

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

WRIT PETITION NO. 9519 OF 2023

Babanrao Vitthalrao Thorat,
Age : 60 years, Occu. Business,
R/o. E F 46/6, Shiv Chatrapati Nagar, N-12,
HUDCO, Aurangabad,
Tq. & Dist. Aurangabad.

....Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. Commissioner / Administrator,
Aurangabad Municipal Corporation,
Aurangabad.
3. Property Officer,
Property Department,
Aurangabad Municipal Corporation,
Aurangabad.

....Respondents

AND

WRIT PETITION NO. 9570 OF 2023

Sonal Haridas Narwade,
Age : 23 years, Occu. Household,
R/o. 6/18/172, Paithan Road, Near Flour Mill,
Vitkheda, Aurangabad, Dist. Aurangabad.

....Petitioner

Versus

1. The State of Maharashtra,
Urban Development Department,
Mantralaya, Mumbai,
Through its Secretary,
2. The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad.

3. Property Officer,
Property Department,
Aurangabad Municipal Corporation,
Aurangabad.

....Respondents

AND

WRIT PETITION NO. 9716 OF 2023

Manish S. Jaiswal,
Age : 35 years, Occu. Business,
R/o. N11B 92/1 Subhash Chandra Bose Nagar,
HUDCO, Aurangabad, Maharashtra, India.

....Petitioner

Versus

1. The Chhatrapati Sambhajnagar Municipal Corporation,
Through its Commissioner,
Main Building, Town Hall,
Behind Post Office, Aurangabad, Maharashtra.
2. The Chhatrapati Sambhajnagar Municipal Corporation,
Through its Officer, Property Department,
Main Building, Town Hall, Behind Post Office,
Aurangabad, Maharashtra.

....Respondents

AND

WRIT PETITION NO. 9742 OF 2023

Nikita K. Rajput,
Age : 29 years, Occu. Doctor,
R/o. N11 K 32/5, Navjeevan Colony HUDCO,
Aurangabad, Maharashtra, India.

....Petitioner

Versus

1. The Chhatrapati Sambhajnagar Municipal Corporation,
Through its Commissioner,
Main Building, Town Hall,
Behind Post Office, Aurangabad, Maharashtra.
2. The Chhatrapati Sambhajnagar Municipal Corporation,
Through its Officer, Property Department,
Main Building, Town Hall, Behind Post Office,
Aurangabad, Maharashtra.

....Respondents

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Mr. R. V. Gore – Advocate for petitioner in W.P. No. 9519 of 2023
Mr. C. V. Dharurkar – Advocate for petitioner in W.P. No. 9570 of 2023
Mr. A. D. Sonkawade – Advocate for petitioner in W.P. No. 9716 of 2023 and 9742 of 2023
Mr. A. A. Jagatkar – AGP for respondent/State in all W.Ps.
Mr. S. S. Tope – Advocate for respondent nos. 2 and 3 in W.P. Nos. 9519 of 2023 and 9750 of 2023 AND for respondent no. 1 in WP Nos. 9716 of 2023 and 9742 of 2023

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**CORAM : MANGESH S. PATIL
AND
NEERAJ P. DHOTE, JJ.**

DATED : 04TH NOVEMBER 2023

JUDGMENT [Per : Neeraj P. Dhote, J.] :-

1. With the consent of learned advocates for the parties and the learned AGP, the petitions are taken up for final disposal. Heard. Perused the papers.

2. Impugned in these writ petitions is the tender notice dated 20.07.2023 for allotment of shops in the premises of T.V. Centre Commercial Complex at Chhatrapati Sambhaji Nagar, issued by the respondent – Municipal Corporation, Chhatrapati Sambhaji Nagar.

3. It is the petitioners case that, the tender notice was initially issued for 10 shops on 19.04.2023, in the nature of e-tender system and the base price for all the shops was fixed at Rs.22,27,500/-. The e-auction was kept on 12.05.2023. The petitioners applied for

allotment of the said shops under the respective categories in which they fall i.e. Open, Open (Female), S.C./S.T. Category (Blind/Handicapped) and Open (Blind/Handicapped) etc. The petitioners' bid for the respective shops were the best offers. The details in respect of the base price of the said shops, price offered by petitioners and the earnest money deposited by them, are as under : -

Sr. No.	WP No.	Shop No. & Category	Base Price	Offer by Petitioner	Earnest Money Deposit
1.	9519/2023	Shop No. 39, Open Category	22,27,500/-	27,30,000/-	1,00,000/-
2.	9570/2023	Shop No. 38, Open Category (Female)	23,00,000/-	30,30,000/-	1,00,000/-
3.	9716/2023	Shop No. 43, Open Category	22,27,500/-	22,61,000/-	1,00,000/-
4.	9742/2023	Shop No. 02, Open Category (Female)	22,27,500/-	22,59,999/-	1,00,000/-

. It is further the case of petitioners that, as per the terms and conditions of the e-auction, the amount was to be deposited in the phased manner and on deposit of 100% bid amount, the agreement was to be executed. The petitioners came to know from the news item published in the daily newspaper dated 20.07.2023, that the respondent-Corporation invited fresh tender for the six shops, which include the shops for which the petitioners had submitted their offers. The petitioners inquired with the office of Corporation about the same and they learnt that the e-tender process was cancelled as some other applicants objected for the e-tender process and demanded the tender process as per the old system and, therefore, the impugned tender notice was issued. The petitioners made application to the Corporation for allotment of the shops for

which they had submitted their offers. Since there was no response from the Corporation, they have filed these petitions on the grounds of arbitrariness, *mala fides* and lack of statutory force for cancelling the e-auction process and pray for setting aside the subsequent tender process and for allotment of the shops to them for which they had submitted their best offers in the initial e-tender process.

4. The respondent – Municipal Corporation refutes the petitioners' contention by way of reply – affidavit filed in Writ Petition No. 9570 of 2023, by contending that the e-tender notice contained stipulation that the Municipal Corporation would have right to cancel the process for all/any of the shops and the petitioners were aware of the same and willingly participated in the e-auction process. It is contended that there was heavy demand to initiate the tender process as per the old system instead of e-auction and considering the economical inability of poor participants, the Corporation took decision to undertake the old auction process for getting additional price for the said shops. It is contended that, since no agreement was entered with the petitioners, no equities are created in their favour. It is further contended that the subsequent tender process is in the final stage, which received heavy response and the amounts quoted by the participants were on the higher side which was beneficial to the public at large. It is prayed that the petitions be dismissed.

5. The learned advocates for the petitioners advanced their submissions in line with the contentions raised in the petitions. The learned advocates for the petitioners submit that there are guidelines issued by the Ministry of Finance in the Government of India, in the nature of manual for procurement of works and for goods. They submit that the action on the part of the respondent – Municipal Corporation in resorting to the fresh tender process was contrary to the manual. They further rely on the following judgments of the Hon'ble apex Court.

- [i] **TATA Cellular V/s Union of India**, (1994) 6 SCC 651
- [ii] **Haffkine Bio-Pharmaceutical Corporation Limited, a Government of Maharashtra Undertaking through Manager V/s Nirlac Chemicals Through its Manager and others**, (2018) 12 SCC 790
- [iii] **State of Jharkhan and others V/s CWE-SOMA Consortium**, (2016) 14 SCC 172
- [iv] **State of Uttar Pradesh V/s Sudhir Kumar Singh and others**, AIR 2020 SCC 5215

6. The learned advocate for the Municipal Corporation advanced his argument in line with the affidavit-in-reply filed by the Municipal Corporation and relied on the following judgments.

- (i) **Meerut Development Authority V/s Association of Management Studeies and Anr.**, AIR 2009 SC 2894
- (ii) **M/s. Michigan Rubber (India) Ltd. V/s State of Karnataka and Ors.**, AIR 2012 SC 2915
- (iii) **Bakshi Security and Personnel Services Pvt. Ltd. V/s Devkishan Computed Pvt. Ltd. and Ors**, AIR 2016 SC 3585

- (iv) **Montecarlo Ltd. V/s NTPC Ltd., AIR 2016 SC 4946**
- (v) **JSW Infracture Limited and Anr. V/s Kakinada Seaports Limited and Ors., AIR 2017 SC 1175**

7. Perusal of the aforesaid judgments show that they are in respect of tender matters and following is the position of law in such matters :-

- (i) The principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, there are inherent limitations in exercise of the powers of judicial review.
- (ii) While exercising judicial review in the matter of Government contracts, the primary concern of the Court is to see whether there is any infirmity in the decision making process or whether it is actuated by *mala fides*, unreasonableness or arbitrariness.
- (iii) If State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, interference by Court would be very restrictive since no person could claim fundamental right to carry on business with the Government.
- (iv) In contractual matters, the Writ Courts should not interfere unless decision taken is arbitrary, perverse or mala fide.

8. Keeping in view the above mentioned legal position, we proceed to consider the merits of the matters.

9. Admittedly, the petitioners responded to the initial e-auction process and submitted their respective bids and according to them, they offered the price higher than the base price. However, admittedly, there was no concluded contract between the petitioners and the Corporation pursuant to the said e-tender process and, therefore, the question of opportunity to the petitioners of hearing before resorting to the subsequent tender process does not arise. The tender notice to which the petitioners responded had a stipulation that, the Commissioner of Municipal Corporation would have the right to accept or reject offers and even cancel the e-auction without assigning reasons to the participants. The reason given by the respondent – Corporation in the affidavit-in-reply is that the subsequent tender for the said shops was undertaken due to heavy demand and for getting additional value for the shops. Though, the petitioners have relied on the manual issued by the Government of India for procurement of works and services, they are unable to show that the said guidelines are applicable and binding to the tender process in question. The petitioners could have participated in the subsequent tender process. Merely because the petitioners have offered best price for the shops in the e-tender process, it does not create any right in their favour to get the contract concluded.

10. The process of tender in question in respect of the shops is a commercial activity for the Corporation and from their

reply-affidavit they are acting in larger commercial and public interest. The petitioners have failed to show *mala fides* and arbitrariness in the action of the respondent – Corporation in resorting to subsequent tender process. In absence of any *mala fide* and arbitrariness in the process of tender undertaken by the respondent – Corporation, this Court will not interfere in the matter. This Court in similar issue has dismissed the Writ Petition No. 7514 of 2023. In the backdrop of the above legal and factual aspect, the petitions are liable to be dismissed and the same are accordingly dismissed with no order as to costs.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

11. After pronouncement, the learned advocate Mr. C. V. Dharurkar appearing on behalf of the petitioner in Writ Petition No. 9570 of 2023 seeks extension of interim relief granted by this Court in Writ Petitions No. 9570 of 2023 and 9519 of 2023 on 03rd August, 2023, for a period of four weeks from today. Considering the request made by learned advocate Mr. C. V. Dharurkar, interim relief granted by this Court vide order dated 03rd August, 2023 in Writ Petitions No. 9570 of 2023 and 9519 of 2023, is extended for a period of four (04) weeks from today.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE