

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

***WRIT PETITION NO. 6748 OF 2023***

M/s. Chemical People through Partner  
Prakash Babulal Mutha

... Petitioner

V/s.

Pune Municipal Corporation through  
the Commissioner and Ors.

... Respondents

Mr. Siddharth Wakankar with Ms. Aishwarya Bapat for the  
Petitioner

Mr. Vishwanath Patil for Respondent Nos. 1 and 2 – PMC  
Mr. Surel Shah i/b. Mr. Prashant Darandale and Mr. Nikhil Chate for  
Respondent No.3

***CORAM : NITIN JAMDAR , ACJ &  
ARIF S. DOCTOR, J.***

***DATE : 27 JUNE 2023***

**P.C. :-**

Heard the learned Counsel for the parties.

2. The Petitioner, who has been declared as ineligible in a tender process initiated by the Respondent – Pune Municipal Corporation is before us questioning their action. After declaring the Petitioner as ineligible, the Municipal Corporation has proceeded

to award tender to Respondent No.3, however the work order is not yet issued.

3. The Pune Municipal Corporation issued a tender notice on 29 March 2023 (19 April 2023 as per the Respondents) for supply of 3661 tones of Poly Aluminium Chloride liquid with the reference rate of Rs.10,800/- per ton. The Poly Aluminium Chloride is used for purification of drinking water and this supply was in respect of the water treatment plants of the Municipal Corporation.

4. The condition attached to the tenders stipulated experience of the tenderer for last five years. In clause 8 it was stated that the tenderer should have experience of last five years. In respect of completed work, three categories were mentioned that is (a) three similar types of work which value should not be less than 40% of the tender value; (b) two similar types of work which is not less than 50% of the tender value; and (c) one similar work not less than 80% of the tender value. Note stated that the value should be taken into consideration inflation at the rate of 10%. As regard the bid capacity in clause 9(c), it was provided that for last five years the tenderer should have supplied 30% of the quantity of the tender within one year.

5. The Petitioner submitted his bid and the Petitioner received an e-mail on 1 June 2023 from the e-tender website of the

Government of Maharashtra and the letter of the same date informing the Petitioner that the Petitioner was ineligible, its technical bid was not accepted. Thereafter, financial bid was opened and the Respondent No.3 was declared as lowest bidder. The Petitioner is therefore before us.

6. The short question is whether the Respondent – Corporation was right in declaring the Petitioner as ineligible. It is the settled position of law that an interference in the tender process more particularly in respect of grant of public works, is limited. The Court does not minutely scrutinize, but generally consider whether the procedure adopted was fair and there is no gross arbitrariness or mala fides results being against the public interest.

7. As regard the tender conditions in clause 8, are concerned, the Petitioner's contention is that clause (a),(b) and (c) are in the alternative and the inflation at the rate of 10% has to be considered. It is the Petitioner's case that the Petitioner falls in clause 8(b) that the Petitioner has carried out two similar types of work in the last five years and its value is not less than 50%. As regard this clause is concerned, the Respondent – Corporation has sought to contend that the two works upon which the Petitioner relies upon are not within last five years.

8. The learned Counsel for the Petitioner sought to contend that the Respondent – Corporation has incorrectly applied the criteria of financial year to calculate the last five years. There is no merit in this submission because even if the five years are calculated from the date of issuance of tender as per the Petitioner that is 29 March 2023, the certificate that the Petitioner has relied upon either do not fall within last five years or fall short of the quantity of 50%.

9. As regard the condition 8(b) upon which the Petitioner relies on, the Petitioner has produced the certificate issued by the Authority on 6 July 2019 which refers to work order dated 4 September 2017. The remark states that this work order is completed. The Respondent contends that the work order dated 4 September 2017 would fall beyond the period of five years calculating from 29 March 2023. According to the Petitioner, the date on which the order was completed should be taken as germane and if that be so, the documents would show that the work was completed some time in the year 2018 well within last five years. Clause 8 clearly stipulates that the certificate needs to be produced showing the experience. The certificate therefore is an unquestionable document that would be considered to calculate the experience. The certificate mentions only the date of 4 September 2017 and no other date. If the Petitioner wanted to place on record the work was within the five years, then it was the responsibility of

the Petitioner to place the certificate to that effect on record. It is not possible for us to enter into the question of fact as to the exact date on which the work was completed. Therefore, we are left with date of 4 September 2017 which is taken as a work order date and if that date is concerned, the Petitioner does not have the eligibility as per clause 8(b).

10. As regard the certificate dated 18 April 2023 is concerned, which is also relied upon, it is stated that it is within a period of five years as the work order is of 1 June 2022 and the order is still in process. Clause 8 specifically refers to completed work and the completed work as per the certificate admittedly fall short by 21 metric ton of 50% of the tender value. Therefore, it is clear that the stand taken by the Respondent – Corporation that the Petitioner is not eligible as per clause 8 is concerned, it is neither perverse view nor arbitrary.

11. Since the Petitioner is not eligible as per clause 8, it is not necessary to examine further as regard the Petitioner's eligibility as the bid capacity and the annual turnover as per clause 9.

12. There is, therefore, no merit in the Petition. The Petition is accordingly rejected.

***ARIF S. DOCTOR, J.***

***ACTING CHIEF JUSTICE***