

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16575 OF 2024

Surya Center Treatment Facility Pvt. Ltd. .. Petitioner
Vs.
The State of Maharashtra and Others .. Respondents

Mr. Saurabh Kulkarni (through VC) a/w Mr. Omkar S. Wangikar,
Advocates for the petitioner.

Mrs. G.R. Raghuwanshi, Assistant Government Pleader for the respondent-
State.

Mr. Vikram Walawalkar, Advocate for respondent no.2.

Mr. Vishwanath Patil a/w Mr. Akshay Naidu, Advocates for respondent
no.3-MPCB,

Mr. C.M. Lokesh, Advocate for respondent no.4.

CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ

DATE : 26th NOVEMBER 2024.

PC. :

1] Heard. The challenge raised in this writ petition is to the request for proposal dated 03/10/2024 issued by the 2nd respondent – Sangli Miraj Kupwad Municipal Corporation thereby intending to conduct e-auction for the operation and maintenance of common Bio-medical Waste Treatment Facility Project. The principal ground of challenge as raised is to Condition no.9 of the terms and conditions mentioned in the e-auction notice published by the Health Department of the Municipal Corporation. As per that condition, a bidder is required to have consent of the

Maharashtra Pollution Control Board of having an incinerator with capacity of 200 kilograms per hour.

2] The learned counsel for the petitioner submits that the requirement prescribed by Clause-9 of the tender conditions is against the provisions of the Biomedical Waste Rules, 2016. The said Clause had been inserted only with a view to favour certain interested bidders and with a view to deprive various eligible bidders. Initially a similar tender notice was issued on 06/03/2024 with a similar condition. The tender notice however came to be thereafter withdrawn. Referring to the Resolution dated 04/01/2024 passed by the Administrator appointed on the Municipal Corporation, it was submitted that no justification whatsoever for inserting that condition could be found. Since the said condition amounted to highhanded action on the part of the Municipal Corporation, it was submitted that the request for proposal be quashed.

3] The learned counsel for the 2nd respondent – Sangli Miraj Kupwad Municipal Corporation opposed the aforesaid submissions. He submitted that pursuant to the auction notice dated 03/10/2024, a pre-bid meeting was held on 13/12/2024. The petitioner had raised an objection on the same lines as raised in the writ petition in the said meeting. On the basis of the requirement in Sangli District coupled with the fact that there was

likely increase in the volume of biomedical waste in the coming ten years, the requirement of having consent from the Maharashtra Pollution Control Board to have incinerator with capacity to the extent of 200 kilograms per hour was prescribed. There were no allegations of malafides in the writ petition and it was merely stated that the condition was imposed to favour some others. Reliance was placed on the judgment of the Co-ordinate Bench in *Gypsum Structural India Pvt. Ltd. vs. Brihanmumbai Municipal Corporation* AIROnline 2023 Bom 1987 to submit that the petitioner had not submitted its bid and hence it had no locus to maintain the writ petition. Since the requirement was prescribed after considering all technical issues the same did not require any interference. It was submitted that the writ petition was liable to be dismissed.

4] Having heard the learned counsel for the parties and having perused the relevant documents on record, we do not find any case made out for this Court to exercise discretion under Article 226 of the Constitution of India. Firstly, the petitioner failed to respond to the tender notice in the form of request for proposal dated 03/10/2024 issued by the second respondent. As a result, by failing to participate in the tender process the petitioner is a stranger to the same. On this count, as held by the Co-ordinate Bench in *Gypsum Structural India Pvt. Ltd.* (supra), it cannot be permitted to question the tender process. In addition, we find that in the pre-bid meeting that was held on 13/10/2024, the petitioner raised an

objection to the tender condition requiring the possession of an incinerator with capacity of 200 kilograms per hour. This objection was considered by the second respondent and on the ground that there was requirement for the same coupled with need that would arise in future that objection was turned down. A similar objection with regard to Clause No.11 has also been considered. It may be stated that the requirements as prescribed are by expert bodies. The Court is not equipped with necessary technical expertise to examine as to whether the prescription as stipulated is either illegal or unwarranted. The objection raised by the petitioner in the pre-bid meeting having been duly considered and addressed, that is another reason to hold that the second respondent has acted fairly while prescribing the tender conditions. In that view of the matter, there is no case made out to interfere in exercise of writ jurisdiction. The writ petition stands dismissed with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]