

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

WRIT PETITION NO.14000 OF 2024

BSA Corporation Ltd.

...Petitioner

Versus

Pimpri Chinchwad Municipal Corporation & Ors. ...Respondent

Mr. Dormaan Jamshid Dalal, for the Petitioner.

Mr. Kedar B. Dighe, for Respondent Nos.1 to 3 – Pimpri Chinchwad Municipal Corporation.

Mrs. Neha Bhide, Govt. Pleader a/w Mr. O. A. Chandurkar, Addl. Govt. Pleader & Mrs. G. R. Raghuwanshi, AGP for the Respondent No.4.

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

DATE : 14th OCTOBER, 2024

P. C.

1. Heard Mr. Dalal, learned counsel for the Petitioner and Mr. Dighe, learned counsel representing the Respondent No.1 – Pimpri Chinchwad Municipal Corporation.

2. By invoking our jurisdiction under Article 226 of the Constitution of India, the Petitioner, which is a company registered under the Companies Act having its registered office in Pune, challenges the entire tender process for selection of agency for manpower supply at various hospitals under Medical

Department of Pimpri Chinchwad Municipal Corporation. Accordingly, a prayer has been made for quashing the Request for Proposal (RFP) document of Tender No.3/1/2024-2025 and Tender No.3/2/2024-2025.

3. Primary submission of learned counsel for the Petitioner is in respect of the tender condition, which required the tenderer to submit copy of GST Registration Certificate and GST Clearance Certificate upto March, 2023. In respect to the objection raised by the Petitioner in relation to the said requirement, our attention has been drawn by the learned counsel representing the Respondent – Corporation to paragraph 12 of the affidavit-in-reply filed on behalf of by the Respondent – Corporation, wherein it has been stated that the Corporation has orally informed all the attendees, who participated in the pre-bid meeting that instead of submitting the GST Clearance Certificate, the Corporation would accept submission of GST Payment Challan and corrigendum to that effect shall be issued shortly. The averments made in paragraph 12 of the affidavit-in-reply filed by the Respondent – Corporation are extracted herein below :-

“12. So far as the requirement under RFP for procuring and providing GST Clearance Certificate is concerned, the corporation has orally informed all the attendees who attended the pre-bid meeting that instead of submitting the GST Clearance Certificate, the corporation would accept submission of GST Payment Challan instead. I say that a corrigendum to that effect shall be issued shortly.”

4. In view of the aforesaid averments made in the affidavit-

in-reply filed by the Corporation, so far as the grievance relating to GST Clearance Certificate is concerned, the same stands redressed.

5. Learned counsel for the Petitioner has thereafter drawn our attention to yet another condition, as mentioned under the minimum eligibility criteria, namely work experience. It has been submitted on behalf of the Petitioner that in support of the claim relating to work experience, the bidder has to submit Work Order or Agreement and Completion Certificates or Satisfactory Service Certificate from the client for the similar work. Drawing our attention to the definition of "similar work" as mentioned in the tender document, learned counsel for the Petitioner has submitted that it is provided in the tender document that the bidder has to supply combination of resources mentioned in the table in clause (19) of the tender document and in that situation the percentage of the resources of Medical/ Para Medical/Technical manpower to the total manpower supplied in a single work order should be equal to total 70%. Mr. Dalal, learned counsel representing the Petitioner has taken us to clause (19) of the tender document, which consists of a table under the heading "Deployment and Tentative Requirements of Manpower". The table contains various informations such as designation for which the manpower is required and the category i.e. Medical/Technical/ Para Medical/Non-Technical etc. The said table also mentions monthly payment to be made to the incumbents to be engaged

against the designations mentioned therein and the qualification as also the work experience required for appointment against a particular post/designation.

6. It has been contended by the learned counsel for the Petitioner that in case a bidder is required to possess the work experience as per similar work to be calculated in terms of the provisions contained in clause (19) and the table appended thereto, the ratio between the the Medical/Para Medical/Technical manpower and the total manpower in any work order comes out to be 65% : 35 % and not 70% : 30%, which is the requirement. His submissions is that therefore the definition of the phrase "similar work" is inconsistent with the provisions contained in clause (19) and if the manpower supplied for exhibiting the experience of similar work is to be calculated as per the table given in clause (19), it can be never be 70% : 30%. It is, thus, his submission, that there being inconsistency between the definition of the phrase "similar work" and what has been provided for in clause (19) of the tender document in the form of the table, such a condition cannot be insisted upon by the Respondent – Corporation.

7. Having considered the aforesaid arguments made on behalf of the Petitioner, we are of the considered opinion that the same is absolutely misconceived, for the reason that clause (19) only gives, in general, the requirement of manpower corresponding to the designation, category, monthly payment,

qualification and work experience. The specific requirement in respect of both the tenders are given in clause (20) of the tender document. Where table "A" is in respect of the requirement of employees for Yashwantrao Chavan Memorial Hospital and Masulkar Eye Hospital, Sangavi Hospital, New Bhosari Hospital, and Yamunanagar Hospital, and table "B" is in respect of requirement of the manpower for New Thergaon Hospital, Jijamata Hospital, Ha. Bha. Pa. Prabhakar Malharrao Kute Memorial Hospital - Akurdi and Talera Hospital.

8. What clause (19) provides is the designation and other relevant information for which the manpower is to be provided by the successful bidder. It is not that the category of technical or non-technical designations mentioned in clause (19) is to be taken into consideration for the purpose of arriving at the ratio of 70% : 30% of the manpower to be supplied by the successful tenderer. What has been perceived by the Petitioner by the information available in the table appended to clause (19) of the tender document is that the said table mentions 48 different posts/designations, out of which some are categorized as technical posts and non-technical posts and based on such description the ratio 65% : 35% has been calculated, which in our opinion is highly misconceived. As already mentioned above, the table appended to clause (19) only mentions the designation and other relevant information, in general, of the manpower to be supplied by the successful tenderer. The work experience required as per the tender document is that the

tenderer should have experience of supplying manpower in the ratio 70% : 30% in respect of the ratio between technical and non-technical manpower supplied in an earlier work.

9. For the aforesaid reasons, we do not find ourselves in agreement with the submission made by the learned counsel for the Petitioner in this regard.

10. Lastly, it has been argued by learned counsel for the Petitioner that by the notice inviting tender, the request for proposal was invited in respect of two tenders, namely Tender No.3/1/2024-2025 and Tender No.3/2/2024-25, however, the NIT mentions only one tender, namely Tender No.3/2/2024-2025. His submission is that accordingly, there being such discrepancy, the Respondent could not have proceeded with the impugned tender process.

11. The aforesaid submission, in our opinion, is also misconceived. The tender document is on record of the instant Petition, which has been appended as Exh.B at page Nos.29 to 77. The bid document clearly mentions the name of work as "Selection of Agency for Manpower Supply at Various Hospitals under the Medical Department of Pimpri Chinchwad Municipal Corporation". It clearly mentions at page No.33, internal page No.5, the details of two tenders, namely Tender No.3/1/2024-2025 and Tender No.3/2/2024-2025, which are in respect of different hospitals. Tender No.3/1/2024-2025 is in respect of

manpower supply for YAshwantrao Chavan Memorial Hospital and Masulkar Eye Hospital, Sangvi Hospital, New Bhosari Hospital and Yamunanagar Hospital, whereas Tender No.3/2/2024-2025 is for the manpower supply of New Thergaon Hospital, Jijamata Hospital, Ha. Bha. Pa. Prabhakar Malharrao Kute Memorial Hospital-Akurdi and Talera Hospital. The internal page No.7 of the tender document gives description of certain necessary information in the form of data sheet, which *inter-alia* mentions the website address from where the tender document will be made available and cost of the tenders as well. As per the said data-sheet, cost of two tenders as aforesaid are mentioned separately. The Earnest Money Deposit (EMD) in the said data-sheet, in respect of both the tenders, are mentioned separately and the amount for both the tenders are different. For Tender No.3/1/2024-2025, the EMD amount is Rs.99,48,561/-, whereas for the other tender, the EMD amount is Rs.1,16,03,440/-.

12. As already pointed out, the requirement of both the tenders are also different and separately mentioned in table "A" and table "B". We may also notice a note appended to the notice inviting tender, which clearly mentions that there shall be two different tenders for two different packages and that bidders can participate in any of these tenders, however, the bidders shall be eligible to get work for only one package. That would mean that any bidder could participate in both the tenders, however, on being found eligible and successful in all

respects, such a bidder would get work only for one package. Accordingly, merely, because of the fact that at one place the Tender No.3/1/2024-2025 is not mentioned in the notice inviting tender, the tender process cannot be said to be vitiated.

13. For the reasons aforesaid, we are not inclined to interfere in this Writ petition.

14. Accordingly, the Writ Petition is dismissed.

15. However, there will be no order as to costs.

[AMIT BORKAR, J.]

[CHIEF JUSTICE]