

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10072 OF 2022

Sreebalajee Consultants

....Petitioner

V/S

Mira Bhayander Municipal Corporation & Ors.

....Respondents

...

Mr. K.P.Anil Kumar a/w Ms. Roshni Viani, Ms. Priyanka Kumar, Mr. Chinmay Apte for the Petitioner.

Mr. Mayuresh Lagu for Respondent Nos.1 and 2-Corporation.

...

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

DATE : 10 JANUARY 2023.

P.C.:

1 Pursuant to the tender notice the Petitioner had submitted its bid for construction, maintenance, repair of bus stop, shops in Mira Bhayander Municipal Corporation area on build-use-and-transfer basis and grant of rights to the broadcast advertisements on the bus stops. The Petitioner was held eligible in the technical and financial bid. The Petitioner was found to be the highest bidder. It is the case of the Petitioner that Petitioner was called for negotiation and the Petitioner had increased its offer by Rs.15,00,000/-. The Petitioner agreed also. However, on or about 6 August 2022 the tender was cancelled.

2 The learned Counsel for the Petitioner submits that the entire tender process pursuant to which the Petitioner had filled the tender was

completed. The Petitioner was found to be the highest bidder and qualified with each and every terms and conditions of the tender. The Petitioner was called for negotiation for increasing his offer by Rs.15,00,000/- and it agreed for the same. Pursuant to the request of the Respondent-Corporation the Petitioner also constructed the model bus stand and had spent an amount of Rs.12,00,000/-. It was arbitrary on the part of the Respondent-Corporation to cancel the tender at such an advanced stage. The entire process of the tender having concluded, only work order remained to be issued. According to the learned Counsel, the reason for cancellation of the tender is erroneous, unreasonable and irrational. The learned Counsel further submits that thereafter second and third tenders were issued but the Respondent-Corporation did not get any bidder. The fourth tender was also issued surreptitiously by increasing the eligibility criteria of turn over of Rs.1 crore per year to turn over of Rs.3 crores. The same was to favour the contractor in which the Respondent-Corporation was interested. For the fourth tender a cartel was created and the same entity in two names had bid in the tender process. According to the learned Counsel, if the decision making process is arbitrary then this Court can interfere and exercise its powers of judicial review under Article 226 of the Constitution. The learned Counsel relies upon the judgment of the Apex Court in case of **Food Corporation of India vs. M/s. Kamdhenu Cattle Feed**, reported in **AIR**

1993 SC 1601. The learned Counsel further submits that it is a legitimate expectation of tenderer that being highest bidder, would be entitled for the work order. The learned Counsel further relies upon the judgment of the Apex Court in the case of **B.S.N. Joshi & Sons Ltd. vs. Nair Coal Services Ltd. & Ors.** reported in **(2006) 11 SCC 548** to submit that marginalization by bidding contractor is impermissible. The act of the Respondent-Corporation is not bonafide and is stated to be malafide.

3 The learned Advocate for the Respondent-Corporation submits that no work order was issued in favour of the Petitioner. It was found by the Committee that the price received was too less and therefore a decision was taken to float fresh tender. The fresh tenders were floated for the second and third time but no eligible bids were received. However, in the fourth tender the highest bidder was 30% more than the Petitioner, the Respondents are benefitted by the better retendering. The Petitioner has not challenged the decision to proceed with retendering.

4 We have considered the submissions.

5 The jurisdiction of this Court to entertain a Writ Petition in respect of contractual matters and/or tender is in a narrow compass. This Court would only concerned with the decision making process and not the decision. This Court would not sit as an Appellate Authority over the decision taken by the

Respondent-Corporation but is only concerned with a due adherence of the decision making process.

6 It appears that when the first tender was issued, the Petitioner was the highest bidder. According to the Petitioner the bid was also raised by Rs.15,00,000/- and that the model bus stop was also constructed. However, the same does not find approval from the Respondent-Corporation.

7 The Petitioner was never issued with the work order. No concluded contract came into existence between the parties. As concluded contract did not come into existence, the Petitioner did not get the vested right nor any contractual obligation arose.

8 Be that as it may, the decision was taken by the Committee of the Respondent-Corporation to cancel the tender process and to go for fresh bidding as it was observed in the order wherein decision was taken for fresh tender that though the Petitioner claims to have agreed to enhance the amount by Rs.15,00,000/- no such communication was given in writing. It was also observed that considering the growth of the city and that in future metro would also start running, more income would be derived from the advertisements and various reasons were given for fresh tender. Thereafter, second and third tenders were issued but there were no bidders and in the fourth tender process, two bids were received. The highest bidder was 30%

more than the Petitioner's bid. The Respondent-Corporation would be benefited by an amount of Rs.2.5 crores in total. The public exchequer would be benefited. There is no concrete proof of cartelisation as alleged.

9 The Petitioner has also not challenged the decision of the Respondent-Corporation to go for fresh tender process.

10 Considering all the aforesaid conspectus of the matter, we are not inclined to exercise our writ jurisdiction under Article 226 of the Constitution.

11 The Writ Petition as such is dismissed. No costs.

12 At this stage, the learned Advocate for the Petitioner submits that the Respondents be directed to refund the costs incurred in constructing the model bus stop i.e. Rs.12,00,000/-. The said amount is disputed by the Respondent-Corporation. The Petitioner may file a civil suit or take appropriate steps as may permissible in that regard. In that event the contentions of respective parties are kept open.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)