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

WRIT PETITION NO. 1880 OF 2023

Gujrat Apollo Industries Ltd.,	)
'Parishram' Cellar, 5-B,	)
Rashami Society, Near Mithakhali	)
Circle, Navrangpura, Ahmedabad	)
Pin-380009	)
Through	)
Jagdish s/o. Chaturbhuj Modani,	)
Age : 64 years, Occu. : Business	)
R/o. Flat No.201, Sky Luxuria, Antilia-1,	)
Nepania, Indore-452 010	) … Petitioner

VERSUS

1.	The State of Maharashtra	)
	Through its Secretary,	)
	Urban Development Department,	)
	Mantralaya, Mumbai.	)
2.	The Commissioner,	)
	Sangli, Miraj & Kupwad	)
	Municipal Corporation, Sangali	) … Respondent

…

Mr. Girish V. Wami, for Petitioner.
Mr. Vikram N. Walawalkar, a/w. Mr. Amay C. Sawant a/w. Mr. Virendrasinh V. Tapkir for Respondent Municipal Corporation.
Mr. P. P. Kakde, GP a/w. Mr. M. M. Pabale, AGP for State.

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CORAM : S. V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.

RESERVED ON : 9th MARCH, 2023.
PRONOUNCED ON : 15th MARCH, 2023.

<u>JUDGMENT : (PER - SANDEEP V. MARNE, J.)</u>

1. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

2. By this petition, petitioner challenges tender notice dated 24th January 2023 for the work of Processing and Disposal Day to Day Solid Waste generated in Sangli-Miraj & Kupwad Municipal Corporation. Petitioner also seeks direction for issuance of work order in pursuance of confirmation letter dated 25th January 2022 issued to it after completion of the earlier tender process.

3. Respondent No.2-Municipal Corporation floated a tender on 4th May 2020 for twin works of (A) Processing and Disposal of Day to Day Solid Waste generated in Sangli-Miraj & Kupwad Municipal Corporation area and (B) Scientific Dumpsite Land Reclamation through Bio-Mining, Resource Recovery and Scientific Rejects Disposal on Samdoli and Bedag site of the Municipal Corporation (**Work**). A consortium named Eco Pro Environmental Services comprising 4 companies namely (i) Gujrat Apollo Industries Ltd., (ii) Eco Pro Environmental Services, (iii) Susajja enterprises Pvt. Ltd. and (iv) Vardig Pvt Ltd. submitted its bid in pursuance of the tender notice. Petitioner is one amongst the said 4 companies of the consortium. The

consortium was found technically qualified. The financial bids were opened on 12th August 2020. The consortium of petitioner was found L1 in respect of the work of day to day disposal of solid waste with the rate of Rs.490 per ton whereas the consortium of Group Consultancy Services Ltd. Navi Mumbai was found L2 with the rate of Rs. 711 per ton. So far as the work of Bio-Mining is concerned, consortium of petitioner was found L2 with rate of Rs. 652 per tonne whereas Samarth Softec Services Pvt. Ltd. Was found L1 with rate of Rs.396 per ton. Both set of bidders were called for discussions on technical issues by letter dated 13th August 2020. By letter dated 6th August 2021 the validity period of the bids was extended by the Municipal Commissioner by a period of 180 days from 8th July 2021.

4. By letter dated 25th January 2021 the Municipal Commissioner called upon the consortium of petitioner to convey willingness to execute the work of day to day solid waste at Rs.490 per metric ton and the work of Bio-Mining at Rs.296 per metric ton. By its letter dated 25th January 2022 the consortium of petitioner convened willingness to operate at the rate suggested by the Municipal Commissioner.

5. However, instead of issuing work order in favour of petitioner the Municipal Corporation issued fresh tender notice dated 24th January 2023 for both the works. Petitioner is aggrieved by the fresh tender notice dated

24th January 2023 and seeks cancellation of fresh tender process and issuance of work order in it's favour.

6. Appearing for petitioner Mr. Wani the learned counsel would submit that the respondent Municipal Corporation has acted in an arbitrary manner in inviting fresh bids even though petitioner was selected for issuance of work order in the previous tender process. That the fresh tender is resorted to without giving any intimation to petitioner about the outcome of its bid in the previous process. That petitioner showed willingness to work at the rates suggested by the Municipal Commissioner and that therefore there was no reason for the Municipal Corporation to resort to fresh bids. That the State Government had also convened approval to the Municipal Corporation for issuance of work order in favour of petitioner. Mr. Wani would further contend that the impugned action is taken by the Municipal Corporation on account of baseless complaint made by the local MLA.

7. The petition is resisted by the respondent Municipal Corporation. Mr. Walawalkar, the learned counsel appearing for the respondent No.2 Corporation would submit that the petition is not maintainable as the same is not filed by all the consortium partners on whose behalf the bid was submitted. He would further submit that no right is created in favour of the consortium or even in favour of petitioner for award of contract. Municipal

Corporation is within its rights to cancel the tender process. That substantial period had elapsed from initiation of earlier tender process on account of which the Municipal Corporation has taken a decision to invite fresh bids. He would further submit that there has been change in circumstances warranting insertion of new parameters to the project on account of which re-tendering is resorted to.

8. Mr. Walawalkar would further submit that even though petitioner is now painting a picture as if it is willing to execute the work at the rates suggested by the Municipal Corporation, it had expressed unwillingness to do so on an earlier occasion vide letter dated 19th August 2020. That then Municipal Commissioner erred in continuing the tender process in ignorance of the fact that the General Body of the Municipal Corporation had adopted resolution a No.81 dated 24th August 2020 canceling the tender process. That even though the State Government did not suspend or rescind the Gb resolutions in pursuance of proposals sent by then Municipal Commissioner, he erroneously issued letter dated 25th January 2022 seeking reduction of rates by Petitioner’s consortium. That the Standing Committee of the Municipal Corporation has adopted a resolution on 20th January 2023 for issuance of the fresh tender.

9. We have heard the learned counsels for the parties and have perused the records. We first examine objection relating to maintainability of the petition. The objection is that Petitioner is not the bidder and metely a part of a consortium and other companies in that consortium have chosen not to challenge the action of Municipal Corporation. That therefore petition filed by Petitioner alone is not maintainable. In pursuance of earlier tender notice dated 4th May 2020 a consortium of following 4 companies had submitted its bid:

(i) Gujrat Apollo Industries Ltd., (Petitioner)
(ii) Eco Pro Environmental Services,
(iii) Susajja enterprises Pvt. Ltd.
(iv) Vardig Pvt Ltd.

Petitioner in its individual capacity has not submitted the bid. Contract, if any, could have been awarded to the consortium, and not to petitioner alone. However, present petition is not filed by all 4 consortium companies, but is filed by petitioner alone. Though it is sought to be contended by Mr. Wani that petitioner is the lead party in the consortium, the same would not mean that petitioner alone can file the petition when the bid is submitted in the name of consortium. In absence of other 3 members of the consortium being party to the petition, the present petition filed by petitioner alone would nit be maintainable.

10. Even if the objection with regard to maintainability of the petition by petitioner alone is to be momentarily ignored, we do not otherwise find any illegality, irrationality or arbitrariness in the action of respondent Municipal Corporation. The petitioner or its consortium has not acquired any indefeasible right to do business with the respondent Municipal Corporation. Merely because petitioner's consortium is found L1 in respect of one of the works or that it agreed to match the price bid of L1 for other work, the same would not mean that petitioner would be entitled to seek issuance of work order in respect of either of the works as a matter of right. In the present case the earlier tender process was initiated on 4th May 2020 and remained unconcluded for a considerable period of almost 3 long years. The chronology of events narrated above would show contradictory decisions being taken by the General Body and the then Municipal Commissioner. The General Body of the Municipal Corporation had adopted resolution on 24th August 2020 for cancellation of the tender process and for floating fresh tender. The then Municipal Commissioner however proceeded to ignore the resolution and continued the earlier tender process. Though he submitted successive proposals for rescinding General Body resolution No.81 dated 24th August 2020 it is common ground that the State Government neither suspended nor rescinded the resolution. The Municipal Commissioner therefore could not have taken any further steps in respect of earlier tender process by calling upon Petitioner's consortium to lower it's rates.

11. The General Body of the Municipal Corporation later took a *volte face* and decided to review its resolution and adopted a fresh resolution No.175 on 11th March 2022 for issuance of work order in favour of Petitioner's consortium. We fail to comprehend as to how the respondent Municipal Corporation could have reviewed its earlier resolution adopted on 24th August, 2020 especially when the State Government had not accepted the request of the then Municipal Commissioner for rescinding the same. Here again, the succeeding Municipal Commissioner decided not to act on fresh GB resolution and started pursuing issuance of fresh tender. He submitted reports to the State Government on 28th October, 2022 and 25th November, 2022 pointing out the reasons why initiation of fresh tender process was warranted. Though all the reasons stated in the said proposals may not stand judicial scrutiny, the Municipal Commissioner is of the opinion that the Petitioner's consortium would not be in a position to execute the contract satisfactorily at the rates agreed in the year 2020 in view of the escalation in the rates. It is pointed out that as per District Schedule of Rates (DSR) the rate of bio-mining is Rs.420 per ton whereas Petitioner's consortium has agreed to execute the work of Bio-Mining at Rs.296 per ton. He has opined that at such low rates, it is impossible to deliver satisfactory solid waste management services. The Standing Committee of the Municipal Corporation has agreed to invite fresh tender by adopting resolution No.443

dated 20th January 2023. In this manner the General Body, Standing Committee and successive Municipal Commissioners have changed their decisions, resulting in the earlier tender process remaining indecisive.

12. The Supreme Court has held in catena of judgments that the scope of judicial review in tender and contractual matters is extremely narrow. This court would not be justified in interfering in the decision of the tendering authority unless the same is found to be arbitrary, unjust or irrational. The tendering authority would be the best judge to decide whether the tender process initiated 3 years ago should still be continued or fresh tender process should be adopted. In **Maa Binda Express Carrier and Ors. Vs. North South Frontier Railway**, (2014) 3 SCC 760 the Apex Court has held as under:-

> "8. The scope of judicial review in matters relating to award of contract by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognize that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. **The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government.** All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well-settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is

> found that the same have been tailor made to benefit any particular tenderer or class of tenderers. So also the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.
>
> 9. Suffice it to say that in the matter of award of contracts the Government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the Court who is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest.

13. In **Rishi Kiran Logistic Pvt. Ltd. Vs. Board of Trustees of Kandla Port Trust and Ors,** (2015) 13 SCC 233 it is held that if the action of cancellation of tender was bonafide and in public interest, the court would not be justified in interfering with the decision of the tendering authority. Similar view is taken by the Apex Court in **South Delhi Municipal Corporation Vs. Ravinder Kumar & Anr.** (2015) 15 SCC 545 and **State of Jharkhand & Ors. vs. CWE Soma Consortium**, (2016) 14 SCC 172.

14. Since we have arrived at a finding that the action of the respondent Municipal Corporation is not arbitrary, unjust or irrational, we would not be justified in interfering in the same. Petition filed by petitioner is also faulty, where the other 3 consortium partners have chosen to stay away from the present proceedings. It appears that they are not aggrieved by the decision of the Respondent Municipal Corporation. Even of merits, no case is made out for interference.

15. Resultantly, we do not find any merit in the present petition. It is dismissed with no order as to costs. Rule is discharged.

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16. At this stage, the learned counsel for the petitioner seeks continuation of the interim order.

17. Upon consideration of the entire facts, we have concluded that the petitioner had no vested right.

18. In light of that the request for continuation of interim relief is rejected.

SANDEEP V. MARNE, J. **S. V. GANGAPURWALA, ACJ**