



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11519 OF 2023

Sahitya Sanskar Prabhodini,
Nageshwarwadi,
Through its President,
Chandrakant s/o Purushottam Sonawane,
Age: 53 years, Occu.: Business/Social work,
R/o. Flat No.45, B-01, Sunny Centre,
Pisadevi Road, Aurangabad.

.. PETITIONER

VERSUS

1. The Commissioner/Administrator,
Municipal Corporation, Chh. Sambhajinagar
(Aurangabad)
2. Deputy Commissioner-06 and
Divisional Head of Women and Child
Welfare Department, Chh. Sambhajinagar,
(Aurangabad)

.. RESPONDENTS

...
Mr. D. B. Pawar, Advocate for the petitioner.
Mr. S. P. Urgunde, Advocate for Respondent Nos.1 and 2.
...

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

DATE : 10 JUNE 2024

ORDER [Per Shailesh P. Brahme, J.] :-

1. Heard both the sides with their consent for final disposal.
2. Petitioner's grievance is that it participated in tender process and found to be lowest bidder, but the respondent Corporation failed to

issue work order. Petitioner is soliciting direction to the respondent Corporation to issue work order. By additional affidavit, it is further prayed that the E-tender notice dated 31.10.2023 be quashed.

3. Learned Counsel for the petitioner submits that despite being selected as successful lowest bidder in tender process dated 27.12.2022, arbitrarily and with a *mala fide* intention, work order has been withheld. It is further contended that additional conditions have been incorporated during subsistence of the tender process calling upon the petitioner to pay additional security deposit within three days. Despite the payment of additional security deposits on 05.07.2023, respondent Corporation failed to issue work order. It is further contended that highhandedly respondent Corporation resorted to fresh tender process vide E-tender notice dated 31.10.2023. Petitioner seeks to challenge action of the respondent Corporation on the ground of discrimination and arbitrariness.

4. Learned Counsel Mr. S. P. Urgunde for respondent No.1 Corporation repels the submission on the basis of affidavit-in-reply. He would submit that payment of additional performance security deposit within three days from the date of opening of bid was already one of the conditions stipulated in the tender notice. The payment of security deposit on 05.07.2023 was late by 20 days. Petitioner failed to comply with the condition. The respondent Corporation was

constrained to go for fresh tender process which is finalized and work order has also been issued to the successful bidder. Learned Counsel would submit that as the petitioner participated in the fresh tender process but was unable to succeed, he is pressing for direction to issue work order.

5. We have considered rival submissions of the parties. It is not disputed that the petitioner participated in the first tender process and found to be successful. Subsequent tender process was initiated by E-tender notice dated 31.10.2023. Petitioner participated in that process without any protest or demur. He was not successful and the process has been concluded by awarding contract to the tenderer, who is not party to this proceeding.

6. Petitioner could not have participated in the subsequent tender process if this matter was sub judice. No endeavour has been made soliciting prohibitory orders against the Corporation from proceeding with the fresh tender process, pending present petition. In this situation, we find that petitioner has been taking chance. It would not have prosecuted present matter had it been successful in the subsequent process.

7. For the reasons stated above, we are not inclined to exercise our discretion. The respondent Corporation has given work order to the

newly selected successful tenderer. No relief can be granted to the petitioner. Writ Petition is, therefore, dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

scm