

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8648 OF 2022

Yousuf s/o. Ahemad Qureshi

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through its Secretary
Agriculture, Animal Husbandary,
Dairy Development and Fisheries
Department, Mantralaya, Mumbai-32
2. The Collector, Hingoli
3. The Chief Executive Officer
Nagar Panchayat, Aundha Nagnath
Dist. Hingoli
4. The Tahsildar
Aundha Nagnath, Dist. Hingoli
5. The President/Secretary
Andh Adiwasi Matsya Vawyasik
Sahkari Sanstha Ltd. Rajwadi,
Tq. Wasmat Dist. Hingoli

... **RESPONDENTS**

...

Advocate for petitioner : Mr. N.J. Patil

A.G.P for respondent Nos.1,2 and 4: Mr. A.S. Shinde

Advocate for respondent No.3: Mr. B.S. Chondhekar

Advocate for respondent No.5 : Mr. V.S. Bedre

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CORAM

**: MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE

: 30.10.2023

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties the matter is heard finally at the stage of admission.

2. The petitioner challenges the auction conducted by the respondent No.3 – Chief Executive Officer, Nagar Panchayat, Aundha

Nagnath for fishing for a period of five years in three reservoirs in its area.

3. The learned advocate for the petitioner would submit that petitioner is the Chairman of a fishing Society registered under the Cooperative Societies Act. The respondent No.3 published a tender notice on 21.07.2022. It was to be in the form of an open auction which was scheduled to take place on 29.07.2022. The petitioner approached the site where the auction was to take place, that is the office of the respondent No.3, with a requisite demand draft of Rs.500/-. He was present there throughout the day but was never allowed to participate and he was only informed about the auction having taken place thereby completing the process. The learned advocate submits that the auction was a make belief. It was concluded in a clandestine manner and the contracts were allotted depriving him of a fair opportunity to bid. It was allotted to the respondent No.5. He would submit that the whole action is arbitrary and prompted by *mala fides*. Though he promptly approached the respondent No.2 - Collector with a representation of 02.08.2022 he did not pay any heed hence this petition. He prays that the allotment of the contracts to the respondent No.5 be quashed and set aside and the respondent No.3 be directed to conduct a fresh auction.

4. Per contra, the learned advocate for the respondent No.3 strongly opposes the petition. He would submit that it was an open auction. Public were put to notice by way of paper publication of notice

inviting offers. Even the auction had taken place on a pre-scheduled date. The process was transparent, minutes were recorded even the names, phone numbers and signatures of the bidders were obtained at the time of holding of the auction. Copies of such minutes were recorded and have been annexed to the affidavit-in-reply. There were no *mala fides*. The work orders were issued to the respondent No.5 in the ordinary course of the tender process which cannot be interfered with on basis of surmises and conjectures.

5. Learned advocate Mr. Bedre for the respondent No.5 would also oppose the petition. He would submit that auction process has been conducted in a transparent manner. Since his society was the highest bidder it was rightly allotted the contract. There is no illegality.

6. We have considered rival submissions and perused the record. It would be apt to remind ourselves about the limitations for judicial review in the tender matters as laid down by catena of judgments. The relevant observations of the Supreme Court in the matter of *N. G. Projects Limited Vs. Vinod Kumar Jain and others; (2022) 6 SCC 127* are as under :

“23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present- day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The

approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”

Similarly, in the matter of **Jagdish Mandal Vs. State of Orissa and others ; (2007) 14SCC 517** it has been observed :

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual

matters in exercise of power of judicial review, should pose to itself the following questions :

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : ‘the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.’

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

7. In the light of these guidelines if one examines the matter in hand, it is apparent that admittedly a notice inviting offers was published in a newspaper and the auction had taken place on the stipulated date, wherein, three fishing societies had participated including the respondent No.5. It is not the version of the petitioner that it was a matter of formation of cartel. In fact all the highest offers were made by the respondent No.5 - Society. The other two bidders who had actually participated in the auction have not questioned the auction process. If those are also the competitive bidders being fishing Cooperative Societies, they would be the first to be aggrieved about allotment of the contracts to the respondent No.5. No specific *mala fides* have been attributed to the respondent No.3 in allotment of three tanks to the respondent No.5.

8. Though the petitioner claims to be present in the office of the respondent No.3 at relevant date that is 29.07.2022 together with a demand draft, except his bald statement, there is absolutely nothing tangible to substantiate his such stand. It appears that he had subsequently submitted some application with the respondent No.3. Though the written representation of which a copy is produced on the record at (Exhibit P-4) bears the date 29.07.2022, the acknowledgment thereon of the Inward Outward Clerk of the Aundha Nagar Panchayat shows that in fact it was tendered in that office on 01.08.2022. No explanation is coming forth as to why the petitioner immediately on the same day or may be on the next day could not approach the respondent No.3 or even the other revenue authorities respondent No.2 – Collector and respondent No.4 – Tahsildar. If such is the state of affairs, the very stand of the petitioner about being present in the office of the respondent No.3 throughout the day of the auction cannot be accepted.

9. Since there is nothing except the demand draft drawn on the date of the auction, to demonstrate that the petitioner was actually present at the place where the auction had taken place and had actually participated therein, her cannot be heard to say, by way of an afterthought, that the process was not transparent.

10. Besides, as can be seen from the title of the petition the petitioner has filed this petition may be as a chairman of the society but his society is not a party to the petition and there is nothing to

demonstrate that the society has authorized him to file the petition. Though the learned advocate for the petitioner as a last attempt requested for taking appropriate steps to rectify the error, in our considered view, the request is too late in the day.

11. There is no merit in the petition. It is dismissed.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE