



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7790 OF 2024

Akanksha Enterprises,
Through its Proprietor
Authorized Signatory
Shri. Jitendra s/o Suresh Chavan,
Age : 45 years, Occ: Business,
R/o : 12, Municipal Colony, Near
Gogadev Mandir, Dilli Gate, Ahmednagar

...Petitioner

VERSUS

1. State of Maharashtra,
Through its Secretary,
Department of Urban Development,
Mantralaya, Mumbai-32.
2. The District Collector,
Osmanabad, Dist. Osmanabad.
3. Municipal Council,
Omerga, Dist. Osmanabad,
Through its Chief Officer.
4. Maharashtra Jeeven Pradhikaran
Osmanabad Division, Osmanabad,
Through its Executive Engineer.

...Respondents

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Advocate for Petitioner : Mr. Deshmukh Sachin S. h/f

Mr. Jadhav Vinod B.

AGP for Respondent/State : Ms. M.L. Sangeel

Advocate for Respondent No.4 : Mr. Vinod Patil

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 25 JULY 2024

PER COURT :

. Heard.

2. The petitioner who intended to bid in the tender process floated by the respondent no.3/Municipal Council, is approaching the Court with following prayers :

“B. Hold and declare that the E-tender notice dated 29/6/2024 issued by the respondent No.3 for Door to door Collection, Transportation, Recycling of Dry/Wet Waste under Solid Waste Management work is illegal, arbitrary and as such, same may kindly be quashed and set aside.

C. By issuance of a writ of mandamus or any other appropriate writ, order or direction in like nature, the respondent No.3 be directed to undertake the work in relation to Door to door Collection, Transportation, Recycling of Dry/Wet Waste under Solid Waste Management flashed in E-tender notice dated 29/6/2024 may kindly be directed to be undertaken after applying the DSR/SSR rates for the year 2024-2025 determined by the competent authority and for that purpose issue necessary orders.”

3. As is laid down in the matter of **Ramana Dayaram Shetty Vs. The International Airport Authority of India and Ors.**, AIR 1979 SC 1628, indeed, a prospective bidder even before participating in the tender process has a right to put up a challenge to certain terms and conditions of the tender.

4. Perhaps, in the light of that the petitioner is coming with a ground that SSR and DSR rates for payment to the skilled and unskilled labours are different, the stipulation in the tender

document expecting the bidders to pay minimum wages to the employees, is incompatible. It is also being alleged that there is no technical sanction prevalent and the sanction granted for the year 2023 forms the basis for floating the tender.

5. The learned advocate for the petitioner takes us through the papers to demonstrate that in spite of a specific objection raised in a pre bid meeting, there was no satisfactory explanation. The query was raised not only by the petitioner but by another prospective bidder. If it is a matter of payment of wages which cannot be below the minimum wages, reference to the SSR and DSR prescribing a different rate creates a confusion thereby obstructing the right of the petitioner to participate.

6. The question as to whether a prospective bidder has a right to object to the tender process on the ground that there is no technical sanction was already a ground in the previous writ petition wherein the petitioner had approached this Court but subsequently withdrew it when we raised a query as to what right a prospective bidder has to obstruct a tender process on the ground that there is no technical sanction and the technical sanction being relied upon is for the previous. We, therefore, cannot hear the petitioner on that count.

7. As far as the confusion as regards the DSR or SSR regarding the wages to be paid to the skilled and unskilled labours as notified by the labour commissionerate and expectation of the tendering

authority/respondent no.3 binding the bidders by stipulating that the employees should be paid minimum wages, though there is some substance in the stand being taken regarding creation of such confusion, in our considered view, it is not a material stipulation which could prevent somebody from participating in the tender process. When the term and condition expressly lays down that minimum wages will have to be paid, the prospective bidder can draft his offer accordingly irrespective of what the DSR or SSR is.

8. There is one more angle to this aspect. The last date for filling the offers is already over. The petitioner could have but has not submitted his offer. If such is the scenario, in our considered view, when he could have filled in the tender by taking the benchmark as liability to pay minimum wages, of which, the petitioner is fully aware of, having not participated in the tender process, in our considered view, it would not lie in his mouth now to make us believe that the confusion has prevented him from participating in the tender process. There is no merit in the petition.

9. The petition is dismissed.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]