

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13369 OF 2023

**BASAVRAJ
GURAPPA
PATIL**

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BASAVRAJ GURAPPA
PATIL
Date: 2024.04.24
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1. Global Waste Management Cell Pvt. Ltd.
A Company registered under the
Companies Act, 1956 having its
Registered Office at 20/21, First Floor,
10, Atul Niwas, 7th Khetwadi Lane,
Mumbai – 400004
2. Pramod Mishra,
Director of Global Waste Management
Cell Pvt. Ltd.
having his address at 20/21, First Floor,
10, Atul Niwas, 7th Khetwadi Lane,
Mumbai – 400004

..... Petitioners

Versus

- 1 Panvel Municipal Corporation
A Body Corporate and Local Authority,
Constituted under the provisions of
Maharashtra Municipal Corporation Act,
1949, having its office at Swami
Nityanand Rd, Opp. Gokhale Marriage
Hall, Panvel, Navi Mumbai – 410206
- 2 The Municipal Commissioner,
Panvel Municipal Corporation
having his office at Swami Nityanand
Road, Opp. Gokhale Marriage Hall,
Panvel, Navi Mumbai – 410206
- 3 The Deputy Municipal Commissioner
(Health), Panvel Municipal Corporation
having his office at Swami Nityanand
Road, Opp. Gokhale Marriage Hall,
Panvel, Navi Mumbai – 410206

4 AG Enviro Infra Projects Pvt. Ltd.
Having its registered office at
Flat No.1403, 14th Floor,
Dev Corpora Building,
Opp. Cadbury Company,
Eastern Express Highway,
Thane – 400601

.....Respondents

Shri Aspi Chinoy, Senior Advocate, Shri Sanjeev Gorwadkar, Senior Advocate with Shri Akash Rebellow, Shri Rahul Hakani, Ms. Niyati Mankad, Ms. Renuka Gorwadkar, Shri Abhay Wadhwa, Ms. Shreya Gosavi, Shri Advait Dalvi i/b. Kirit Hakani for the Petitioners

Shri A. A. Kumbhakoni, Senior Advocate a/w Shri Akshay Shinde i/b. Shri Shreekant V. Gavand for Respondent No.1 to 3 – Panvel Municipal Corporation

Dr. Milind Sathe, Senior Advocate a/w. Shri Saket Mone and Shri Devansh Shah i/b. Vidhi Partners for Respondent No.4

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

**RESERVED ON : FEBRUARY 23, 2024
PRONOUNCED ON : APRIL 24, 2024**

JUDGMENT (PER : CHIEF JUSTICE)

1. Heard learned counsel representing the respective parties.

CHALLENGE:

2. By filing this Writ Petition under Article 226 of the Constitution of India, the Petitioners assail the validity of the decision /order, dated 18th October 2023, whereby technical bid

submitted pursuant to the e-tender notice, dated 11th August 2023 has been rejected. Further challenge has been made to the minutes of the meeting dated 20th October 2023, whereby the tender committee of Respondent No.1 – Panvel Municipal Corporation (hereinafter referred to as **"the Corporation"**) has declared that the Petitioner did not fulfill the condition of experience prescribed in the tender notice and accordingly, its technical bid has been disqualified.

FACTS:

3. Respondent No.1 – Corporation floated notice dated 11th August 2023 inviting e-tenders for selection of experienced and qualified operator for door-to-door collection and transportation of solid waste upto the disposal site and accordingly, a request for proposal (RFP) was published. The Petitioners, pursuant to the said e-tender notice submitted their bid, however, by means of the impugned decisions, dated 18th October 2023 and 20th October 2023, the technical bid submitted by the Petitioners has been rejected on the ground that the Petitioner did not fulfill requisite experience in terms of clause 3.1.3 of the eligibility criteria as modified by suo-moto corrigendum issued by Respondent No.1 – Corporation, dated 5th September 2023.

Clause 3.1.3 as extracted from the tender conditions is quoted below:

“3.1.3. Bidder shall be eligible for the project if he has experience of

- One municipal solid waste collection and transportation project, costing not less than 191 Crores*
- Two municipal solid waste collection and transportation project, each costing not less than 119 Crores*
- Three municipal solid waste collection and transportation project, each costing not less than 95.4 Crores”*

4. The experience criteria as modified by suo-moto corrigendum dated 5th September 2023 is extracted hereinbelow:

“Bidder shall be eligible for the project if he has experience of

- One municipal solid waste collection and transportation project, costing not less than 191 Crores completed*
- OR*
- Two municipal solid waste collection and transportation project, each costing not less than 119 Crores completed*
- OR*
- Three municipal solid waste collection and transportation project, each costing not less than 95.4 Crores completed*
- In last seven years from any government, semi government organisation. If any ongoing work is in progress then the bidder has to submit partial completion certificate of amount and tonns mentioned above.”*

5. The only alteration made vide suo-moto corrigendum dated 5th September 2023 in the eligibility criteria as quoted above was that the word "completed" was added in the three eligibility conditions and the word "OR" was inserted between these three conditions. Accordingly, the eligibility condition as publicised for a bidder to be eligible was experience of either (i) one municipal solid waste collection and transportation project, costing not less than 191 crores, completed, or (ii) two municipal solid waste collection and transportation projects, each costing not less than 119 crores, completed, or (iii) three municipal solid waste collection and transportation projects, each costing not less than 95.4 crores, completed.

6. Thus, the bidders fulfilling either of the aforesaid three eligibility conditions were technically qualified to participate in the bid. The occurrence of the word "OR" between these three conditions, therefore, means that the bidder should have experience of either completing one project of the value of 191 crores or two projects of the value of not less than 119 crores or three projects of the value of not less than 95.4 crores. All these works, for making a bidder to be eligible, were required to be completed in last seven years with any Government or semi

Government organization. If any ongoing work was in progress then the bidder was required to submit partial competition certificate of the amount and tonnes mentioned in these conditions.

7. The Respondent – Corporation issued a letter on 11th October 2023 to the Petitioners to submit the experience certificate in terms of the eligibility criteria as quoted above. It was stated in the said letter dated 11th October 2023 that as per the tender condition, the Petitioners were required to submit project experience certificate of solid waste collection and transportation. It is to be noticed at this juncture itself that along with the tender documents the Petitioners had submitted an experience certificate dated 19th May 2022 issued by the Mira Bhayander Municipal Corporation (hereinafter referred to as the **"MBMC"**) according to which, the Petitioners were awarded the work of collection of waste and its transportation to the processing plant from prabhag samiti Nos.1, 2, 3 and 4. The said certificate clearly recites the details of the projects, contract period thereof was 5 years and the date of start was 1st May 2012. The total cost of the work done was more than Rs. 191 crores.

8. Based on the said certificate, dated 19th May 2022. it was claimed by the Petitioners – company that since the total cost of the work done as evidenced by the said certificate dated 19th May 2022 was more than 191 Crores in a single project, as such it fulfilled the eligibility criteria of having completed one project of municipal solid waste collection and transportation costing more than 191 croes. The contention as raised by the Petitioners is that the Petitioners thus fulfilled the first eligibility condition and accordingly, the decision of the Respondent – Corporation in not accepting the technical bid submitted by the Petitioners, is arbitrary.

9. The Petitioner submitted its reply to the letter dated 11th October 2023 vide its letter, dated 16th October 2023 stating therein that the certificate issued by MBMC, which was tendered by the Petitioners, was clear and unambiguous which explicitly establish that the Petitioner fulfilled the tender condition relating to experience. It was also stated that in the light of the said certificate further demand for various documents, particularly the single work order, was uncalled for and not in accordance with the tender conditions. Along with the letter dated, 16th October 2023, the Petitioners also submitted copy of the single

tender notice dated 29th July 2011 issued by MBMC and stated that as per the said tender notice the scope of work of the project was one and that the MBMC had divided its single project area of municipal solid waste collection within the limits of the MBMC in the four divisional committees or zones (Prabhag Samitis) for administrative purposes. The Petitioner also contended in the said reply dated 16th October 2023 that accordingly four tenders were floated at the same time pursuant to a single notice dividing the MBMC in four divisional committees or zones (Prabhag Samitis) for administrative convenience. In sum and substance, the submission made in the reply, dated 16th October 2023 by the Petitioner was that as per the e-tender notice issued by the MBMC, though separate tenders according to ward committee Nos.1, 2, 3 and 4 were published however, the entire MBMC area was divided into four prabhags for administrative convenience and therefore, it was a single project and not four separate projects. On the strength of the said submissions as recited in the letter dated 16th October 2023 the Petitioners submitted that it fulfilled the requisite qualification of having performed work relating to one project of the value more than 191 crores.

10. The tender committee of Respondent No.1 – Corporation met on 20th October 2023 and considered the reply given by the Petitioners – company to the letter dated 11th October 2023 and came to the conclusion that the MBMC had issued four separate work orders and had also entered into four separate agreements in respect of four wards and that earnest money deposit for four tenders was also different and hence, just because the nature of the work was the same, it was impractical to sum up four separate tenders together and presume that experience was of a single work/project. The tender committee, thus, found and declared the Petitioners – Company to be technically ineligible. Thereafter the subject tender was finalized and the work order has also been issued in favour of Respondent No.4 on 25th October 2023 and as informed, Respondent No.4 is presently executing the work of the subject tender.

Arguments of Shri Aspi Chinoy, learned Senior Advocate, representing the Petitioners:

11. The case set-up by the Petitioner and argued on its behalf by Shri Aspi Chinoy, learned Senior Advocate is that the rejection of technical bid of the Petitioners amounts to arbitrary exclusion of the Petitioner from the tender process, which is

based on perverse mis-appreciation of tender clause No.3.1.3, which is against the objective of tender process I.e. to encourage competition / participation by expert bidders.

12. Shri Chinoy has further argued that so far as the e-tender notice dated 29th July 2011 issued by the MBMC in which the Petitioners had successfully participated, is concerned, the work was related to collection and transportation of municipal solid waste from the entire area of the MBMC, that is to say, from all its four zones (prabhag samitis) and though the project was implemented by inviting four separate tenders for each of the four prabhag samitis and by awarding separate contracts, however, since the work by the successful tenderer was to be performed in the entire area of Municipal Corporation, it was one project and accordingly, the Petitioner clearly fulfilled the requisite qualification criteria. It is also the submission of Shri Chinoy that the Petitioner, since the year 2012-2013, have been successfully operating the work of collection of solid waste for the entire area of MBMC and therefore, by the impugned decision ousting the Petitioner from participating in the tender process on the non existent ground by rejection of the technical bid, is not tenable. According to Shri Chinoy, clause 3.1.3 of the

alleged conditions refers to 1, 2 or 3 **"projects"**, however, it does not refer to 1, 2 or 3 **"contracts"** and that the term **"project"** connotes a wider meaning than the term **"contract"** and accordingly, the same cannot be read to be synonymous. His contention is that any one project can be implemented / performed by awarding one or more contracts and merely because more than one contracts were entered into between the MBMC and the Petitioner, it cannot be construed that the Petitioner had worked in different projects.

13. It is also the submission on behalf of the Petitioner that the tender notice issued by the MBMC for all four prabhag samitis was one and accordingly, the work relating to all four prabhag samitis should be construed to be one project for the reason that the ordinary meaning of the word **"project"** cannot be overlooked. Referring to dictionary meaning of the word **"project"**, Shri Chinoy has stated that the term **"project"** used in the requisite criteria connotes a specific plan or a planned undertaking or a piece of work or an activity that is intended to achieve a particular purpose and accordingly the word **"project"** occurring in clause 3.1.3 always intended to be one single contract and/or work arising out of a single tender. The

submission is that though the work performed by the Petitioner in the MBMC limits pertains to the work similar to the work of the subject tender and it was performed through four separate contracts, however, based on the ordinary meaning of the word “**project**”, since the work related to single piece of work and single activity and therefore, the Petitioner had gained experience of a single project worth more than 191 crores.

14. Relying on the judgment in the case of ***Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd & Anr.***¹ and ***Vidarbha Irrigation Development Corporation & Ors. Vs. Anoj Kumar Agarwala & Ors.***², Shri Chinoy has argued that the meaning of the word “project” in ordinary parlance cannot be overlooked. He also relies upon the judgment in the case of ***Reliance energy Ltd. & Anr. Vs. Maharashtra State Road Development Corporation Ltd. & Ors.***³ to submit that if there is vagueness or subjectivity in the terms of the conditions of a tender, same will result in unequal and discriminatory treatment and thus, it will violate the doctrine of “Level Playing Field”.

¹ (2016) 16 SCC 818

² (2020) 17 SCC 577

³ (2007) 8 SCC

15. Shri Chinoy has also relied upon the judgments in the case of ***NHAI Vs. Gwalior-Jhansi Expressway Ltd.***⁴ and ***I.S. Enterprises Vs. Jamia Millia Islamia***⁵, to submit that the impugned decision has resulted in unlawful ouster of the Petitioner from participation in the tender process which is contrary to the objective of the tender itself as the objective of tender process is not only to adhere to the transparent process but also to encourage competition and give equal opportunity to all tenderers for the end result of getting a fair offer or value for money.

16. On the aforesaid counts, the submission on behalf of the Petitioner is that the impugned decision, whereby the Petitioner's technical bid has been found to be non-responsive on account of the alleged ground of non fulfilling the criteria contained clause 3.1.3, is absolutely illegal and hence, is liable to be struck down.

Case set-up by the Respondent – Corporation :

17. Shri Ashutosh Kumbhakoni, learned Senior Advocate representing the Respondent - Corporation has submitted that the scope in tender matters for judicial review is limited to the

⁴ (2018) 8 SCC 243

⁵ 2021 SCC OnLine Del 4666

action complained of being arbitrary, irrational, unreasonable on the part of the tendering authority. According to him interference in such matter by the Courts may also be permissible if the impugned action suffers from bias or *mala fides*. He has further argued that no person has a right to do business with the Government and that as held by the Hon'ble Supreme Court in the case of ***Caretel Infotech Ltd. Vs. Hindustan Petroleum Corpn Ltd.***⁶, it is the author of the tender document who is the best person to understand and appreciate his requirements. He further stated that in the instant case, as to what should be the exact and correct interpretation or in what manner clause 3.1.3 is to be appreciated has to be left to the tendering authority i.e. Respondent No.1 – Corporation. He has also relied on the judgment in the case of ***State of Madhya Pradesh & Anr. Vs. UPSBC***⁷, to buttress his submission that unless there is some perversity in the construction of tender documents by its author, the Court must not enter into understanding of the clauses of tender documents.

⁶ (2019) 14 SCC 81

⁷ 2020 SCC OnLine SC 1001

18. According to Shri kumbhakoni, if the impugned decision dated 20th October 2023 of the tendering authority is considered, it cannot be said that the same suffers from any kind of perversity or unreasonableness on the touch-stone of *Wednusbury Principle* of unreasonableness and hence, the impugned decision in this matter need not be interfered with. Shri Kumbhakoni has also submitted that in absence of any challenge to clause 3.1.3 of the tender condition, having participated in the tender process, it is not open for the Petitioner to challenge the same. His submission is that the manner in which the Petitioner insist clause 3.1.3 of the tender conditions to be interpreted, is not legally permissible as no tenderer can thrust upon the tendering authority its own interpretation of any of the tender clauses.

19. On behalf of the Respondent – Corporation it has also been argued that bare reading of e-tender notice dated 29th July 2011 issued by the MBMC, it is clear that the said Corporation had taken a decision to notify separate tenders in respect of Ward Nos.1, 2, 3 and 4. The MBMC always intended to have separate tender process each ward separately. It is also stated that since four different contracts were executed and hence, these four

contracts cannot be said to construe a single project. Shri Kumbhakoni has also drawn a distinction between the nature of work to be performed under the subject tender and that which was performed under the tender awarded to the Petitioner by the MBMC. On the aforesaid counts, Shri Kumbhakoni, in his submission, has submitted that the writ petition deserves to be dismissed.

Submission made on behalf of Respondent No.4:

20. Dr. Sathe, learned Senior Advocate representing Respondent No.4 has opposed the prayers made in the writ petition and has submitted that the word “**project**” has to be read as one word, one work order and one contract and meaning of the said word occurred in clause 3.1.3 of the tender condition has to be derived in the context in which the said word occurs in clause 3.1.3 of the tender condition.

21. Dr. Sathe has argued that in absence of separate work experience certificates, even if the Petitioner has experience of executing the work worth more than Rs.191 crores, the same does not make the Petitioner eligible. He has also stated that the certificate issued by Corporation to the Petitioner clearly talk

about “projects” and “contracts” accordingly, the work experience gained by the Petitioner cannot be said to be in relation to one project. Dr. Sathe has, thus, on the strength of these submissions, stated that the tender committee, therefore, rightly concluded that the Petitioner lack the requisite condition as per the requirement of clause 3.1.3 of the tender conditions and that there is no illegality in the said decision and hence, the writ petition is not tenable. He has also brought to our notice the undisputed fact that the MBMC had executed four different agreements and accordingly, issued four certificates depicting experience and thus, the Petitioner cannot be said to be possessed of experience of one project worth Rs.191 crores or above. The prayer, thus, by Dr. Sathe is, that the Petitioner is not entitled to any relief whatsoever and accordingly, the petition does not warrant any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India and hence, the writ petition be dismissed.

ISSUE:

22. On the basis of the pleadings available on record and the submissions made by the learned Counsel for the respective parties and the discussion made above, the issue which falls for

our consideration in the facts of the present case is as to whether the experience as relied upon by the Petitioner – company can be said to be sufficient to declare that the Petitioner fulfilled the condition in respect of requisite experience as per clause 3.1.3 of the tender conditions as amended vide suo-moto corrigendum dated 5th September 2023.

DISCUSSION:

23. We have given our anxious consideration to the respective submission made by learned Counsel representing the competing parties. However, for the reasons which follow, we are unable to subscribe to the arguments made by Shri Aspi Chinoy, learned Senior Advocate representing the Petitioners:

(a) Undisputedly, the Petitioner furnished the experience certificate issued by the MBMC claiming that it fulfilled the requisite experience in terms of clause 3.1.3 as given in the first criteria mentioned therein. In other words, the Petitioners claimed that the work done by it for MBMC was in relation to a single project worth more than Rs. 191 crores.

As to whether the Petitioners fulfilled the said criteria or not, can be easily gathered, deduced and understood by the tender notice/letter dated 29th July 2011. The MBMC issued notice dated 29th July 2011 inviting tenders for the work related to door-to-door collection of wet and dry garbage on daily basis, daily cleaning of roads, footpaths, pavements and open and vacant places by manually and mechanically and daily transportation of the garbage to the waste processing plant. The said tender notice is available as Exhibit-A appended to the writ petition at page No.33, clause 4 whereof clearly stipulates that, **“Mira Bhaindar Corporation has 4 Prabhag Samitis. Each Prabhag Samiti has separate tender document, EMD etc. so bidder should submit tender documents separately.”**

The said tender notice dated 29th July 2011 preceded a letter of the Dy.Commissioner (Health) of Mira Bhayandar Municipal Corporation to the System Programmer, E-Tendering cell of Mira Bhayandar Municipal Corporation which is quoted hereunder:

“MIRA - BHAYANDAR MUNICIPAL CORPORATION

Late Indira Gandhi Bhavan, Main Office, Chatrapati Shivaji Maharaj Marg, Bhayandar West, Taluka & District - Thane - 401110.

PUBLIC HEALTH DEPARTMENT

Out No. MNC/Health/228/2011-2012

Date: 29/07/2011

To,
The system programmer,
E-Tendering Cell,
Mira-Bhayandar Municipal Corporation.

Subject :- Regarding publication/release of tender form
(tender document).

Tenders are being invited through e-tenders for cleaning works through complete privatization as per ward committee of municipal area under Solid Waste Management Rules, 2000 in the area of Mira-Bhayandar Municipal Corporation. Therefore, separate tenders according to the Ward Committee Nos. 01, 02, 03 and 04 should be published on e-tendering website.

Sd/-
Deputy Commissioner
(Health),
Mira-Bhayandar Municipal
Corporation"

The tender notice dated 29th July 2011 is also extracted
hereinbelow:

"MIRA - BHAYANDAR MUNICIPAL CORPORATION
Indira Gandhi Bhavan, Chatrapati Shivaji Maharaj Marg,
Bhaindar (W), Tal. Dist - Thane
Public Health Department

mbmc/health/227/2011-12

DT.29/07/2011

TENDER NOTICE

Mira Bhaindar Municipal Corporation invites tenders from company public ltd./private ltd in the form of E-Tendering, for daily cleaning of roads & gutters and collection and transportation of Municipal Solid Waste. The detail tender form and other relevant document will be available for download on **MBMC's E-Tendering website www.mbmc.abcprocure.com**

from Dt. 01/8/2011 to 20/8/2011 till 01.00 pm., tender form Fee & EMD should be submitted through online Receipt system, failing which the tender will be disqualified.

The Last date for submission of tenders completed in all respects on Dt : 20/8/2011 up to at 01.00 pm on the above mentioned website, Mira Bhaindar Municipal Corporation, if possible, the tenders (Technical Bids) will be opened in the presence of the bidders or their representative on the same day at 04.00 pm at the Tender Cell of Mira Bhaindar Municipal Corporation. The Price bids will be opened after the evaluation of technical bids and the date of price bid opening will be intimated to the tenderers.

Commissioner of Mira Bhaindar Municipal Corporation has reserved right to reject any or all bids, without assigning any reasons thereof.

<i>Name of Work</i>	<i>Prabhag Samiti No.</i>	<i>Earnest Money Deposit (EMD) (In Rs.)</i>	<i>Cost of Tender Documents (In Rs.)</i>
<i>Door to door collection of Wet & Dry garbage on daily basis from the waste generators in close compactors, daily cleaning of roads, footpaths, pavements & open and vacant places by manually / mechanically, daily cleaning & collection of waste from roads, side drains nallas, bins / container and daily transportation same to the waste processing plant at Uttan from Prabhag Samiti within the limit of</i>	<i>01</i>	<i>Rs.16,21,330/-</i>	<i>Rs.50,000/-</i>
	<i>02</i>	<i>Rs.18,87,780/-</i>	<i>Rs.50,000/-</i>
	<i>03</i>	<i>Rs.21,00,940/-</i>	<i>Rs.50,000/-</i>
	<i>04</i>	<i>Rs.15,16,210/-</i>	<i>Rs.50,000/-</i>

<i>Mira Bhaindar Municipal Corporation under MSW and Handling Rules, 2000.</i>			
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1) There will be prebid meeting on Monday, 08/08/2011 at 12.00 hrs., at the office of Commissioner, Mira Bhayander Municipal Corporation, 2nd floor, Chhatrapati Shivaji Road, Bhaindar West, Mira Bhaindar, Dist. Thane – 401 101 (Tenderer shall attend the meeting or authorise his representative along with authorisation letter).

2) All the tenderers have to pay the EMD Demand Draft issued by Nationalised Bank in favour of Commissioner, Mira Bhaindar Municipal Corporation through online receipt system Faling which the tender will be disqualified.

3) Tender form submitted through post/courier shall not be accepted.

4) Mira Bhaindar Corporation has 4 Prbhag Samiti. Each Prabhag Samiti has separate tender document, EMD etc. So bidder should submit tender document separately.

*Sd/-
Commissioner"*

If we peruse and plainly read tender notice dated 29th July 2011 and the letter of the said date as extracted above, the indefeasible inference is that separate tender documents were issued for each prabhag samitis and accordingly, the bidders were required to submit tender documents separately. The tender notice and the letter dated 29th July 2011 further reveal that for participation in each tender the bidder was required to make separate Earnest Money Deposit and it was instructed to

the system programmer of e-tendering cell of MBMC accordingly, to publish separate tenders for ward Nos.1, 2, 3 and 4.

Thus, as per the terms of the tender notice, dated 29th July 2011, it was a possibility that separate bidders would have qualified in each tender separately. It is only per chance that it is the Petitioner who qualified and was awarded all the four tenders. Merely because the Petitioner qualified in all the four tenders and were awarded the work accordingly, will not lead us to conclude, by any reason, that it was a single project. It was also a possibility that the Petitioner would have qualified only in two tenders and rest of the two tenders in respect of the other wards, would have been awarded to any other bidder. In that eventuality, the Petitioner was unable to claim that it was awarded the work of the value of all the four tenders.

We also notice that pursuant to the tender notice dated 29th July 2011, there were four separate agreements/contracts entered into between the Petitioners and the MBMC and that separate work completion certificates and experience certificates have been issued by MBMC and accordingly, on the basis of these documents, specially in view of the contents of the tender

notice and the letter dated 29th July 2011, to arrive at a conclusion that all the four works constitute a single project, in our opinion, will be fallacious.

(b) There is no ambiguity so far as tender condition No.3.1.3 is concerned. It unequivocally requires the tenderer to be possessed of work experience in a single project if the work experience was claimed in criteria one as mentioned in the said clause. Since the Petitioner is claiming its eligibility under criteria one of clause 3.1.3, we are concerned with the said criterion and not with the rest of the criteria.

We are also of the opinion that merely because the work earlier executed by the Petitioner for MBMC related to the entire length and breadth of the municipal area of the MBMC, it cannot be said that all the four works, where tender documents were required to be submitted separately, EMD was required to be deposited separately and the contracts were also constituted separately, constituted a single project. Requirement of submission of separate documents, requirement of deposition of separate EMDs and constitution of separate agreements/contracts though pursuant to the single tender

notice, lead us to conclude that there were four projects and not a single project which the Petitioner had earlier executed with MBMC.

(c) The settled legal position is that the tendering authority has to be given enough elbow space to determine not only the conditions of tender but also as to what would amount to fulfilling such tender conditions for the reason that it is the tendering authority which is the best judge of its requirements. Accordingly, the assessment as to whether a particular bidder fulfills the requisite tender condition, has to be left with the tendering authority unless such assessment is found to be arbitrary, unreasonable (on the Wednusbury Principles) or it is infested with malice.

When the impugned decision taken by the tendering authority is analysed, what we find is that the tendering authority has given sustainable reasons as recorded in the minutes of its meeting dated 20th October 2023 for arriving at the conclusion that the Petitioners did not fulfill the requisite criteria of work experience. We find that the reasons given therein are based on material available on record and the same

are not found vulnerable on the Wednusbury Principles of reasonableness. No element of *malice* or *mala fide* is reflected in the impugned decision and accordingly, we do not find any fault with the reasons recorded by the tender committee in its meeting dated 20th October 2023.

(d) We are also not inclined to interfere in the impugned decision of the Respondent – Corporation in view of the settled principle of law that the authority that authors the tender document is the best person to understand and appreciate its requirements and accordingly, its interpretation should not be second-guessed by a court in a judicial decision. Hon'ble Supreme Court has, in the case of ***Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers Vs. New J. K. Roadways, Fleet Owners and Transport Contractors and Ors.***⁸ in paragraph No.14 held as under:

"14. In a series of judgments, this Court has held that the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings. In Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818] , this Court held

⁸ **2020 SCC OnLine SC 1035**

15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.

(emphasis supplied)"

(e) We may also note that the terms of the tender or as to what fulfills the requirement of a particular tender condition, cannot be interpreted as a statute. Reference in this regard may be had to paragraph 15 of the judgment in the case of **Galaxy Transport Agencies (supra)** which is extracted as under:

"15. *In the judgment in Bharat Coking Coal Ltd. v. AMR Dev Prabha 2020 SCC OnLine SC 335, under the heading "Deference to authority's interpretation", this Court stated :*

"51. Lastly, we deem it necessary to deal with another fundamental problem. It is obvious that Respondent 1 seeks to only enforce terms of the NIT. Inherent in such exercise is interpretation of contractual terms. However, it must be noted that judicial interpretation of contracts in the sphere of commerce stands on a distinct footing than while interpreting statutes.

52. In the present facts, it is clear that BCCL and C1-India have laid recourse to clauses of the NIT, whether it be to

justify condonation of delay of Respondent 6 in submitting performance bank guarantees or their decision to resume auction on grounds of technical failure. BCCL having authored these documents, is better placed to appreciate their requirements and interpret them. (Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. (2016) 16 SCC 818)

53. The High Court ought to have deferred to this understanding, unless it was patently perverse or mala fide. Given how BCCL's interpretation of these clauses was plausible and not absurd, solely differences in opinion of contractual interpretation ought not to have been grounds for the High Court to come to a finding that the appellant committed illegality."

(emphasis supplied"

It is also noticeable that while pronouncing the judgment in the case of ***Galaxy Transport Agencies (supra)***, Hon'ble Supreme Court has taken a note of the previous judgments such as ***Silpi Constructions Contractors Vs. Union of India, 2019 SCC OnLine SC 1133, Jagdish Mandal Vs. State of Orissa (2007) 14 SCC 517*** and ***Montecarlo Ltd. Vs. NTPC Ltd. (2016) 15 SCC 272.***

Yet another judgment of the Hon'ble Supreme Court in ***Agmatel India Pvt. Ltd. Vs. Resoursys Telecom & Ors.***⁹ may be referred to where it has been held that the author of the tender document is taken to be best person to understand and

⁹ (2022) 5 SCC 362

appreciate its requirements and if interpretation is manifestly in consonance with the language of the tender document, the Court should keep a restraint. Hon'ble Supreme Court in the said case has gone to the extent of observing that even if interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself cannot be any reason for interfering with such interpretation. Paragraph 26 of the report in the case of **Agmatel India Pvt.**

Ltd. (supra) is extracted hereunder:

"26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given."

24. For the aforesaid reasons, we find that the writ petition lacks merit.

25. Resultantly, the writ petition is hereby dismissed.

26. There will be, however, no orders as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)