IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5511 OF 2023

M/s. Suraj Enterprises
Through its Proprietor –
Mr.Sachin Sampat Shewale
Age – 40 years, Occupation : Business,
Having office at D-56, Vashi Plaza, Plot 80/81, Sector 17, Vashi,
Navi Mumbai - 400703 ….. Petitioner

Versus

1 Nashik Municipal Corporation
Through its Municipal Commissioner, Rajiv Gandhi Bhavan, Saharanpur Road,
Nashik – 422001

2 M/s. S and R Pest Control Services,
Shop No.1, Ground Floor,
Amar Arcade, Kulkarni Colony,
Sadhu Vaswani Road, Nashik – 422002 ….. Respondents

Mr. Mihir Desai, Senior Advocate I/b. Mr. Sangram Chinnappa a/w. Ms. Bhoomika Vyas for the Petitioner

Mr. M.L. Patil a/w. Mr. Shridhar A. Patil for Respondent No.1

Mr. R. S. Kohli a/w. Ms. Nikita K. Dharamshi I/b. M/s. C. K. Legal for Respondent No.2

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.

RESERVED ON : AUGUST 18, 2023
PRONOUNCED ON : NOVEMBER 3, 2023

JUDGMENT (PER : CHIEF JUSTICE)

1. Heard Mr. Mihir Desai, learned Senior Advocate representing the Petitioner, Mr. M.L. Patil representing Respondent No.1 and Mr. R. S. Kohli appearing on behalf of Respondent No.2.

CHALLENGE:

2. The Petitioner which is a proprietary firm, has invoked our jurisdiction under Article 226 of the Constitution of India with a prayer to issue writ of certiorari or any other appropriate writ to quash and set aside the order dated 7th February 2023 to the extent it holds that Respondent No.2 - M/s. S and R Pest Control Services as qualified in the technical bid submitted for award of Tender No.2 pursuant to e-tender notice No.3/2022 floated by Respondent No.1 – Nashik Municipal Corporation for executing the work related to daily spraying and fogging activity for control of Vector Borne Diseases under the Urban Malaria Scheme and to supply man power, machinery and equipments in Nashik Municipal Corporation.

3. The Petitioner has also prayed that an appropriate direction be issued to Respondent No.1 to issue fresh tender for executing the said works.

CASE SET-UP BY THE PETITIONER:

4. It is the case of the Petitioner that Respondent No.2 had submitted a certificate from a Chartered Accountant certifying that its total turn-over in last three years (2018-19, 2019-20 and 2020-21) is more than Rs.4.50 Crores on account of execution of work carried out relating to spraying and fogging, though on inquiries it was revealed that Respondent No.2 had not carried out spraying and fogging work in the relevant period worth more than Rs.4.50 Crores and that the certificate submitted for the said years by Respondent No.2 was incorrect.

5. It is also the case of the Petitioner that Respondent No.1 vide its letter dated 3rd November 2023 required Respondent No.2 to submit work orders/documents to establish that it had actually had turn-over of Rs.4.50 Crores for the relevant period and Respondent No.2 in its reply dated 7th November 2022 though submitted certain documents, however, the said documents reveal that the value of the work order was Rs.62,29,927/-. It

has further been submitted by the learned Senior Advocate for the Petitioner that the documents submitted by Respondent No.2 vide its reply dated 7th November 2022 reveal that the most of the work orders were in respect of rodent, termite and cockroach control and not mosquito control or spraying and fogging.

6. In the background of the aforesaid facts it has been stated by the learned Senior Advocate for the Petitioner that tender condition No.6, which required the tenderer to furnish a Chartered Accountant certificate evidencing that bidder's total turn-over due to spraying and fogging activity for last three years should be more than Rs.4.50 crores, was not fulfilled, however, Respondent No.1 declared Respondent No.2 to have technically qualified which is completely illegal, unreasonable and hence the decision of Respondent No.1 declaring Respondent No.2 to have technically qualified is liable to be set aside.

7. Further submission on behalf of the Petitioner advanced before us is that in fact the Tender Committee, in its meeting held on 13th December 2022 clearly found Respondent No.2 to be ineligible for not having complied with Tender Condition No.6, however, the Additional Commissioner, Nashik Municipal

Corporation, relying on the Certificate from another Chartered Accountant held Respondent No.2 to be eligible. In his submission, learned Senior Advocate representing the Petitioner has, thus, stated that Tender Committee which comprised of experts of the field which consisted of a Biologist, Chief Accounts/Finance Officer and the Chief Auditor, was of the clear opinion that Respondent No.2 did not fulfill tender condition No.6 of having turn-over of more than Rs.4.50 Crores in past three years, however, the said opinion of the Tender Committee was illegally overruled by the Additional Commissioner of the Municipal Corporation relying solely on the certificate issued by the another Chartered Accountant. Such an act, as per the learned Senior Advocate for the Petitioner, of the Additional Commissioner, is against all settled norms relating to process of evaluation of the tender for the reason that the Additional Commissioner could not have sat in appeal over the opinion formed by the Tender Committee. It has further been argued that in fact the Additional Commissioner has made reassessment of the issue as to whether Respondent No.2 fulfilled condition No.6 which was impermissible in view of the opinion of the Tender Committee. Learned Senior Advocate representing the Petitioner further submitted that in view of the aforesaid facts the process adopted by Respondent No.1 in evaluating the technical bids submitted by the bidders cannot be said to be fair and transparent which makes the decision declaring Respondent No.2 to have qualified in technical bid, vitiated.

8. Apart from making the assertion in respect of the alleged illegality in the technical bids submitted by Respondent No.2 to the extent of Respondent No.2 not fulfilling the requirement of the turn-over of Rs.4.50 Crores in the past three years, it has also been stated by the learned Senior Advocate for the Petitioner that the reason indicated for disqualifying the Petitioner in the technical bid is also not tenable. In this regard, it has been submitted that the reason given by Respondent No.1 for disqualifying the Petitioner is that the certificate of the Chartered Accountant submitted by it does not bear UDIN and that Respondent No.1 did not receive any response from the Bank for verification of solvency certificate submitted by the Petitioner along with its bid. Another reason indicated by Respondent No.1 for disqualifying the Petitioner is that the GST return summary was not enclosed and that certificate issued by the Biologist/Entomologist/Chief Technical Officer evidencing three

years minimum experience of mosquito control was a fake document. It has been argued by the learned Senior Advocate for the Petitioner that UDIN was left to be mentioned in the Chartered Accountant Certificate inadvertently and if the Petitioner was intimated about the said deficiency, he would have taken remedial steps. It has also been argued that the solvency certificate submitted by the Petitioner was a valid certificate and that merely because the Bank did not verify the certificate, it cannot be a ground to disqualify the Petitioner. It has also been stated by the Petitioner that had Respondent No.1 informed the Petitioner about non verification of the solvency certificate by the Bank, the Petitioner would have taken steps to ensure that the Bank verifies the same.

9. As regards the lacunae in the GST Registration Certificate, it has been stated by the learned Senior Advocate for the Petitioner that along with the bid documents, the Petitioner inadvertently did not enclose the GST return summary. Regarding the fake document in respect of the certificate by Entomologist, it has been stated in the Writ Petition that some employee of the Petitioner / firm had inadvertently uploaded the certificate of some wrong Entomologist. It has been stated that as soon as this fact was

informed by Respondent No.1 by letter dated 12th October 2022, the Petitioner, on the next date vide its reply dated 13th October 2022 informed Respondent No.1 about the error and also submitted the certificate of correct Entomologist. On these counts the submission of the learned Senior Advocate for the Petitioner is that on one hand Respondent No.2 has been declared qualified in the technical bid illegally whereas in the process of evaluation of technical bid the Petitioner has wrongly been declared to be disqualified.

10. Thus, the submission on behalf of the Petitioner is that the impugned actions on the part of Respondent No.1 in declaring Respondent No.2 to have technically qualified and the Petitioner to have technically disqualified are absolutely illegal and hence not tenable in the eyes of law. The prayer, thus, is that the decision of Respondent No.1 declaring Respondent No.2 to have technically qualified be set aside and directions be issued for re-tender.

11. At this juncture itself, it is noteworthy to note that though certain averments in the Writ Petition have been made by the Petitioner pointing out alleged errors in evaluating the Petitioner's

technical bid and declaring Respondent No.2 to be qualified, however, no prayer in respect of the Petitioner for declaring it to have technically qualified has been made in the Writ Petition.

CASE SET-UP BY RESPONDENT NO.1:

12. Respondent No.1 – Nashik Municipal Corporation has filed an Affidavit-in-Reply denying the allegations and averments made in the Writ Petition and further submitting that in evaluating the tenders and awarding the contracts, the parties are to be governed by commercial prudence and to that extent principle of equity and natural justice have to stay at a distance. In this view, it has been submitted by the learned Counsel representing Respondent No.1 that the impugned decision declaring Respondent No.2 to have technically qualified does not warrant any interference by this Court.

13. It has further been argued that the Petitioner had also participated in the tender, however, he was unsuccessful as his technical bid has been rejected for valid reasons and as such any attempt by an unsuccessful tenderer with imaginary grievances and on account of business rivalry, cannot be permitted by this Court to persuade itself to interfere by exercising its jurisdiction

of judicial review under Article 226 of the Constitution of India. Reliance in this regard has been placed by the learned Counsel representing Respondent No.1 on the judgment of this Court in the case of ***Uflex Ltd. Vs. Government of Tamil Nadu and Ors.***[1]

14. Apart from placing reliance on the judgment of **Uflex Ltd. (supra)**, learned Counsel for the Respondent No.1 has also placed reliance on the judgment of ***The Silppi Constructions Contractors Vs. Union of India***.[2] to submit that unless there is a overwhelming case to justify judicial intervention in the matters of the contract involving State or its instrumentalities, the Court should give way to the opinion of the experts and since in this case the impugned decision declaring Respondent No.2 is based on the opinion expressed by the Chartered Accountant who is an expert in the area, no interference is permissible in this Writ Petition. Reliance has also been placed by Respondent No.2 on the judgment of this Court in the case of ***Gypsum Structural India Pvt. Ltd. Vs. Brihanmumbai Municipal Corporation and Others***[3] and on the judgment of the Hon'ble Supreme Court

1 **(2022) 1 SCC 165**
2 **(2020) 16 SCC 489**
3 **(2023) SCC OnLine Bom 683**

in the case of ***Bharat Coking Coal Limited & Ors. Vs. Amar Dev Prabha & Ors.***[4]

15. It has been argued further on behalf of Respondent No.1 that the decision to declare Respondent No.2 technically eligible was taken in terms of the provisions contained in Clause 4.4.3.1(c) of the Government Resolution dated 1st December 2016 to avoid epidemic like situation in emergency considering the acute shortage of man power to provide adequate services for prevention of vector borne diseases.

16. It is also the case of Respondent No.1 that tender conditions clearly stipulated that the Corporation reserves the 'right to accept or reject' any or all the offers or cancel the tender process without assigning any reason and hence the Petitioner cannot have any grievance.

17. It has further been submitted by the learned Counsel representing Respondent No.1 that as per its own averments made in the Writ Petition in paragraph No.4(d),4(u)(i)(ii)(iii) & (iv) and paragraph No.5(i)(ii)(iii) & (iv) the Petitioner admits submission of wrong documents due to inadvertence and further

4 **(2020) 16 SCC 759**

that the Petitioner has admitted that in the Chartered Account Certificate submitted by it for fulfillment of requirement of condition No.6 relating to turn-over of Rs.4.50 Crores in past three years, the UDIN was left inadvertently. It is also the case set up by Respondent No.1 that the Petitioner itself has admitted that the Bank did not verify the solvency certificate and that the GST return summary as per the requirement of condition No.11 was also not furnished by it. Respondent No.1 further submits that, in fact, the Petitioner is guilty of furnishing fake certificate of Mr.Sudhir Daptarkar, Entomologist stating that Mr.Daptarkar had been working with the Petitioner for a period of 15 years with his signature and stamp of the firm, however, the said document has been found to be false, fabricated and fake.

18. It is also stated on behalf of Respondent No.1 that a complaint dated 6th October 2022 was received on 12th October 2022 wherein Mr.Daptarkar had stated that the Petitioner had misused his name and qualification and it had wrongly and falsely shown him working with it for last 15 years. It is further stated in the said complaint that Mr.Daptarkar denied having worked with the Petitioner and having ever given any certificate in favour of the Petitioner. The learned Counsel for Respondent No.1 has

further argued that the documents used by the Petitioner in this Writ Petition are said to have been obtained by him under the Right to Information Act, whereas, the said fact is completely incorrect for the reason that the Application under the Right to Information Act was not made by the Petitioner but by one Mr.Sandesh Madhav Phule on 20th March 2023 and hence, the Petitioner had made wrong averments in the Writ Petition which shows its *mala fide* intention and oblique motive to stall the process of tender depriving the Corporation to provide necessary services for controlling the vector borne diseases. In the light of these submissions it has been argued by the learned Counsel representing Respondent No.1 that since the Petitioner itself admits having not fulfilled the tender conditions and also because the Petitioner has not approached this Court with clean hands, the instant Writ Petition is liable to be dismissed at its threshold.

19. Regarding Respondent No.2 having qualified in the technical bid, it has been stated and argued by learned Counsel representing Respondent No.1 that vide letter dated 12th October 2022 an opinion was sought by Respondent No.1 from Mr.Yogesh Kataria, Tax Consultant who is a Chartered Accountant, on the Chartered Accountant certificate regrading total turn-over due to

spraying and fogging activity for past three years and in his reply the said Chartered Accountant clearly opined that the Chartered Accountant Certificate tendered by Respondent No.2 has evidenced that it has a turn-over without GST of Rs.5.64 Crores in past three years (2018-2019, 2019-2020 and 2020-2021). The submission, thus, is that Mr.Yogesh Kataria, Tax Consultant is a Chartered Accountant who is also an expert in the field and since he had verified the documents submitted by Respondent No.2 and further verified that Respondent No.2 had the turn-over of Rs.5.64 Crores in past three years, as such, Respondent No.2 was rightly declared to have technically qualified.

20. It is further submitted on behalf of Respondent No.1 that decision to declare Respondent No.2 to have technically qualified is based on the opinion of an expert which cannot be doubted in any manner and thus the instant Writ Petition is nothing but a *mala fide* attempt on the part of the Petitioner to stall the tender process.

21. It has been argued by Respondent No.1 that the Municipal Commissioner of Nashik Municipal Corporation has delegated his powers to the Additional Municipal Commissioner and under this delegated power and after considering the opinion of the expert

viz. Mr. Yogesh Kataria and further invoking the emergency powers available under Clause 4.4.3.1(c) of the Procurement Manual, in larger public interest, to avoid delay, the decision to declare Respondent No.2 to be technically qualified was taken which cannot be faulted with. It is also stated that the Additional Municipal Commissioner did not overrule the decision of Tender Committee for the reason that the Tender Committee consists of Chairman and other three members and it does not consist of only three members and hence the opinion expressed by the three members cannot be said to be an opinion of the Tender Committee. The submission is, thus, that the decision taken by the Additional Municipal Commissioner declaring Respondent No.2 to have technically qualified is lawful and needs no interference. On the basis of this, the submission is that the Writ Petition deserves to be dismissed.

SUBMISSION ON BEHALF OF RESPONDENT No.2:

22. The learned Counsel representing Respondent No.2 has submitted that scope of judicial review in contractual matters is very limited and further that the authority authoring the tender document is the best person to entertain and appreciate its requirements and therefore interpretation of such a document

should not be guessed by Court in the judicial review. It has further been argued on behalf of Respondent No.2 that technical evaluation or comparison by the Court is impermissible. The submission on behalf of Respondent No.2 is also that the requirement of having turn-over of more than Rs.4.50 Crores in past three years was fulfilled which was evidenced by the documents submitted by Respondent No.2 along with tender and on verification by an expert i.e. the Chartered Accountant, it has been opined that Respondent No.2 did have the requisite turn-over. It has, thus, been urged that any interference in such a matter by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India will be impermissible. Reliance by Respondent No.2 in support of its submission has been placed on the judgments in the case of ***Agmatel India Private Limited Vs. Resoursys Telecom and Ors.***[5]***, Raunaq International Ltd. Vs. I.V.R. Construction Ltd. & Ors.***[6]***, Shri K. Jayaram & Ors. Vs. Bangalore Development Authority & Ors. in Civil Appeal No(s).7550-7553 of 2021*** and in the case of ***Tata Cellular Vs. Union of India***[7]***.***

5 **(2022) 5 SCC 362**
6 **(1999) 1 SCC 492**
7 **(1994) 6 SCC 651**

DISCUSSION AND ANALYSIS:

23. Having heard the competing arguments advanced by learned Counsel representing the respective parties and perused the pleadings and documents available on record of this Writ Petition, the issue which emerges for our consideration in this case is, as to whether the decision-making process adopted by Respondent No.1 in declaring Respondent No.2 to have technically qualified, is just, proper and lawful ? And further, as to whether the reasons given by Respondent No.1 for declaring Respondent No.2 to have technically qualified are sustainable?

24. The scope of writ jurisdiction, a public law remedy in the matters relating to contract, where the State or its instrumentality is a party to the contract, has been much debated in Superior Courts, however, the law which has emerged is that jurisdiction under Article 226 of the Constitution of India is not excluded as a principle, in contractual matters and further that if the State or its instrumentality violates its constitutional mandate under Article 14 of the Constitution of India and acts unfairly and unreasonably, the relief under the plenary powers under Article 226 of the Constitution of India can be granted. It is also settled now that

while exercising the jurisdiction under Article 226 of the Constitution of India though the Court is entitled to inquire into the issue as to whether the action of the State or its instrumentality is arbitrary or unfair, however, exercise of such jurisdiction has to be made with circumspection. It is equally well settled that the jurisdiction under Article 226 of the Constitution of India cannot be ousted only on the basis that dispute pertains to contractual arena. At this juncture, regard may be had to the observations made by the Hon'ble Supreme Court in paragraphs 40, 41 of the judgment in the case of ***Unitech Limited and Others Vs. Telangana State Industrial Infrastructure Corporation (TSIIC) and Ors.***[8]***.*** Somewhat similar view has been expressed by the Hon'ble Supreme Court in the case of ***Tata Motors Ltd. Vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Ors.***[9]***.*** While considering the decision in the case of ***N.G.Projects Ltd. Vs. Vinod Kumar Jain***[10]***,*** wherein it was held that the writ court should refrain itself from imposing its decision over the decision of the employer as to whether to accept the bid of a tenderer and that contract of public

8 **2021 SCC OnLine SC 99**
9 **2023 SCC OnLine SC 671**
10 **(2022) 6 SCC 127**

service should not be interfered with lightly. Hon'ble Supreme Court in paragraph 48 of **Tata Motors (supra)** held that superior courts being guardians of fundamental rights are duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. The Hon'ble Supreme Court, in the case of ***Tata Motors (supra),*** also took note of its judgment in the case of ***Silppi Constructions Contractors (supra)***. Paragraph 48 of the judgment in the case of ***Tata Motors (supra)*** is relevant which is extracted hereinbelow:

> *"48. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer. (See : Silppi Constructions*

Contractors v. Union of India, (2020) 16 SCC 489)”

25. It is true that in certain circumstances, a Writ Petition challenging decision of the authority floating the tender in accepting or rejecting of bid may not be maintainable, however, as held in ***Bharat Coking Coal Limited (supra)*** public law remedy may be sought in such matters provided in addition to arbitrariness, illegality or discrimination under Article 14 of the Constitution of India or encroachment of rights under Article 19(1)(g), public interest too is demonstrated. Paragraph 34 of the said judgment is extracted hereinbelow:

> *34. It is thus imperative that in addition to arbitrariness, illegality or discrimination under Article 14 or encroachment of freedom under Article 19(1)(g), public interest too is demonstrated before remedy is sought. Although the threshold for the latter need not be high, but it is nevertheless essential to prevent bypassing of civil courts and use of constitutional avenues for enforcement of contractual obligations.*

26. In **Tata Cellular (supra),** a clear principle of law has been laid down according to which even in matters relating Government contracts or tenders a decision or the action of the State must be in consonance with Article 14 of the Constitution of India. It is only the decision-making process and not the merit of the decision which can be judicially scrutinized by the superior courts. **Tata Cellular (supra)** further states that the issue as to whether the

decision or action of the State or its instrumentality in tender/contractual matters is vitiated by arbitrariness, unfairness, illegality or irrationality, can be gone into.

27. Thus, in light of the above discussion, the principle of law which emerges in the matter of interference of this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India in the matters relating to tender/contracts where State or its instrumentality is a party, primarily is that it is the decision-making process and not the decision itself which is permissible to be judicially scrutinized. It is also equally well settled that this Court can in such matters go into the issue of unreasonableness of the decision though while judicially scrutinizing such matters, the Court has to be circumspect and cautious and while permitting adequate space to the State or its instrumentality it should also be alive to the situation where such decisions are infested with arbitrariness, unreasonableness or unfairness. The sum and substance, thus, is that interference by this Court in contractual/tender matters is permissible with a caveat that such interference is to be guided by larger public interest and also that it should be for safeguarding and protecting the rights under Article 14 and 19(1)(g) of the Constitution of India.

DISCUSSION AND ANALYSIS:

28. The facts of the case as presented before us are, thus, to be analyzed and our conclusion is to be reached on the anvil of the law as discussed above.

29. So far as the claim of the Petitioner that its technical bid was wrongly and unlawfully rejected, we are of the opinion that the submissions made in this regard by the learned Senior Advocate appearing for the Petitioner do not hold any ground for the reason that various admissions have been made in the Writ Petition itself by the Petitioner whereby it is established that the Petitioner did not fulfill the tender conditions. In this regard, we may state that the Petitioner has itself admitted in the Writ Petition that the Chartered Accountant certificate submitted by it did not bear UDIN and the explanation for not doing so as given by the Petitioner does not appeal to us. Similarly, it is also the admission of the Petitioner in the Writ Petition itself that the solvency certificate submitted by the Petitioner was not verified by the Bank. The Petitioner also admits that along with the bid documents it did not furnish GST return summary. It has also been admitted that the certificate submitted of the Entomologist of the Petitioner was a

wrong certificate, however, all these lacunae and deficiencies in the tender documents submitted by the Petitioner have been sought to be attributed by the Petitioner to inadvertent mistakes.

30. The contention made by the learned Counsel for the Petitioner giving explanation for non-fulfillment of the conditions of the tender are not tenable. It is for the tenderer to be cautious and vigilant while furnishing the tender documents and attributing non-submission / submission of incorrect documents or wrong certificate to an inadvertent mistake, cannot be accepted. The tender documents are to be evaluated by the tender floating authority. Evaluation of any bid has to be made by the tender floating authority on the basis of the documents submitted by the tenderer and it is required, under any law that for removing the deficiencies in the tender documents, any opportunity needs to be given for the tenderer. Seeking clarification in respect of certain documents and giving opportunity to replace the document or to remove the deficiency in the documents furnished by the tenderer are two different aspects of the matter. It is not the case of the Petitioner that any clarification ought to have been sought by Respondent No.1 while evaluating the tender document submitted by the Petitioner; rather the case set-up by the

Petitioner is that it had submitted wrong documents / incomplete documents and had Respondent No.1 intimated the Petitioner to remove the deficiencies, it would have removed the same. Such contention, in our considered opinion, is not tenable. Thus, the submissions made by learned Senior Advocate for the Petitioner challenging the rejection of its technical bid merit rejection, which are hereby rejected.

31. As far as the decision of Respondent No.1 to declare Respondent No.2 to have technically disqualified is concerned, we now need to consider justification sought to be given by Respondent No.1 for the said decision.

32. In this regard, the minutes of meeting of Tender Committee, dated 13th December 2022 are relevant to be referred to. The Tender Committee, in its meeting held on 13th December 2022 has clearly opined that Respondent No.2 did not comply with condition No.6 in e-tender No.2 and hence it became technically ineligible. The said minutes of meeting of the Tender Committee held on 13th December 2022 have been signed by (i) the Biologist and Member Secretary, (ii) Chief Accounts and Finance Officer and Member and (iii) the Chief Auditor and Member of the Tender

Committee of Nashik Municipal Corporation. Below the said opinion formed by the Tender Committee is a note appended by the Additional Municipal Commissioner (Services) and Chairman of the Tender Committee stating that the Chartered Accountant Certificate submitted by Respondent No.2 was checked by him and it was found that its total turn-over was Rs.5.64 Crores and it was, thus, ensured that it had become eligible. The Additional Commissioner (Services) and the Chairman of the Tender Committee, thus, writes in his noting that there is no objection to open the financial bid submitted by Respondent No.2. The Minutes of the Tender Committee along with the noting appended by the Additional Commissioner (services) of Respondent No.1 Nashik Municipal Corporation is extracted hereinbelow:

"EXHIBIT – I

Malaria Department,
Date 13.12.2022.

M I N U T E S

Humbly Submitted:

As regards triennial e-Tender No.01 for three Wards viz. Panchavati, Nashik East and Nashik Road and Tender No.02 for the three wards viz. Nashik West, New Nashik (CIDCO) and Satpur, for appointing a Contractor to control the mosquito and insect-borne diseases within the limits of Nashik Municipal Corporation, Nashik, the new e-Tender for 25 days was published on the date 08.07.2022. However, on the date 01.08.2022, when the web-site viz. https://mahatenders.gov.in was checked, it was noticed that in both the e-Tenders, one and the same tenderer had submitted the tender and therefore, the time period for both e-Tenders was initially extended for the period of 15 days.

Thereafter, again on the date 15.08.2022, when the web-site viz. https://mahatenders.gov.in was checked, it was noticed that, in both the e-Tenders, one and the same tenderer had submitted the tender and therefore, the time period for both e-Tenders was extended for second time by 07 days. Thereafter, on the date 23.08.2022, the technical bid for both e-Tenders was opened. However, in both the tenders, both the tenderers were became technically ineligible and therefore, on the date 22.09.2022, the Commissioner and Administrator had directed to cancel the e-Tenders and to again invite tenders afresh. Pursuant thereto, on the date 26.09.2022, the Malaria Department had published e-Tender afresh. The technical bid for the said tenders was opened on the date 06.10.2022. Three tenderers had taken part in Tender No.02. Their names are: (1) S and R Pest Control Services, Nashik, (2) Orion Pest Solution Pvt. Ltd., Kolkata, West Bengal and 3) Messrs Suraj Enterprises, Navi Mumbai.

In order to check the technical documents / certificate in respect of the said tender, a Tender Committee, as approved by the Commissioner and Administrator was set up as under:

Sr. No.	*Officer*	*Designation in Tender Committee*
1.	*Shri Ashok Atram (Additional Commissioner (Service))*	*Chairman*
2.	*Shri Bodhikiran Sonkamble (Chief Auditor)*	*Member*
3.	*Shri Narendra Mahajan (Chief Accounts and Finance Officer)*	*Member*
4.	*Shri Dr. Rajendra Tryambake (Biologist)*	*Member Secretary*

In pursuance thereof, in the meetings, held on the dates 17.10.2022 and 07.11.2022, in the chamber of the Additional Commissioner (Service) for checking the technical documents/Certificate for the said tender, the above named Committee Members had remained present.

The Department, after carrying out procedure as per the first minutes, produced before the Tender Committee the documents that have been received in respect of Tender No.02 and in *pursuance thereof, the Tender Committee gave its opinion as follows:*

TENDER NO.02:

1. *As per the instructions given in respect of Condition No.06 in the tender, the Tender Committee got checked the CA Certificate submitted by the Tenderer by the Municipal Chartered Accountant. As per the same, as per the CA Certificate submitted by Messrs S and R Pest Control Services, Nashik, its Total Turnover (excluding GST) is 5.64 Crores and as per the terms and conditions of the tender, in respect of Tender No.02, there was a condition that the turnover should be 4.50 Crores. According to the said condition, its Total Turnover is more than the amount mentioned in the terms and conditions. However, as per the objection raised by the Tenderers about Messrs S and R Pest Control Services, Nashik not having experience of the work of Spraying And Fogging as mentioned in Condition No.06 in the Tender, copies of the Work Order for the work of Spraying and Fogging received by the said tenderer during the period from the year 2018-19, 2019-20, 2020-21 and certificates for having completed the said work were called for from it. Pursuant thereto, Messrs S and R Pest Control Services, Nashik has produced the Work Orders for the work of Spraying And Fogging, totally amounting to Rs.60,03,384/- (in words – Rupees Sixty Lac Three Thousand Three Hundred and Eighty Four only) and therefore, it is seen that it does not comply with the Condition No.06.*

   Similarly, when the report in respect of Messrs Orion Pest Solution Pvt. Ltd., Kolkata, West Bengal, received from C.A. as per Condition No.06 is checked, nothing about the Spraying and Fogging Activity has been mentioned in the CA Certificate as required as per the terms and conditions of the tender. There is no mention about UDIN Number. Further, it has not produced to the Department, the Work Orders for its having carried out the work of Spraying And Fogging during the period of years 2018-19, 2019-20, 2020-21 and certificates for having completed the said work and therefore, it is seen that it does not comply with the Condition No.06.

   Further, as per the Condition No.6, after the Suraj Enterprises, Navi Mumbai submitted the Work Orders for *its having carried out the work of Spraying And Fogging during the period of years 2018-19, 2019-20, 2020-21 and certificates for having completed the said work, when the Tender Committee checked the same, it is seen that it has submitted the certificate for having completed the work to the tune of Rs.7,36,92,252/- issued by the Medical Health Officer, Navi Mumbai Municipal Corporation. However, when the Tender Committee checked the CA Certificate submitted by Messrs Suraj Enterprises, Navi Mumbai as per Condition No.6, there is no UDIN Number mentioned therein and therefore, as it is not in accordance with the Rules, it is seen that the said Company does not comply with the Condition No.06.*

2. As per the Condition No.07 of the tender, when the Tender Committee sent an e-mail on the date 18.10.2022 to the Bank of Baroda, West Bengal for verifying the Bank Solvency Certificate submitted by Messrs Orion Pest Solution Pvt. Ltd., Kolkata, West Bengal; the Bank, by its e-mail, has informed to the Department that, the said Bank of Baroda had not issued any Bank Solvency Certificate in whatsoever manner to Messrs Orion Pest Solution Pvt. Ltd., Kolkata, West Bengal. When the documents received by E-mail were placed before the Tender Committee and when the same were checked by the said Committee, it becomes clear that the said Bank Solvency Certificate is bogus and therefore, it is seen that Messrs Orion Pest Solution Pvt. Ltd., does not comply with the said condition and instructions were given to take further action as per the Rules.

Further, on the date 18.10.2022, when a letter on behalf of the Department was personally submitted to the Cosmos Co-operative Bank, Nashik Branch for verification of the Bank Solvency Certificate submitted by Messrs S and R Pest Control Services, Nashik, the said Bank has informed to the Department that the Cosmos Co-operative Bank has issued Bank Solvency Certificate to Messrs S and R Pest Control Services, Nashik and therefore, it is seen that the said Company complies with the Condition No.07.

On the date 18.10.1022, an e-mail was sent by the Department to the Bank of Maharashtra, Navi Mumbai Bank for verification of the Bank Solvency Certificate submitted by Messrs Suraj Enterprises, Navi Mumbai, *however, no reply of whatsoever nature has been received from the Bank of Maharashtra and therefore, no verification in respect thereof could be carried out.*

3. As regards Condition No.8, it has come to the notice of the Tender Committee that, the certificates about having experience of carrying out the work within the limits of Municipal Corporation that have been submitted by the tenderer namely Messrs Orion Pest Solution are of having experience of less than 3 years, and hence Messrs Orion Pest Solution does not comply with the said condition.

The certificate that Messrs S and R Pest Control Services, Nashik has submitted shows that it has an experience of more than 3 years of carrying out the work within the limits of Municipal Corporation and therefore, it is seen that the said company complies with the said condition.

The certificate that Messrs Suraj Enterprises, Navi Mumbai has submitted shows that it has an experience of more than 3 years of carrying out the work within the limits of Municipal Corporation and therefore, it is seen that the said company complies with the said condition.

4. When the Tender Committee checked the report received from CA in connection with the Condition No.09, it is found that the print of the Audited Financial Statement that Messrs Orion Pest Solution Pvt. Ltd., Kolkata, West Bengal has submitted for the Financial Year 2018-19 as per the Condition No.9 is faint and as the legible print has not been made available for ascertaining the turn over as mentioned in the Certificate, it is seen that the said Company does not comply with the said condition.

When the report in connection with the Condition No. 09 in respect of Messrs S and R Pest Control Services, Nashik, received from CA is checked, it is seen that the said Company complies with the said condition.

Further, when the report in connection with the Condition No. 09 in respect of Messrs Suraj Enterprises, Navi Mumbai, received from CA is checked, it is seen that the said Company complies with the said condition.

5. *When the Tender Committee checked the report received from CA in connection with the Condition No.10, it is found that UDIN Number is not mentioned in the Certificate submitted by Messrs Orion Pest Solution Pvt. Ltd. , Kolkata, West Bengal and therefore, it is seen that, as it is not in accordance with the Rules, it does not comply with the said condition.*

Further, when the report in connection with the Condition No. 10 received from CA in respect of Messrs S and R Pest Control Services, Nashik is checked, it is seen that it complies with the said condition.

Further, when the report in connection with the Condition No. 10 received from CA in respect of Messrs Suraj Enterprises, Navi Mumbai is checked, it is seen that it complies with the said condition.

6. *As per Condition No.11, when the Tender Committee checked the Report received from the C.A., it is found that M/s S. & R. Pest Control Services, Nashik and Orion Pest Solution Pvt. Ltd., Kolkata, West Bengal are complying with the Condition No.11.*

On checking the report received from the C.A. as per Condition No.11, it is found that M/s. Suraj Enterprises, Navi Mumbai has not annexed the GST return summary and therefore, it is seen that it does not comply with the condition No.11.

7. *When the Tender Committee checked the documents in respect of depositing salary of the Chief Technical Officers for three years with the Bank, submitted by M/s S. & R. Pest Control Services, Nashik as per condition No.17, it is seen that it complies with the condition No.17.*

M/S. Orion Pest Solution Pvt. Ltd., Kolkata, West Bengal and Suraj Enterprises, Navi Mumbai have not submitted to the Department, the documents in respect of depositing salary of the Chief Technical Officers for three years with the Bank, it is seen that they do not comply with the condition No.17.

8. *As M/s S. and R. Pest Control Services, Nashik is not complying with the condition No.06 in E-Tender No.02, it*

becomes ineligible as regards the condition of technical documents.

As M/S. Orion Pest Solution Pvt. Ltd., Kolkata, West Bengal does not comply with condition Nos. 06, 07, 08, 09, 10, 17, 18, it becomes ineligible as regards the condition of technical documents.

As Suraj Enterprises, Navi Mumbai does not comply with condition No. 06, 11, 17, it becomes ineligible as regards the condition of technical documents.

Sd/-
(Shri Dr.Rajendra Tryambake)
Biologist and Member Secretary,
Tender Committee
Nashik Municipal Corporation, Nashik

Sd/-
(Shri Narendra Mahajan)
Chief Accounts and Finance Officer
and Member, Tender Committee,
Nashik Municipal Corporation, Nashik

(Sd/-)
(Shri Bodhikiran Sonkamble)
Chief Auditor and Member,
Tender Committee
Nashik Municipal Corporation, Nashik

Checked the C.A. certificates submitted by M/s. S. and R. Pest Control and it is found that its total turnover is 5.64 crores and as it is ensured to that effect, it becomes eligible. Hence, there is no objection to open its financial Bid.

(Sd/-)
(Shri Ashok Atram)
Additional Commissioner (Services) and Chairman,
Tender Committee
Nashik Municipal Corporation, Nashik"

33. In the Affidavit-in-Reply filed by Respondent No. 1, it has been stated that the decision of the Tender Committee as embodied in the minutes dated 13th December 2022 was not

overruled by the Additional Commissioner, rather he found Respondent No. 2 to be technically eligible on the basis of the opinion expressed by Shri. Yogesh Kataria, Chartered Accountant vide his letter dated 12th October 2022.

34. The opinion by the Chartered Accountant Shri Yogesh Kataria was given by him in response to a letter by the Corporation dated 12th October 2022, whereby his opinion was sought in respect of the tender documents with a specific reference to tender condition Nos. 6, 9, 10 and 11. The opinion of the Chartered Accountant Shri. Yogesh Kataria is embodied in his letter dated 12th October 2022, which is extracted hereinbelow: -

"AYG & ASSOCIATES
CHARTERED ACCOUNTANTS
NASHIK MUMBAI THANE PUNE

To
Shri Dr. Rajendra Trymbake
Biologist
Nashik Municipal Corporation
Rajiv Gandhi Bhavan
Nashik

Sub: - Opinion on Pest Control Tender Document evaluation

Ref: - Your Office Letter No. Ja.No./Malaria/ Va.Shi/ Dept./74/2022 dated 12th Oct 2022

Sir,
With reference to above letter, your office has called our opinion for Pest Control Tender Document verification with

specific reference to Tender conditions 6, 9, 10 and 11. We have verified the bidder's tender document submission with reference to points mentioned above i.e. condition number 6, 9, 10 and 11. The document verification as to be done for 2 tender documents (Nivedika 1 and Nivedika 2) identified by Tender id as –

Tender ID: 2022_NMC_838551_1
Tender ID: 2022_NMC_838508_1

The documents considered and reference made for framing the opinion are listed below –

I. *For Tender ID: 2022_NMC_838551_1*
   1. *The tender documents submitted by*
      i. *S & R Pest Control Services (Bid ID-4518812)*
      ii. *Orion Pest Solutions Private Ltd (Bid ID-4518965)*
      iii. *Suraj Enterprises (Bid ID-4519736)*
   2. *GST Portal (www.gst.gov.in) for GST Registration and Return Summary*
   3. *UDIN verification at https://udin.icai.org/search-udin*

II. *Tender ID: 2022_NMC_8385508_1*
      i. *Digvijay Enterprises (Bid ID-4519876)*
      ii. *Orion Pest Solutions Private Ltd (Bid ID-4518954)*
      iii. *S & R Pest Control Services (Bid ID-4518817"*

35. In his opinion Shri Yogesh Kataria, Chartered Accountant has opined that the turn-over of Respondent No.2 without GST is Rs.5.64 Crores It is on the said opinion of the Chartered Accountant, as has been argued by Respondent No.2, that the decision to declare Respondent No.2 to have technically qualified was taken by the Additional Commissioner. It has also been stated on behalf of Respondent No.2, as already noticed above, that the decision to technically qualify Respondent No.2 was taken not

only based on the opinion expressed by the Chartered Accountant, but also keeping in view the provisions contained in paragraph 4.4.3.1 of the Procurement Manual which is extracted hereinbelow:

"4.4.3.1 Granting extension of time for Tender process.

In order to have the tender competitive, it is necessary to have minimum three tenderers. If less than three tenderers participate in the tender process, the Purchase Officer concerned shall give extension of time of minimum one week first. However, even after granting such extension of time, if it is noticed that less than three tenderers have participated in the said tender process then, extension of time of one week shall be granted for the second time and thereafter, no such extension of time shall be granted.

While implementing the Tender process, if the situation as mentioned below arises then, the below-mentioned procedure should be followed.

A) If three or more than three tenders become technically eligible then, the Purchaser Department shall be at liberty to take further steps.

B) If two tenders become technically eligible then, if there is a difference of (-)20 percent to (+) 10 percent between the actual price of purchase and the estimated price fixed earlier then, the Purchaser Department shall be at liberty to accept the same. If the prices do not fall within this Price Band then the the tender shall be invited again.

C) If no tender or only one tender is declared as technically eligible then, the tender should be reissued.

If the tender is for the amount of less than Rs. Ten (10) lakhs then, the extension of time should be granted only once.

If importance is given to complete the work in time, the Purchase Officer, even the response of less than 3

> *tenders is received (even after granting extension of time twice), may take decision to take further steps and shall mention feasible grounds therefor. However, in such situation, the Purchase Committee shall have to take extra precaution to ensure the reasonableness of the price."*

36. It is also contended by Respondent No.1 that the said decision was taken keeping in view the urgency for controlling Vector Borne Diseases by executing the work of spraying and fogging which was in larger public interest.

37. The Tender Committee comprises of experts as is apparent from a perusal of the minutes of meeting of the Tender Committee held on 13th December 2022. The said minutes have been signed by Biologist who is a Member, Chief Accounts and Finance Officer who is its second Member and by the Chief Auditor who is the third Member of the Tender Committee. Though constitution of the Tender Committee, admittedly, also includes the Additional Commissioner, however, the minutes dated 13th December 2022 have been signed by three members, whereas, the Additional Commissioner, who is the Chairman of the Tender Committee as well, has written a separate note which runs contrary to the opinion formed and expressed by the other three members of the Tender Committee wherein it has clearly been held that

Respondent No.2 did not comply with tender condition No.6 which rendered Respondent No.2 to be ineligible. The Additional Commissioner, further records his opinion stating that certificate submitted by Respondent No.2 has been checked and on scrutinizing the said certificate it was found that its total turnover was Rs.5.64 Crores and, therefore, it was eligible. However, what is startling to note is that though in the Affidavit-in-Reply Respondent No.1 states that to arrive at the decision of holding Respondent No.2 to be eligible, reliance was placed on the opinion expressed by Shri Yogesh Kataria, Chartered Accountant of the Corporation, but no such mention of the opinion expressed by Shri Yogesh Kataria has been made by the Additional Commissioner while expressing his opinion contrary to the opinion expressed by the rest of the three members of the Tender Committee. The Additional Commissioner, in his separate note appended just below the minutes of the meeting of the Tender Committee, has relied on the Chartered Accountant certificate submitted by Respondent No.2 and does not make any mention of the opinion expressed by the Chartered Accountant of the Corporation, Shri Yogesh Kataria, as has been asserted in the Affidavit-in-Reply.

38. If we peruse the opinion expressed by the three members of the Tender Committee which stands recorded in the minutes of the meeting dated 13th December 2022, we find that the three members Committee has clearly stated that Respondent No.2 did not comply with tender condition No.6 and hence, it became ineligible. While recording this opinion, it has been clearly stated that Respondent No.2 had produced the work orders for work of spraying and fogging amounting to Rs.60,03,384/- only and, therefore, it was found that it did not comply with condition No.6. Though the minutes of the meeting dated 13th December 2022 have already been quoted above, however, we find it appropriate to extract below the relevant portion of the said minutes where discussion has been made about Respondent No.2 not fulfilling tender condition No.6, which reads thus:

> *"1. As per the instructions given in respect of Condition No.06 in the tender, the Tender Committee got checked the CA Certificate submitted by the Tenderer by the Municipal Chartered Accountant. As per the same, as per the CA Certificate submitted by Messrs S and R Pest Control Services, Nashik, its Total Turnover (excluding GST) is 5.64 Crores and as per the terms and conditions of the tender, in respect of Tender No.02, there was a condition that the turnover should be 4.50 Crores. According to the said condition, its Total Turnover is more than the amount mentioned in the terms and conditions. However, as per the objection raised by the Tenderers about Messrs S and R Pest Control Services, Nashik not having experience of the work of Spraying And Fogging as mentioned in Condition No.06 in the Tender, copies of the Work Order for the work of Spraying*

> *and Fogging received by the said tenderer during the period from the year 2018-19, 2019-20, 2020-21 and certificates for having completed the said work were called for from it. Pursuant thereto, Messrs S and R Pest Control Services, Nashik has produced the Work Orders for the work of Spraying And Fogging, totally amounting to Rs.60,03,384/- (in words – Rupees Sixty Lac Three Thousand Three Hundred and Eighty Four only) and therefore, it is seen that it does not comply with the Condition No.06."*

39. Thus, what we find in an unambiguous terms is that the three members of the Tender Committee have recorded their opinion about Respondent No.2 not fulfilling the tender condition No.6 on the basis of discussion and also on the basis of the documents produced by Respondent No.2, such as work orders and the inference drawn by three members is that the work order submitted by Respondent No.2 indicated that it had carried out the work amounting to Rs.60,03,384/- alone, whereas, the appendage at the end of the minutes by the Additional Commissioner does not discuss the documents such as the work orders submitted by Respondent No.2; rather he only relies upon the Chartered Accountant certificate submitted by Respondent No.2. At the cost of repetition, we may observe that though in the Affidavit-in-Reply filed by Respondent No.1 it has been stated that the decision by the Additional Commissioner declaring Respondent No.2 was based on the opinion expressed by the Chartered Accountant of the Municipal Corporation Shri Kataria,

however, no such mention is available on the note separately appended by the Additional Commissioner.

40. Similarly, as per the averments made in Affidavit-in-Reply, the decision to declare Respondent No.2 to have technically qualified is said to have been taken by the Additional Commissioner in the light of paragraph 4.4.3.1 of the Procurement Manual which has been extracted in the preceding paragraph **No.35** of this judgment. The said provision provides for grant of extension of time for tender process. According to this provision, if less than three tenderers have participated, then extension of one week's time shall be granted first, however, even after granting such extension if it is noticed that three tenderers have participated, extension of one week shall be granted second time and thereafter no such extension of time shall be granted. It further provides that if three or more than three tenderers become technically eligible, then the Purchaser Department shall be at liberty to take further steps, however, if only two tenderers become eligible then, if there is a difference of (-) 20 % or (+) 10% between actual price of purchase than the estimated price fixed earlier, then the purchase department shall be at liberty to accept the same. Paragraph No.4.4.3.1(c) on which reliance has

been placed by Respondent No.1 provides that if no tenderer or only one tenderer is declared as technically eligible, then the tender should be reissued. It further stipulates that if importance is to be given to complete the work in time, the Purchase Officer, even if the response of less than three tenderers is received even after granting extension of time twice, may take further decision and shall give feasible grounds there for. However, in such circumstances, the Purchase Committee shall have to take extra precaution to ensure reasonableness of the price. Respondent No.1 in its Affidavit-in-Reply has, thus, relied upon clause 4.4.3.1 of the Procurement Manual which provides that if completion of work is required to be done in time then the Purchase Officer will be at liberty to take further steps even if response of less than three tenderers is received, provided that for taking further steps, feasible grounds for the same has to be recorded.

41. Respondent No.1, in its Affidavit-in-Reply, though relies upon clause 4.4.3.1(c) of the Procurement Manual, however, the decision of the Additional Commissioner, which is appended below the minutes of the meeting dated 13th December 2022, does not mention any reason for proceeding ahead despite the fact that only one tenderer was found technically qualified.

42. In view of the aforesaid, we are of the opinion that the Additional Commissioner, while appending his note and accepting the technical bid of Respondent No.2 has not acted with requisite fairness. The justification sought to be given in Affidavit-in-Reply by Respondent No.2 for declaring Respondent No.2 to have technically qualified, cannot be taken aid of to protect such a decision taken by the Additional Commissioner of the Corporation as such reasons or justification are missing in his note appended to the minutes of the meeting of the Tender Committee. We have already observed that three members of the Tender Committee have clearly opined on the basis of the documents submitted by Respondent No.2, including the work orders for work of spraying and fogging submitted by Respondent No.2 amounting to total Rs.60,03,384/- only that it did not fulfill the tender condition No.6. Though the Chartered Accountant of the Corporation has given opinion that the total turn-over of Respondent No.2 is Rs.5.64 Crores, however, three members of the Committee had scrutinized the said opinion as well and have concluded that the work orders submitted by Respondent No.2 evidenced total works amounting to Rs.60,03,384/- only. The conclusion, thus, drawn by three members of the Committee is based on the documents

and evidence available on record. The Additional Commissioner has based his conclusion only on the Chartered Accountant Certificate submitted by Respondent No.2 and has not made any mention even of the opinion submitted by the Chartered Accountant of the Corporation viz. Shri Yogesh Kataria. The Additional Commissioner also does not assign any reason for proceeding ahead with the process of tender as per the requirement of paragraph 4.4.3.1(c) of the Procurement Manual.

43. Even the opinion expressed by Shri Yogesh Kataria, Chartered Accountant, relied upon by the Municipal Corporation does not discuss the documents, especially, the work orders submitted by Respondent No.2 for the works relating to spraying and fogging. On the contrary, the conclusion of the three members Committee is based on evaluation of the documents such as the work orders submitted by Respondent No.2 for the work relating to spraying and fogging which according to three members Committee aggregated to Rs.60,03,384/- only.

44. For the reasons discussed above, we have no hesitation to hold that the decision-making process adopted in this case by the Additional Commissioner of the Nashik Municipal Corporation/

Respondent No.1 declaring Respondent No.2 to have technically qualified, was not fair or reasonable. Any decision based on such unfair and unreasonable process of decision making cannot be permitted to be sustained in the eyes of law.

ORDER

45. Resultantly, the Writ Petition is allowed and the decision declaring Respondent No.2 to have technical qualified is hereby quashed.

46. Respondent No.1 / Nashik Municipal Corporation is directed to reissue the tender and process the same in the minimum possible time as per the requirement.

47. There shall be no order as to costs.

(ARIF S. DOCTOR, J.) **(CHIEF JUSTICE)**

48. After pronouncement of the Judgment, the learned counsel representing the respondent nos.1 and 2 pray for stay of the Judgment. The prayer is rejected.

(ARIF S. DOCTOR, J.) **(CHIEF JUSTICE)**