

Shabnoor

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

WRIT PETITION NO.10230 OF 2024

Adarsh Bharat Enviro Pvt. Ltd.

a company incorporated under the Indian Companies Act, 2013, having its registered office at C/o. Harishchandra Pawar, S. No.278, H. No.425 NRZP School, Vithalnagar, Hadapsar, Pune – 411 028.

... Petitioner

V/s.

1. The State of Maharashtra
Through Ministry of Urban Development,
Having its address at
2. Ichalkaranji Municipal Corporation,
Through its Commissioner, having office at
Municipal Corporation Building, Ichalkaranji,
Kolhapur, Maharashtra
3. Greentech Environ Management Pvt. Ltd.
Having office at 140, Lake Town, Block A,
Kolkata – 700 089
4. Cuttack Municipal Corporation, Orissa
Having its office at Choudhary Bazar,
Cuttack – 753001, Orissa

... Respondents

Mr. Onkar Warange with Mr. Aniket Kamble for petitioner.

Mr. P. P. Kakade, Government Pleader with Mr. O. A. Chandurkar, Additional Government Pleader and Ms. G. R. Raghuwanshi, AGP for respondent No.1.

Mr. Aditya Raktade with Ms. Aarti Shah and Mr. Aup Kamble for respondent No.2.

Mr. Sarang S. Aradhye with Ms. Gauri Velankar, Mr. Shantanu Gurav and Mr. Saarth Chordia for respondent No.3.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ &
AMIT BORKAR, J.

RESERVED ON : AUGUST 7, 2024

PRONOUNCED ON : AUGUST 13, 2024

JUDGMENT: (Per Amit Borkar, J.)

1. **Rule.** With the consent of the learned counsel of the respective parties, rule is made returnable forthwith.
2. With the consent of the respective counsel and at their request, the petition is taken up for final hearing and disposal.
3. Respondent No. 2, Ichalkaranji Municipal Corporation, issued an invitation for bids on February 16, 2024, for the execution of work related to Scientific Dumpsite Land Reclamation through Bio-mining, Resource Recovery, and the scientific disposal of rejects at the Municipal Solid Waste Dumping Ground, Ichalkaranji. Four bidders, including the petitioner and Respondent No. 3, submitted their offers. The Request for Proposal (RFP) issued by Respondent No. 2 outlined the general terms and conditions and the scope of work for the tender. The RFP stipulated that the tender process would follow a two-stage system. In the first stage, pursuant to Condition No. 5.1.3, proposals were scrutinized for responsiveness to the RFP requirements, with only responsive proposals proceeding to the second stage. The second stage, as per Condition No. 5.1.4, involved a technical evaluation based on the criteria set forth in the RFP

document. It was specifically provided that the financial bids of only those bidders who met the technical qualification criteria would be opened.

4. The technical bids were opened on July 11, 2024. The tender committee scrutinized the documents submitted by all four bidders, including the petitioner's objection regarding the ineligibility of Respondent No. 3 due to an order of debarment issued by the Cuttack Municipal Corporation. The committee opined that the project management consultant was responsible for verifying the certificate provided by the petitioner, which indicated the debarment of Respondent No. 3. Consequently, the committee decided to qualify the petitioner, Respondent No. 3, and another bidder, and recommended the opening of the financial bids submitted by them. The decision of the tender committee dated July 11, 2024, declaring Respondent No. 3 eligible to participate in the tender process, is being challenged in the present writ petition.

5. In challenging the decision to declare Respondent No. 3 eligible, the learned advocate for the petitioner submitted that Respondent No. 3 failed to meet the pre-qualification criteria prescribed by Condition No. 2.3.4, which required the bidder to provide proof of RDF supply by producing a certificate from a cement factory, power plant, waste-to-energy plant, or Urban Local Body (ULB) confirmed and signed by the Head of Department (HOD) or executive engineer, for the disposal of at least 20% of the RDF quantity, which, according to the petitioner, amounts to 69,873.84 metric tons.

6. According to the petitioner, the total RDF supply based on certificates from the cement factory, power plant, and waste-to-energy plant is 55,197.32 metric tons. The petitioner relied on Clause 3.2.4 of the tender conditions, which stipulates that any entity barred or blacklisted by the Central Government, any State Government, a statutory authority, or a public sector undertaking from participating in any project, where such bar or blacklisting is in effect on the date of proposal submission, would be ineligible to submit a proposal, either independently or through an associate. The petitioner contended that the certificate relied upon by Respondent No. 3, issued by a paper mill, could not be considered for evaluating the eligibility of Respondent No. 3. The date of the proposal submission, as per the petitioner, was January 9, 2023. The communication dated July 21, 2023, issued by the Cuttack Municipal Corporation, indicated that Respondent No. 3 was debarred for a period of two years, a fact not contested by Respondent No. 3. Therefore, according to the petitioner, Respondent No. 3 was disqualified on the date of submission of the tender.

7. Conversely, it was argued on behalf of Respondent No. 3 that Respondent No. 2 had appointed a highly qualified expert agency to investigate and scrutinize the documents submitted by all bidders, including the petitioner's objections. As such, the scope of judicial review against the decision of an expert body is limited. Relying on the communication dated June 5, 2024, issued by the Cuttack Municipal Corporation and addressed to Respondent No. 2, Ichalkaranji Municipal Corporation, Respondent No. 3 contended that, in light of the

order of the Calcutta High Court in WAP No. 18204 of 2023, the documents issued by KMDA in favor of Respondent No. 3 were authenticated and valid. The certificate indicated that the debarment order had been recalled. Relying on the certificate of experience on record, Respondent No. 3 submitted that the expert body had adjudicated the fulfillment of eligibility criteria by Respondent No. 3. Whether Respondent No. 3 met the eligibility criteria of experience based on the documents relied upon by the petitioner is not a matter for this Court to decide within its limited power of judicial review, as the Court cannot substitute its opinion for that of the experts. In support of these contentions, Respondent No. 3 relied on the judgments in *Michigan Rubber (India) Limited v. State of Karnataka & Ors.*, (2012) 8 SCC 216, and *Moksh Innovations v. State of U.P. & Ors.*, AIR 2021 Allahabad 105.

8. The learned advocate for Respondent No. 2, Ichalkaranji Municipal Corporation, supported the decision of the tender approval committee, arguing that the decision was based on the expert opinion of the project management consultant, who is an authority in the field. Therefore, no interference in the extraordinary constitutional jurisdiction is warranted.

9. The rival contentions now require adjudication. The primary issue is whether Respondent No. 3 was debarred by the Cuttack Municipal Corporation on the date of submission of the tender, as per Condition No. 2.3.4, and whether Respondent No. 3 met the pre-qualification criteria prescribed by Condition No. 2.3.1. For the effective adjudication of the

issues involved, it is necessary to examine the following two tender conditions:

"2.3.1 Technical Capacity

For demonstrating technical capacity ("the technical capacity"), the bidder has to comply with both the following conditions (I) and (ii):

(i) Successfully completed similar works during last five year ending last day of the month previous to the one in which applications are invited should be either of the following:

(a) Three similar completed works each of quantity not less than 30% of the quantity (87,342.15 Cum/1,04,810.76 MT) mentioned in Sr.4 above (2,91,140.51 Cum/3,49,369.20 MT).

OR

(b) Two similar completed works each of quantity not less than 40% of the quantity (1,16,456.20 Cum/1,39,747.68 MT) mentioned in Sr.4 above (2,91,140.51 Cum/3,49,369.20 MT).

OR

(c) One similar completed work quantity not less than 50% of the quantity (1,45,570.26 Cum/1,74,684.60 MT) mentioned in Sr.4 above (2,91,140.51 Cum/3,49,369.20 MT).

(ii) Similar completed works defined as projects relating to :

(a) Scientific Dumpsite Reclamation/Bio-mining of legacy Waste dump site of municipal solid waste in Urban Local Bodies in India. If there are multiple locations of legacy waste in one town then it shall be considered separate work not cumulatively single) for evaluation purpose.

(b) Works executed in overseas/foreign countries shall not consider for evaluation.

(iii) Note:

(a) Bidder shall provide proof of RDF supply: The certificate from cement factory or Power Plant or Waste to Energy Plant Or from ULB confirming & signed by HOD or executive engineer for disposal for RDF at least 20% of the quantity (Quantity claimed as technical experience as per the clause 2.3.1(i)) and should be provided mandatorily during bid submission only.

(b) Successful Bidder shall provide Mou for supply of RDF, recovered from legacy waste from project site, to cement factories or power plant or any authorized industry as per rules & regulations mandatorily during bid submission only.

(c) Eligible project for assessing "the technical capacity" shall have been executed on individual basis only.

(d) The eligible projects claiming "the Technical Capacity" should have been executed for any Local Body/ any Government ? Semi-Government Organizations ? Public Sector Undertakings in India with direct contract with them.

(e) Subcontracting works provided as similar completed works will not be considered for evaluation.

(f) Supply of machinery rented or leased or purchased by any local body for bio-remediation & Bio-mining work will not be considered under technical capacity.

(g) Contractor should have required plant and machineries and human resources as specified in RFP for the successful execution of works.

2.3.4 Other Pre-Qualification Criteria

(i) The bidder should be technically capable enough to ensure all environmental hazard mitigation measures and demonstrate expertise in EHS Environment, health and safety aspects and impacts that need to be addressed at dumpsite while adopting the works. The bidder shall furnish a write up in the format as provided in the Form 10 of this RFP

document demonstrating their proposal to follow the measures for the Protection of Environment, Health and Safety while executing the Works.

(ii) Any entity which has been barred/blacklisted by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any Project, and the bar/blacklisting subsists as on the date of Proposal, would not be eligible to submit a Proposal Either by itself or through its Associate."

10. For adjudication of the first issue, the following factual scenario emerges: (i) The petitioner produced before the tender committee the certificate dated July 21, 2023, indicating the debarment of Respondent No. 3 for a period of two years, which was not challenged by Respondent No. 3; (ii) the tender committee declared Respondent No. 3 qualified, subject to verification of the certificate issued by the Cuttack Municipal Corporation; (iii) the communication dated June 5, 2024, issued by the Cuttack Municipal Corporation, revoked its earlier communication dated July 26, 2023, regarding the debarment of Respondent No. 3 based on re-verification of documents and the order of the Calcutta High Court in WAP No. 18204 of 2023, which, according to the Corporation, held that the documents issued by the KMDA in favor of Respondent No. 3 were authenticated and valid.

11. As per tender Condition No. 2.3.4(ii), the date of submission of the proposal is relevant in determining whether any entity was barred or blacklisted by any statutory authority from participating in any project. The date of proposal submission is January 9, 2023. The aforementioned facts indicate that the Cuttack Municipal Corporation revoked the

debarment of Respondent No. 3 effective June 5, 2024. Moreover, the judgment of the Calcutta High Court, based on which the Cuttack Municipal Corporation issued the certificate, clarifies in paragraph 48 that the certificate issued by the KMDA shall be treated as valid in respect of tenders where Respondent No. 3 had already participated by producing the said certificate. However, the judgment delivered by the Calcutta High Court on August 8, 2023, will not benefit Respondent No. 3 as the process in question commenced in 2024. Therefore, in our considered opinion, on the date of proposal submission, i.e., January 9, 2023, Respondent No. 3 was debarred from participating in any project by the Cuttack Municipal Corporation, a fact not contested by Respondent No. 3. Accordingly, Respondent No. 3 was disqualified from participating in the tender process.

12. The second issue for adjudication pertains to the fulfillment of the pre-qualification criteria prescribed by tender Condition No. 2.3.1, which required the bidder to provide proof of RDF supply by submitting a certificate from a cement factory, power plant, waste-to-energy plant, or ULB, confirmed and signed by the HOD or executive engineer, for the disposal of at least 20% of the RDF quantity (claimed as technical experience as per Clause 2.3.1(i)), and such proof was required to be mandatorily produced during the submission of the bid. It is undisputed that Respondent No. 3 submitted the following documents: (i) Certificate from UltraTech Cement Limited for 875.755 metric tons, (ii) Certificate from Suchi Paper Mills Ltd. for 14,035.112 metric tons (RDF), (iii) Certificate from Birla Corporation Limited,

Chittorgarh, Rajasthan, for 2,511 metric tons, (iv) Certificate from a power plant and waste-to-energy plant for 38,500 metric tons, (v) Certificate from a ULB for 15 metric tons.

13. From the aforementioned documents, it is clear that Respondent No. 3 could not produce the proof required as per Clause 2.3.1(ii) for RDF supply amounting to at least 69,873.84 metric tons, i.e., 20% of the RDF quantity claimed as technical experience. Instead, Respondent No. 3 produced a certificate for 55,197.32 metric tons of RDF. We are, therefore, of the considered opinion that Respondent No. 3 did not fulfill the pre-qualification criteria prescribed by Condition No. 2.3.1 and should not have been declared eligible to participate in the tender process.

14. In view of the foregoing discussion, we conclude that Respondent No. 3 was not qualified to participate in the tender process due to its failure to meet the pre-qualification criteria prescribed by Condition No. 2.3.1 and due to the fact that it was debarred by the Cuttack Municipal Corporation on the date of proposal submission. The decision of the tender committee dated July 11, 2024, declaring Respondent No. 3 eligible to participate in the tender process, suffers from vice of arbitrariness, as the tender approval committee could not have opened financial bid, and declared respondent No.3 as eligible bidder. The reasons which weighed with the committee are ex-facie arbitrary and ultra vires the tendering process and tender conditions.

15. In the aforesaid facts and circumstances, for the reasons indicated earlier, we are of the view that the petitioner would be entitled to succeed. We, therefore, quash and set aside the decision of tender approval committee dated 11 July 2024 recommended opening financial bid submitted by respondent No.3.

16. Respondent No.2 would be at liberty to invite fresh bid, if it so advised.

17. Rule made absolute in above terms.

18. The writ petition stands disposed of. Costs made easy.

19. Pending interlocutory application(s), if any, shall stand disposed of.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)