

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

WRIT PETITION NO.4787 OF 2024

Shri Sai Ganesh Construction,
Through its Proprietor
Shri. Narsu Hanumanta Mandel

... Petitioner

V/s.

Khopoli Municipal Council & Anr.

... Respondents

Mr. Rahul Kasbekar for the Petitioner.

Mr. Gouresh Mogre a/w Ms. Nikita Mandaniyan and Ms. Padma
Chinta i/by Ms. Harshad Bhadbhade for Respondent No.1.

Mr. P. P. Kakade, GP a/w Mr. O. A. Chandurkar, AGP a/w Mrs. G.
R. Raghuwanshi, AGP for Respondent No.2.

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

DATE : 28TH MARCH 2024

P.C. :

1. By way of the present Writ Petition, the Petitioner seeks withdrawal and/or cancellation of an e-tender bearing No. Ja.Kra. KMC/EST/GEA/Arogya/217 dated 15th March 2024 floated by Respondent No.1 for inviting bids for the purpose of solid waste collection and transportation.

2. The principal grievance of the Petitioner is twofold, (a) that the terms and conditions of the tender have been tailor-made to suit only a few bidders and (b) that the terms and conditions are entirely arbitrary and unreasonable having no rational nexus with the object sought to be achieved by the tender. While the Petition sets out various clauses, which according to the Petitioner are tailor-made to suit only a few bidders Mr. Kasbekar, Learned Counsel for the Petitioner has confined his challenge to the following three tender conditions:-

17	Regarding the average turnover in the last 3 years being at least 9 Crores, certificate from C.A. about turnover
19	Documents regarding working in at least 10 Nagar Panchayats/Municipal Councils/Municipal Corporations in the current year in solid waste management and documents regarding working at least 3 B class or senior level at present.
20	Certificates regarding completion of works worth Rs.5 Crores in solid waste management.

Mr. Kasbekar submitted that the aforesaid condition 19 was tailor-made to only suit a few entities and would exclude the Petitioner from participating in the tender despite the fact that the Petitioner had 18 years experience in carrying out similar works only because the Petitioner was not presently carrying on the similar works in ten Nagar panchayats/municipal corporations/municipal councils. He then submitted that the condition of having an average annual turnover was not only exorbitant but was wholly irrelevant for the purpose of the tender, given the nature of the work. He submitted that the condition requiring the bidders to have completed solid waste management work having minimum value of Rs.5 Crores was also equally irrelevant for the purpose of the tender, given the nature of the work.

3. Mr. Kasbekar then submitted that the sole reason for imposing such conditions was to favour few well established entities, who had been carrying out similar work in other Municipal Councils/Municipal Corporations. He submits that the

impugned tender conditions were not only unreasonable and exorbitant, but would aid in increasing/permitting cartelization etc. He submitted that it was thus that the tender conditions were contrary to the Government Resolutions issued by Respondent No.2 from time to time in respect of e-tender as also in violation of the pre-qualification criteria laid down by the Central Vigilance Commission of the Government of India in its Office Memorandum dated 17th December 2002.

4. Learned Counsel for the Petitioner points out that such tender conditions would ensure only those well established entities, who already had current work orders, would be eligible for participation and that entities like the Petitioner who were in the same business for a longtime would be excluded only because they did not presently have ten current work orders from the Municipal Councils/Municipal Corporations. It is, thus, he submitted that the tender conditions were entirely arbitrary and unreasonable and thus liable to be set aside.

5. *Per contra*, Mr. Mogre, Learned Counsel appearing on behalf of Respondent No.1 submitted that the Petitioner's contention that the tender conditions were tailor-made to favour few bidders was entirely devoid of merit. He submitted that the tender conditions were only to ensure that the object of solid waste management was undertaken and executed properly and efficiently and it was thus to gauge the financial capacity as also capability of the bidders that the tender conditions had been styled accordingly. He also submitted that the Petitioner's contention that the Government Resolution as also CVC guidelines stood violated was misconceived since Respondent No.1 had received five bids in respect of the subject tender. Basis this, he submitted that the Petition is devoid of merits and was required to be dismissed.

6. We have heard Learned Counsel and find that the present Petition is devoid of merits for the following reasons :-

A. The Hon'ble Supreme Court in the case of ***Tata Cellular Vs. Union of India***¹ held that the terms

1 (1994) 6 SCC 651

of an invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of a contract. The Hon'ble Supreme Court has in the case ***Michigan Rubber (INDIA) Limited Vs. State of Karnataka and Ors.***² Held as follows, viz.

"23. *From the above decisions, the following principles emerge:*

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

² (2012) 8 SCC 216

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government."

Hence from the above, it is clear that the terms of the tender lie within the sole domain of the tendering authority. In the present case, apart from the Petitioner's ipse dixit, there is nothing to even remotely demonstrate how any of the terms of the said tender are in any manner arbitrary, irrational, perverse or malafide.

- B. The Petitioner's entire case is that the tender has been floated "*to favour a few well established entities*" however, the Petitioner has neither named much less joined any one of these so called entities as a party Respondent to the present Petition.

7. Hence, in view of the above, we find the present Writ Petition to be entirely devoid of merit and the same is dismissed accordingly.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)