IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7514 OF 2023

Vishwjeet Ashok Jadhav .. Petitioner

Versus

The Municipal Commissioner,
Aurangabad Municipal Corporation
Aurangabad .. Respondent

Shri N. T. Tribhuwan, Advocate for the Petitioner.
Shri Anand P. Bhandari, Advocate for the Respondent sole.

CORAM : MANGESH S. PATIL AND SHAILESH P. BRAHME, JJ.
DATE : 15 SEPTEMBER 2023.

<u>**FINAL ORDER**</u> **(Per Shailesh P. Brahme, J.) :-**

. Hears learned counsel for the respective sides finally at the admission stage.

2. The petitioner is seeking direction to allot him a shop being successful bidder in E-tender notice dated 19.04.2023. Despite his readiness to pay an amount of Rs. 31,40,000/-, the respondent corporation has deprived him the fruits of the tender process.

3. The respondent corporation floated E-tender process for allotment of shops located at T. V. Center at Aurangabad vide tender notice dated 19.04.2023. The subject matter is shop No. 22, which is reserved for disabled person from reserved category. The upset price was stated to be Rs. 22,27,500/-. The petitioner

was eligible being handicapped and belonging to reserved category. He applied for the Shop No. 22.

4. There were five bids for the shop in question. The petitioner was highest bidder, who quoted Rs. 31,40,000/-. He was aspiring to receive the shop in question, as he was ready to pay the amount. It is submitted that some how he mustered the funds by selling ornaments of mother and from the retiral benefits of father.

5. The respondent corporation refused to accept his bid and insisted for more consideration than quoted by him. It transpired that the corporation was expecting more amount than quoted by him. For shop No. 44 and 45 final offered price was Rs. 40,50,000/- each. According to the learned counsel for the petitioner the callus approach of the corporation is against loud object of reserving the shop for disabled and reserved category person. The omission on the part of the corporation to allot the shop is due to the arbitrariness and highhandedness.

6. The learned counsel would submit that having quoted more amount than the upset price and being highest bidder, the Corporation should not have refused the bid of the petitioner. He further submits that the conduct of the corporation is deprecable because this is second time auction. On earlier occasion the amount quoted was Rs. 27,77,777/-, which was failed to be deposited by erstwhile bidder. It is therefore urged that the Corporation may not be permitted to go on with repetitive tender

process. It is further submitted that rate quoted by the petitioner is as per the ready reckoner and there is no reason to deny petitioner's offer.

7. The respondent has filed affidavit in reply and resisted the claim of the petitioner. It is stated that there was no concluded contract. The petitioner does not have vested right to compel the corporation to accept the amount offered by him. The Corporation reserves a right to cancel the process of e-auction as per the Clause No. 13. The decision is in the larger public interest as the Corporation is expecting to fetch more price for the shop in question. The corporation has commercial wisdom and every right to strive for higher price.

8. It is averred in the reply that the shops which could not be allotted are subjected to further process of tender and the upset price has been kept as Rs. 35,00,000/-. Due to the interim orders the present shop in question is not included in the fresh tender process. It is submitted that the Corporation would not allot the shop No. 22 below the price of Rs. 31,40,000/- offered by the petitioner.

9. The learned counsel Mr. Bhandari for the respondent corporation submits that the petitioner has not alleged *mala fides*, irrationality or procedural impropriety. Considering the limitation for exercise of writ jurisdiction under Article 226 of the Constitution, no case is made out by the petitioner. Reliance is placed upon the **judgment dated 09.08.2023** rendered by this

Court in **Writ Petition No. 1324 of 2023** and other connected matters in the matter of **Pratik Group, through its Partner Vs. The State of Maharashtra and others**.

10. We have considered rival submissions canvassed by the learned counsel for the parties. The petitioner is highest bidder for the shop No. 22, who has quoted price of Rs. 31,40,000/-. The corporation is expecting more price than quoted by the petitioner. During the course of arguments it is submitted that the petitioner was called upon to offer competitive price, but, he has expressed his inability.

11. The corporation has taken out near about ten shops for allotment by the tender process in question. It reveals that for shop Nos. 17, 44 and 45 offer amount is Rs. 40,50,000/-. For few shops only one bid was received and for few the expected amount could not be fetched. Therefore, the Corporation has decided to go for fresh tender process for those six shops.

12. The data supplied by the corporation in affidavit in reply, especially in para No. 7 shows that it is not that only the petitioner is targeted for any extraneous reasons or the *mala fides*. The endeavour of the corporation seems to be to secure more price. If the corporation is said to have expected to fetch price of Rs. 40,50,000/- as offered shop Nos. 17, 44 and 45, then that is the commercial wisdom. It cannot be faulted within the tender jurisdiction of the High Court.

13. The petitioner is also given opportunity to match the price by compatible rates, but he did not respond. The allotment of the shop is commercial activity of the corporation. The High Court cannot compel any employer who has floated the tender process to substitute the decision. The submission of the learned counsel for the petitioner that the shop in question is reserved for disabled and reserved category person and has to be allotted to the petitioner does not impress us. We find that the corporation is acting in larger commercial and public interest. It is the best judge to take decision for its benefit.

14. The petitioner has not alleged *mala fides* or procedural impropriety. An attempt is made to make out a case of arbitrariness. However, it is the discretion of the corporation to safeguard financial interest. It is settled position of law that it is not mandatory for an employer to accept highest bidder and the employer has the latitude to exercise the discretion to secure best possible interest.

15. The learned counsel for the respondent places reliance on the judgment as referred above in the case of **Pratik Group, through its Partner Vs. The State of Maharashtra and others** cited supra. The principles settled by various decisions are mentioned in para No. 7 of the judgment. We respectfully agree with the same and propose to adopt the same course.

16. The learned counsel for the petitioner submits that this is second time auction of the shop in question. The petitioner has

offered more amount than what was offered in the last auction. During the hearing, the learned counsel for the petitioner has proposed to offer Rs. 35,00,000/-.

17. We have already recorded that there are restrictions while exercising tender jurisdiction. The commercial activities of the corporation in the tender matters cannot be regulated by the Court. Once it is established that there are no *mala fides* or any deliberate attempt to dodge the petitioner, the decision of the corporation cannot be substituted. Besides the learned counsel for the corporation does not accept the price offered by the petitioner before us. We therefore do not find any substance in the submissions of the learned counsel for the petitioner. The writ petition fails.

18. The writ petition is dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.] **[MANGESH S. PATIL, J.]**

bsb/Sept. 23