inspected and observed to be as per the requirements of the tender document. The sample and the original NABL reports are retained by the institute."

9. The scope of judicial review in tender matters is limited. It is well settled that employer who has floated the tender document is a best person to understand and appreciate its requirements and interpret its documents. In **Montecarlo Ltd vs. NDPC Ltd., (2016) 15 SCC 272**, the Supreme Court held that if a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the Court should follow the principle of restraint. Technical evaluation or comparison by the Court would be impermissible.

10. In the teeth of the Report of the expert and in absence of any averments in the 'Petition' of malafide or favoritism or collusion, in our view, this is not a fit case to exercise the extra-ordinary writ jurisdiction of the Court. We are not inclined go into the technical evaluation made by the Respondent No. 4-CEOP which would tantamount to picking holes in the Report of the expert. The submission that such tests were not carried out in respect of other bidders is denied by the Respondents.

11. In view of the above, and the disputed questions of facts involved, we are not inclined to entertain the Petition. The Petition is accordingly dismissed. No order as to cost.

12. It is always open for the Petitioner to file a suit claiming damages, if so advised.

13. Learned Counsel for the Petitioner seeks continuation of the ad-interim relief for a period of 4 weeks. The prayer is refused.

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(ABHAY AHUJA, J.)

(A. A. SAYED, J.)