

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3457 OF 2022

Sandip s/o Trymbakrao Dhoble,
aged about 50 years, Occupation :
Business/Contractor, r/o 9,
Vidarbha Housing Colony, Near
Maltekdi, Camp, Amravati,
Tq. and District Amravati

... Petitioner

-versus-

1. Collector, Amravati,
Tq. and District Amravati
2. Municipal Council Morshi,
through its Chief Officer,
Morshi, Tq. Morshi,
District Amravati
3. Jitendra Prabhakarrao Gedam,
aged adult, Occupation : Ex-Vice
President, Municipal Council, Morshi,
r/o Jawahar Colony, near Water Tank,
Morshi, Tq. Morshi, District Amravati

... Respondents

.....

Shri J. B. Kasat, Advocate for petitioner.
Ms N. P. Mehta, Assistant Government Pleader for respondent No.1.
Shri A. B. Patil, Advocate for respondent No.2.

.....

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE : August 04, 2022

Judgment : (Per : A. S. Chandurkar, J.)

In view of notice for final disposal issued earlier, the learned
counsel for the parties have been heard by issuing **Rule** and making the
same returnable forthwith.

2. The facts relevant for considering the challenge raised in the writ petition to the order dated 13/06/2022 passed by the Collector thereby cancelling the tender process undertaken earlier and directing re-tendering of the work in question are that in view of grant received under 14th Finance Commission, Municipal Council Morshi passed Resolution No.73 on 18/01/2021 proposing and approving the work of development of 'Hindu Smashan Bhumi'. Budgetary allocation of Rs.69,92,628/- was granted technical sanction while the Collector on 18/01/2022 granted administrative approval for the same. On 15/03/2022 the Municipal Council issued a tender notice inviting bids for the aforesaid work to be submitted till 06/04/2022. The bids received were to be opened on 07/04/2022. As per Clause-13 of the tender notice, it was necessary for a bidder to survey the existing cremation ground and thereafter submit a development plan to the Municipal Council and obtain a certificate in that regard. Pursuant to the aforesaid tender notice various bids were received and it is the case of the petitioner that his bid was the lowest. The petitioner made necessary compliance with a view to be issued the Work Order. It appears that on 07/04/2022 itself a representation was received by the Collector to cancel the tender process on the ground that the said process had not been properly undertaken. Acting on that

representation the office of the Collector called upon the Administrator of the Municipal Council to submit a report after making necessary enquiry. Pursuant thereto the Chief Officer on 05/05/2022 submitted his report to the Collector and stated that as per the Maharashtra Municipal Council Audit Code, 2013 (for short, the Code of 2013), a Tender Evaluation Committee consisting of the Chief Officer, Accountant and Head of the concerned Department had been constituted. Eight bids had been received and alongwith three such bids, the development plan for the cremation ground had been submitted. Two bidders had not submitted such development plan and hence their bids were not considered. As regards three bids, since the plan submitted by them were found acceptable, they were taken into consideration. After this report was submitted, the Collector on 13/06/2022 observed that as per Clause-13 of the tender notice, a bidder was required to submit the development plan. According to the Collector such development plan ought to have been prepared earlier by the Municipal Council. Instead of doing so, the bidders were directed to prepare the development plan and obtain certificate of the Chief Officer. The Collector accordingly directed that said condition vide Clause-13 be cancelled and re-tendering be undertaken. Being aggrieved by the aforesaid direction, the petitioner who is the lowest bidder has challenged that order as well as the subsequent tender notice dated 15/07/2022 issued by the

Municipal Council deleting Clause-13 of the earlier tender notice.

3. Shri J. B. Kasat, learned counsel for the petitioner submitted that the Collector had no authority to cancel the entire tender process on the ground that Clause-13 in the tender notice dated 15/03/2022 was not proper. By that condition the bidders were required to submit a development plan of the cremation ground alongwith the tender document. Same was to be certified from the Municipal Council. There was no reason whatsoever to direct deletion of this condition especially when three bidders had submitted such development plan. The objection raised on 07/04/2022 was general in nature and same did not warrant cancellation of the entire process. The bid of the petitioner having been found to be the lowest and the petitioner having deposited the requisite amount with the Municipal Council, there was no reason to cancel the said tender process. Inviting attention to the reply filed on behalf of the Collector it was submitted that the Collector had made reference to the provisions of Section 320 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, the Act of 1965) as being the provision invoked for cancelling the tender process. The said provision conferred the power of review on the Collector but that contingency was not attracted in the present case since there was no order passed earlier by the Collector for being

reviewed. The said action as taken was therefore arbitrary and without any authority of law. It was prayed that the earlier tender process initiated vide notice dated 15/03/2022 ought to be taken to its logical end and the impugned order was liable to be set aside. He placed reliance on the decision in *Al-Waffi Agro Food Company, Balapur, Dist. Akola vs. State of Maharashtra and ors.* **2019(3) Mh.L.J. 899** to urge that even powers under Section 308 of the Act of 1965 could not be invoked in the present case.

4. Ms N. P. Mehta, learned Assistant Government Pleader for the respondent No.1 supported the impugned order. She referred to the affidavit in reply filed on record by the said respondent and submitted that since administrative approval was granted by the Collector on 18/01/2022, it was open for the Collector to reconsider the matter and exercise powers under Section 320 of the Act of 1965. In view of the complaint received by the Collector on 07/04/2022, a report was called from the Administrator of the Municipal Council and after receiving the same, the impugned action was taken. It was open for the petitioner to participate in the fresh tender process and hence no prejudice whatsoever was caused by cancellation of the earlier tender process. It was thus submitted that there was no ground to interfere in writ jurisdiction.

Shri A. B. Patil, learned counsel for the respondent No.3 submitted that the Municipal Council had proceeded in accordance with the procedure as prescribed in the said matter. The Tender Evaluation Committee had been constituted under Rule 466(4) of the Code of 2013. He submitted that the Municipal Council did not commit any illegality in the entire tender process.

5. We have heard the learned counsel for the parties and we have perused the documents on record. The issuance of tender notice dated 15/03/2022, submission of bids in that regard and the fact that the bid of the petitioner was lowest is undisputed. As per Clause-13 of the said tender notice a bidder was required to submit a development plan after surveying the existing cremation ground and obtain a certificate of the Municipal Council. The bids of those bidders that complied with the conditions of the tender notice were considered by the Tender Evaluation Committee which is clear from the report of the Chief Officer dated 05/05/2022. The said Committee was called upon to submit its report in view of the complaint dated 07/04/2022 received by the Office of the Collector. No irregularities were noticed by that Committee. After receiving this report, the Collector has proceeded to observe that Clause-13 with regard to preparation of the development plan was unwarranted and the same resulted in affecting the

competitiveness of bidders. For that reason the said condition was directed to be deleted and re-auction was directed to be undertaken. In the affidavit filed by the Collector reference has been made to the provisions of Section 320 of the Act of 1965 as being the source of power for cancelling the tender and directing a fresh tender process to be undertaken.

6. We find that pursuant to the complaint dated 07/04/2022 the Assistant Commissioner, Town Planning Department of the Office of the Collector had directed the Administrator of the Municipal Council to make an enquiry into the matter. The Chief Officer accordingly submitted the enquiry report on 05/05/2022 and it did not notice any irregularity in the tender process. Even the complaint dated 07/04/2022 is in general terms and has been made after the last date of submission of bids when the said bids were opened. The Collector in the impugned order has observed that Clause-13 resulted in restricting the competitiveness in the tender process. The material on record does not indicate any such aspect being mentioned in the report of the Chief Officer. We do not find any material on record that would support the conclusion of the Collector that Clause-13 resulted in the tender process not being fair or transparent. Even the resort to the provisions of Section 320 of the Act of 1965 is uncalled for, for the reason that the

said provision confers the power of review on the State Government or the Director or the Collector to review an order passed by such Authority or any sanction given or approval given under the Act of 1965. Proviso(iii) to the said Section stipulates the contingency that an order can be varied or reviewed and insofar as an order affecting any question of right between the private parties, the same cannot be reviewed except on the application of a party to the proceedings. In the present case, the Collector has proceeded to review Clause-13 in the tender notice when, in fact, such tender notice was issued by the Chief Officer and not the Collector. Moreover, the power of review is stated to be invoked without there being any application in that regard by a party to the proceedings as contemplated by proviso (iii) of Section 320 of the Act of 1965.

We therefore find that neither is there any material on record to hold that Clause-13 in the tender notice resulted in affecting the competitiveness nor was there any order passed by the Collector to be reviewed by invoking the power under Section 320 of the Act of 1965. In any event, the contingency prescribed by proviso (iii) to Section 320 of the Act of 1965 is also not satisfied. There being no challenge by any bidder to the tender conditions and the fact that the entire process was completed after which a complaint was made by persons who were not bidders has prompted the Collector to pass the impugned order. We find

that there is no justifiable cause to cancel Clause-13 in the tender notice and thereafter direct a fresh tender process.

7. For aforesaid reasons, the order dated 13/06/2022 passed by the Collector is set aside. It is directed that the tender process that had commenced pursuant to the tender notice dated 15/03/2022 shall be taken to its logical end in accordance with law.

Rule is made absolute in aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Asmita