

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION 4012 OF 2022

<u>Petitioner</u>	:		Skynet Computer Services, Near Coach Gas Service, Kranti Ward, Bhandara 441904, Through its Proprietor, Rajesh s/o Bindraj Khobragade, Aged about 35 years, R/o Kranti Ward, Bhandara, Tahsil & District Bhandara.
			– Versus –
<u>Respondent</u>	:		Maharashtra State Road Transport Corporation, Bhandara Division, Bhandara, Through Divisional Controller, Bhandara.

 Mr. V.D. Mulay, Advocate for the Petitioner.
 Mr. A.S. Mehadia, Advocate for the Respondent.

CORAM: ROHIT B. DEO AND M.W. CHANDWANI, JJ.
RESERVED ON : 21ST JUNE, 2023.
PRONOUNCED ON: 14TH JULY, 2023

J U D G M E N T : (Per M.W. Chandwani, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

02] The writ petition challenges the communication, dated 23/06/2022, whereby the respondent cancelled the tender and proceeded to issue fresh tender.

03] The respondent published tender in respect of letting out various places at its depot in Bhandara Division including Bhandara city.

The petitioner participated in tender for two wheeler stand at Bhandara Bus Depot of the respondent. The financial bid of the petitioner for Rs.36,680/- found to be the highest. The Tender Committee recommended the name of the petitioner as successful bidder and sent the proposal for approval to the Office of Departmental Controller of the respondent. Suddenly, by the impugned communication, the petitioner was informed that the tender was cancelled for the administrative reason. Thereafter, the respondent published fresh tender notice. Feeling aggrieved with the action of the respondent, the petitioner approached this Court.

04] The respondent filed its reply *inter alia* contending that no tender was allotted to the petitioner and only the bid of the petitioner was admitted by the Committee. The petitioner was directed to get in touch with the Tender Inviting Authority. However, the petitioner did not contact the respondent at any point of time. The respondent had mentioned in the tender document that the respondent can cancel the tender without assigning any reason. Therefore, the petitioner should not have grievance. The fresh tender was issued and allotted to one Shahid Beig Mirza. The respondent sought rejection of the writ petition.

05] Learned counsel for the petitioner vehemently submitted that since the petitioner was successful bidder and the Tender Committee has accepted and the bid recommended to the Divisional Controller, Bhandara

for awarding tender to the petitioner. Suddenly, the respondent without assigning any reason and without giving the petitioner chance of hearing cancelled the tender process and issued fresh tender process. Action of the respondent is arbitrary and illegal. To buttress the case of the petitioner, the learned Counsel for the petitioner seeks to rely on the case of *K.P. Ibrahim vs. State of Goa and others – 2021(6)Mh.L.J.530.*

06] Per contra, it is submitted by the learned Counsel for the respondent that the right to cancel without assigning any reason was with the respondent, therefore the petitioner can not questions the same. The petitioner did not participate in the fresh tender invited for the same contract, therefore, he is precluded from challenging the process of tender. He also went on submitting that the Court should be slow in interfering in the process of tender. To buttress his submission, he seeks to rely on the decision of the Supreme Court in case of *State of Uttar Pradesh and another vs. Al Faaheem Meetex Private Limited and another – (2016) 4 SCC 716,* and decision of this Court in the case of *Reutech Mining, A Division of Reutech Pvt. Ltd., Through M/s. K.K. Alliance India Private Limited, Through Power of Attorney Holder Vivek Tank vs. Union of India, Through its Secretary and others – 2023 SCC OnLine Bom 36.*

07] Since, we did not find any reason for cancellation of tender and issuance of new tender in communication dated 23/06/2022 and even in

the reply of the respondent, we directed the respondent to produce the entire record of the tender process. Perusal of the record shows that after opening of the bids, the petitioner was found highest bidder and the Tender Committee, consisting of Divisional Traffic Officer, Divisional Accounts Officer, and Security and Vigilance Officer of the respondent, recommended for allotment of tender to the petitioner and send the proposal to the department controller for approval. Meanwhile, a complaint from Mr. Shahid Beig Mirza was received by department controller alleging that the petitioner has forged the documents by participating in the tender process in the name of M/s. Skynet Computer Services, but through its Proprietor Mr. Rajesh Bindraj Khobragade,

08] We find that the complaint filed by Mr. Shahid Beig Mirza was without substance. The complaint is of applying by the petitioner through its proprietor. There is nothing wrong in applying for tender by a proprietary concern through its Proprietor. Rather, it is the settled law that a proprietary concern is not legal entity, it has to act through proprietor. Instead of considering the recommendations of the Tender Committee, the Department Controller rejected the recommendations of the Tender Committee and directed to invite fresh tender, on the ground that the antecedents of the petitioner were not verified through the Traffic Inspector.

09] We are aware that the principal's right not to accept the offer, provided such decision is taken bona fide, in a transparent manner and not with a view to favour any particular bidder. While exercising the power of judicial review, the Court is primarily concerned as to whether there has been any interference in the decision making process, rather than a correct decision in the fact of the case, have been taken.

10] Here, record of respondent reveals that the Tender Committee in categorical terms has stated the antecedents of the petitioner were examined, not only by the Assistant Traffic Superintendent, but by the Tender Committee as well. The entire scrutiny was done by the Tender Committee, which includes three senior officers. Rather, before opening of financial bid, the Departmental Controller himself had approved the scrutiny of the tender process done by the Tender Committee. If at all, the Divisional Controller was not satisfied with the verification done by the Assistant Traffic Superintendent as well as the Tender Committee, and if it was mandatory to examine the antecedents of the petitioner through Traffic Inspector, he could have directed for verification of the antecedents of the petitioner through the Traffic Inspector and should have satisfied himself regarding clean record of the petitioner. But that has not been done and the tender was cancelled.

11] It appears to us, all it started after the complaint was received by the Department Controller, he instead of closing the complaint, which has no substance, questioned the tender process on the different aspect i.e. verification of antecedents of the petitioner through Traffic Inspector. We could have understood, if the complaint filed by Mr. Shahid Mirza would have referred to any antecedents of the petitioner, which is not the case here. It is a matter of record that the new tender was invited. Notably, Mr. Shahid Beig Mirza, who lodged the frivolous complaint against the petitioner got the next tender, who could not succeed in earlier tender. These chain of circumstances lead us to infer that there is something fishy. The possibility of cancellation of earlier tender to help Mr. Shahid Beig Mirza in getting the tender cannot be ruled out. After perusal of record produced in this case, we are satisfied that the facts of the case do not warrant cancellation of the entire tender process. We find cancellation of tender and bid of the petitioner is arbitrary and unreasonable.

12] In case in *Al Faheem Meetex (supra)* relied by the respondent, there were only two valid bids before the authority, where as per the Financial Rules there must be three or more bids to ensure that bidding process becomes competitive. In that scenario, recommendation dated 08/09/2010 was recalled. The facts of the present case are altogether different. Here, there was no lacuna in first tender process. Rather, the

record suggests that there is something wrong on the part of Divisional Controller. He, anyhow, wanted to cancel the earlier tender in which the petitioner was successful.

13] In case of **Reutech Mining** (supra), relied by the petitioner, this Court has held that in administrative matters and especially the matters pertaining to decisions taken by the tender issuing authority, the Court is more concerned with the decision making process rather than the decision itself. The Court would be more concerned with the manner in which the decision under challenge has been taken rather than the aspect whether a correct decision in the facts of the case has been taken. In this case, despite reiteration thrice by tender Committee that it had verified the antecedent of the petitioner through Assistant Traffic Superintendent, the Departmental Controller directed to cancel the tender on the ground that antecedent of the petitioner was not examined through the Traffic Inspector. This questions the decision making process of the respondent. We are of the view that the decision in **Reutech Mining** (supra), supports the case of the petitioner.

14] The sheet-anchor argument of the learned Counsel for the respondent is that the successful bidder of subsequent tender is not a party to the petition and the work order has been issued to him, rather he is running a stand since last one year. Therefore, at this stage, it is not warranted to cancel the subsequent tender.

15] We are conscious of the fact that the Mr. Shahid Beig Mirza, who get the subsequent tender is not party to the petition. But, the fact remains that this Court by its order dated 19/07/2022 made it clear that the work order issued pursuant to the second tender notice shall be subject to the outcome of the writ petition. Even, perusal of the record produced by the respondent goes to show that the successful bidder was made aware that the Court has passed the said order. It was specifically mentioned by the respondent while giving the work order to the successful bidder that the said tender shall be subject to the outcome of this writ petition. If that is so, then we do not find the absence of the successful bidder is in hurdle while granting relief to the petitioner, particularly, when having knowledge of this interim order, Mr. Shahid Mirza did not choose to intervene in the matter.

16] We could have appreciated the submission of the learned Counsel for the respondent regarding time gap of one year from issuance of work order, had the tender would have been completed in near future, but this tender is for five years. What we find in most of the cases that this defence is being taken by the respondent, but for the sake of rule of law, particularly when the arbitrariness of the respondent is obvious, we are of the view that the matter should be handled with heavy hand and should reach to logical end. Lastly, the cancellation of tender itself is challenged by the petitioner, therefore, not participating in

subsequent tender by the petitioner, does not eclipse the merit of the present petition.

17] To sum up, the petition succeeds. The impugned communication dated 26/03/2022 is hereby quashed and set aside. E-tender Notice No.2/2022 is also hereby set aside. Consequently, the work order issued in favour of the successful bidder does not survive. The respondent to get the motorcycle stand vacated within two weeks. We direct the respondent to get the antecedents of the petitioner inspected through the Traffic Inspector. If the respondent finds no antecedents of the petitioner, the respondent shall issue work order in respect of the e-tender notice dated 21/02/2022.

18] In the aforesaid terms, the petition is disposed of. Rule accordingly with no order as to costs.

(M.W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

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