IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 84 OF 2024

Bio Clean System India Pvt. Ltd. ***....Petitioner***

: Versus :

1. Commissioner, Solapur Municipal Corporation, Solapur.

2. M/s. S. S. Services ***....Respondents***

Mr. A. V. Anturkar, Senior Advocate *i/b Mr. Amol Gatne, for the Petitioner.*

Mr. Ramdas Hake Patil, *for the Respondent No. 1.*

Mr. Surel Shah, Senior Advocate *i/b Mr. Suryajeet P. Chavan, for the Respondent No. 2.*

CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

Reserved on : 21 July 2025.
Pronounced on : 24 July 2025.

JUDGMENT: *(Per Sandeep V. Marne, J)*:

1) By this petition, Petitioner seeks a Writ of Mandamus against the tendering authority for declaration of Respondent No.2 as technically disqualified in the impugned tender process and for award of the work to Petitioner, being the second highest bidder.

2) Solapur Municipal Corporation floated a tender for running the Bio-Medical Waste Treatment Facility for a period of 20 years in the year 2003. Petitioner participated in the said tender process and after being declared as a successful bidder, he was awarded work for a period of 20 years vide work order dated 19 December 2003. As the tenure of Petitioner's work order was coming to an end, the Municipal Corporation floated tender notice dated 19 October 2023 for engaging an operator for Common Bio-Medical Waste Treatment Facility. Petitioner and Respondent No.2 participated in the tender process. In the technical evaluation, bids of both Petitioner and Respondent No.2 were declared qualified. On opening of the financial bids, Respondent No.2 was declared as the highest bidder whereas the bid of the Petitioner was found to be second highest. Accordingly, work order dated 5 January 2024 came to be issued in favour of Respondent No.2. Petitioner is aggrieved by the decision of Municipal Corporation in declaring Respondent No.2 as technically qualified and has accordingly filed the present petition.

3) Mr. Anturkar, the learned Senior Advocate appearing for the Petitioner would invite our attention to the eligibility criteria prescribed in the tender document which required bidder to possess average net worth of Rs.3 Crores during preceding 3 years. He would submit that the last date for submission of bids was 2 November 2023 by which time Respondent No.2 had not submitted any certificate showing the requisite net worth. That the Municipal Corporation has relied upon certificate of net worth issued by the Chartered Accountant of Respondent No.2 on 14 December 2023, to justify qualification of bidder-Respondent No.2. He would therefore submit that certificate issued on 14 December 2023 could not have been a part of bid submitted by Respondent No.2 on or before 2 November 2023. That the technical scrutiny of the bids was conducted on 3 November 2023 and therefore it is inconceivable that the document subsequently created on 14 December 2023 could have been a reason for declaring a bid of Respondent No.2 as technically qualified. He would further submit that the tender condition required submission of notarized certificate to demonstrate minimum average annual turnover. However, Respondent No.2 did not submit a notarized certificate and therefore ought to have been disqualified in the tender process. That in the Affidavit in Reply filed by the Municipal Corporation, there is no reference to notarization of the certificate issued by Chartered Accountant of Respondent No.2. That once the tender condition specified notarization of certificate, non-notarization must lead to rejection of bid. He would submit that since mandatory documents to prove eligibility are not produced by Respondent No.2, its bid ought to have been rejected. That after rejection of bid of Respondent No.2, Petitioner would emerge as the highest bidder, who must be awarded the contract. That mere award of contract to Respondent No.2 during the pendency of the petition cannot be a reason for retaining its work order as the contract is for a period of 20 years. He would accordingly pray for setting aside the work order issued in favour of Respondent No.2 and for award of the contract to the Petitioner.

4) *Per contra*, Mr. Hake Patil, the learned counsel appearing for Respondent No.1 would submit that the decision of the tendering authority in holding the bid of Respondent No.2 as technically qualified is fair and reasonable, not warranting any interference by this Court in exercise of power of judicial review. That the Municipal Corporation is satisfied that Respondent No.2 fulfills both the criteria of minimum average annual turnover and average net worth. He would submit that the CA certificate showed net worth of Respondent No.2 as on 31 March 2023 and therefore the same has rightly being taken into consideration by tender evaluation committee. That the bidders were uniformly granted opportunity to submit shortfall documents and that Respondent No.2 submitted the certificate dated 14 December 2023 in accordance with the opportunity so granted on 9 November 2023. So far as the annual turnover certificate is concerned, the same was submitted in original and therefore there was no question of its notarization. That the annual turnover certificate dated 27 September 2023 and net worth certificate dated 14 December 2023 leave no manner of doubt that Respondent No.2 fulfills all the eligibility criteria prescribed in the tender document. That the decision of tendering authority in adjudging Respondent No.2 as technically qualified cannot be called in question as the tendering authority is the best judge to decide about the eligibility criteria. He would submit that the contract has been awarded to the Respondent No.2 in January 2024 and that therefore it would not be appropriate to disturb the contract at such a belated stage.

5) Mr. Surel Shah, the learned Senior Advocate appearing for Respondent No.2 would oppose the petition submitting that the conduct of the Petitioner is such that the petition filed at his instance need not be entertained by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. That the Petitioner has been imposed with penalty during the earlier tender by the Solapur Municipal Corporation and by Maharashtra Pollution Control Board (**MPCB**). Writ Petition filed by the Petitioner challenging rejection of its bid by Sangli, Miraj and Kupwad Municipal Corporation has been dismissed by this Court vide order dated 10 December 2024. That after the Petitioner started executing the Work, it was found that the Petitioner has left untreated several tons of bio-medical waste and hazardous material at the plant of the Municipal Corporation. That the Municipal Corporation wrote to MPCB on 16 January 2024 for taking action against the Petitioner after Respondent No.2 complained about non-disposal of huge quantity of bio-medical waste and hazardous material kept by the Petitioner at the Corporation's plant vide letter dated 8 January 2024. That Petitioner has secured advance payments from various medical practitioners and has refused to return the amounts to them and has attracted a complaint in that regard. That considering conduct of the Petitioner, it is not entitled to invoke writ jurisdiction of this Court and that therefore the petition deserves to be dismissed. He would further submit that all the bidders were granted an opportunity on 9 November 2023 to submit shortfall documents and accordingly Respondent No.2 physically submitted the net worth certificate dated 14 December 2023. That the entire tender process has been conducted in a fair and transparent manner. That Respondent No.2 has already started operating the plant and has invested huge amount. That Respondent No. 2 is incurring monthly expenses of Rs.26.95 lakhs towards operation of the plant and that it is too late in the day to now interfere in award of contract to Respondent No.2. That the Petitioner does not dispute the figures reflected in the net worth certificate and cannot be permitted to take benefit of submission of the said certificate after granting opportunity to submit shortfall documents by the Municipal Corporation. That annual turnover certificate was submitted in original and that therefore there was no need of notarizing the same. He would submit that Petitioner has not alleged any *malafides* in the implementation of the tender process. Mr. Shah would accordingly pray for dismissal of the petition.

6) Rival contentions of the parties now fall for our consideration.

7) The tendering authority has adjudged the bids of Petitioner and Respondent No.2 as technically qualified. Upon opening of the finance bids, it is found that Respondent No.2 had quoted highest rate of 24% royalty for operation of the Bio Medical Waste Treatment Plant as against quote of 21.21% submitted by the Petitioner. Since the bid of Respondent No.2 is found to be the highest, work order dated 5 January 2024 is issued to Respondent No.2. Petitioner is challenging the decision of the Municipal Corporation in adjudging the bid of Respondent No.2 as technically qualified. The purpose behind doing so is to ensure that the highest bid of Respondent No.2 is ignored and the Petitioner secures the contract despite being the second highest bidder.

8) Petitioner has raised several objections to the bid of Respondent No.2 in the Petition. The objections pleaded in the Petition are broadly as under :-

i. Non submission of Registration Certificate.

ii. Udyog Aadhar Registration Certificate of Respondent No.2 not a valid registration of MSME.

iii. Non submission of Power of Attorney of Mr. Ashish Ghadge by the partnership firm.

iv. Non submission of notarized certificate in format at Annexure 'C' to show minimum average annual turnover of Rs.3 crores.

v. Non submission of any document to prove net worth of Respondent No.2 of Rs.3 crores in preceding 3 years.

vi. Non submission of Annexure 'G'. (tender rates list)

vii. Non possession of 10 years experience in operating and managing Common Bio-Medical Waste Treatment Facility.

viii. Non possession of requisite incineration capacity.

9) Respondent No.1-Municipal Corporation has filed Affidavit in Reply dealing with each of the objections. After receipt of justification in respect of each of the objections from the Municipal Corporation, Petitioner has chosen to press only two objections during the course of hearing of the Petition. Mr. Anturkar has canvassed the following two objections during his submissions. Firstly, it is contended that Respondent No.2 did not submit certificate to demonstrate net worth of Rs.3 crores along with the bid and the Municipal Corporation has justified the eligibility of Respondent No.2 by relying on net worth certificate dated 14 December 2023 which was issued after opening of technical bids on 3 November 2023. Secondly, it is contended that the certificate of minimum average annual turnover of Rs.3 crores submitted by Respondent No.2 is not notarized.

10) Petitioner has alleged that Respondent No.2 did not submit the requisite documents to demonstrate fulfillment of eligibility criteria prescribed in Clause 5 of the Tender Document. It would be necessary to reproduce the relevant eligibility criteria stipulated in the Tender Document, dealing with the above two objections :-

> "Minimum average annual turnover of Rs. 3.00 Crores (Three Crores) or more than Bio Medical Waste Treatment Management Projects during the last two consecutive financial years. The bidder is expected to submit the notarized certificate for the same. (Format attached as Annexure 'C')
> Average of Net worth of Rs. 3.00 CR (Three Crores) only during preceding three years.
> (Note – In case of consortium eligibility criteria shall be applied to the lead member.)"

11) Thus, the bidders were required to possess minimum average annual turnover of Rs.3 crores from Bio-Medical Waste Treatment Management Projects in the previous two consecutive financial years. The bidders were expected to submit a notarized certificate in format at Annexure 'C' to demonstrate the minimum average annual turnover. The bidders were also required to satisfy the condition of average net worth of Rs.3 crores during preceding 3 years.

12) So far as the first ground of Respondent No.2 not submitting net worth certificate along with the bid is concerned, this appears to be a factual position as neither Respondent No.1-Municipal Corporation nor Respondent No.2 have taken a stand that net worth certificate was submitted by Respondent No.2 along with its bid. The document relied upon by Respondent No.1 and

Respondent No.2 is the net worth certificate dated 14 December 2023. However, as per the tender schedule, the last date for submission of bids was 2 November 2023 and the date of opening the technical bids was 3 November 2023. Thus, the net worth certificate of Respondent No.2 appears to have been issued on 14 December 2023 after the date on which the technical bids were opened.

13) However, in its Affidavit in Reply, Respondent No.1 has contended that letter dated 9 November 2023 was issued to Respondent No.2 calling it upon to clear the defects in the documents accompanying the bid. Perusal of the said letter dated 9 November 2023 would indicate that only one document was required to be submitted by Respondent No.2 viz. 'Power of Authority letter'. The letter dated 9 November 2023 does not indicate that Respondent No.2 was called upon to submit the net worth certificate. However, in paragraph 11 of the Affidavit in Reply, Respondent No.1 has contended that Respondent No.2 had submitted income tax returns for previous 3 years to demonstrate its net worth. At Exhibit-R4, copies of the said income tax returns are produced. It is the contention of the tendering authority that the figure of net worth is discernible from the balance sheets produced by the Respondent No.2. As a matter of fact, the tender condition did not specify submission of any particular document to demonstrate average net worth of Rs.3 crores during preceding 3 years. Unlike the criteria of minimum average annual turnover, which required certificate in Annexure 'C', the condition of average net worth did not warrant submission of certificate in any format. Respondent No.2 submitted copies of balance sheet and income tax returns on the basis of which Respondent No.1 was satisfied that it possesses average net worth of Rs.3 crores in preceding 3 years.

14) What has caused confusion in the present case is a document in the form of net worth certificate issued by Chartered Accountant bearing the date 14 December 2023. Paragraph 11 of Affidavit in Reply does not make any reference to the said net worth certificate dated 14 December 2023 and only refers to the Income Tax returns for previous 3 years. Paragraphs 11 and 12 of the Affidavit in Reply of Respondent No.1 read thus :-

> "11. With reference to contents of paragraph Nos. 15 and 16 of the Writ Petition, I say that the grievance is made in respect to Section 5 of the Tender document that the bidder has to show minimum average of annual turnover for 3 years was of Rs. 3 Crores in Bio-Medical Waste Treatment. The Respondent No.2 has filed Annual turnover statement as per the format provided in the tender document at Annexure 'C' and given a letter of the CA thereby showing the average turnover per annual year of last 3 preceding years is Rs. 3,42,651/-. I further say that the said certificate is issued by the C.A. confirming the turnover and it bears his seal and signature and therefore the technical committee has considered the papers as it was filed as per the format of the tender. Similarly, the Respondent No.2 has filed I.T. Returns of last 3 years showing the net worth of the Respondent No.2. **Here to annexed and marked as Exhibit-R4 Colly are copies of last three years IT Returns.**
>
> 12. With reference to contents of paragraph Nos. 17 and 18, I deny that the Respondent No. 2 has not filed any document in the tender process showing net worth of 3 Crores. However, the Respondent No. 2 has filed the annual turnover statement and the last three years I.T. Returns statement to show the average net worth of the Respondent No. 2."

15) As observed above, production of net worth certificate dated 14 December 2023 by Respondent No.1-Municipal Corporation along with its Affidavit in Reply has created a serious apprehension in the mind of the Petitioner that a document which did not exist at the time of opening of technical bids has been created later to justify qualification of Respondent No.2. In our view, however, the tender condition of average net worth of Rs.3 crores did not require submission of any particular document. Thus, the certificate of net worth was not the essential eligibility criteria, in absence of which the bid warranted rejection. Demonstration of net worth of Rs.3 crores was necessary, which has been done in the present case from the balance sheets of Respondent No.2 during preceding 3 years. If para 11 of the Affidavit in Reply clarifies that the net worth was determined from the Income Tax returns, why the certificate dated 14 December 2023 has surfaced is perplexing. The only possibility could be of Respondent No.2 physically submitting the net worth certificate dated 14 December 2023 to indicate the summary of assets and liabilities of Respondent No.2 after technical bid opening. The Affidavit in Reply filed by Respondent No.2 indicates that some documents were physically submitted by Respondent No.2. Letter dated 9 November 2023 does indicate that the technical scrutiny was not completed on 3 November 2023 and the bidders were given opportunity to make good the shortfall documents. Though the date fixed for technical scrutiny was 3 November 2023, the tender process continued throughout December 2023 and was ultimately finalized in January 2024 and therefore the stand taken by Respondents about physical submission of the net worth certificate cannot really be ruled out altogether.

16) So far as the second aspect of non-submission of notarized certificate in format at Annexure 'C' to demonstrate annual turnover requirement is concerned, Respondent No.2 has submitted original CA Certificate dated 27 September 2023 showing its annual turnover. Since the original certificate was uploaded, there was no necessity of notarising the original certificate. Therefore, mere non notarization of turnover certificate cannot be treated as non-fulfillment of mandatory condition. Notarisation of a document (original CA certificate) cannot be treated as a mandatory tender condition warranting rejection of a bid. The tendering authority has thought it appropriate to accept the un-notarised original CA certificate, by treating notarization to be non-mandatory condition and this Court cannot substitute its opinion for opinion of the tendering authority. The objection raised by the Petitioner in this regard is therefore rejected.

17) The jurisdiction of this Court under Article 226 is both extraordinary and discretionary and this Court can decline relief to a party in exercise of discretion considering its conduct. Respondent No.2 has highlighted conduct of the Petitioner. Petitioner is accused of collecting advances from medical practitioners under representation that it would secure the work order and has failed to refund the same despite non award of work. He has invited complaint from Medical Practitioners' Association. Petitioner, who operated the Municipal Corporation's Plant for 20 years, has reportedly left huge quantity of bio-medical waste untreated as well as hazardous material at the plant while leaving possession thereof. The Municipal Corporation has complained to MPCB about non treatment of 40 to 50 tons of bio-medical waste as well as storage of 40 ton of hazardous waste at the plant. Petitioner also appears to have been penalized during previous tender process which fact is noted by this Court while dismissing Writ Petition No. 18373 of 2024 relating to tender process initiated by Sangli, Miraj and Kupwad Municipal Corporation, where Petitioner was accused of failure to disclose penalty imposed on it by Solapur Municipal Corporation and by MPCB. Considering this conduct of the Petitioner, this Court is otherwise not inclined to grant any relief in favour of the Petitioner in the present Petition which is aimed at somehow knocking off the bid of Respondent No.2 by pointing out some technical defects in the same.

18) Apart from the conduct of the Petitioner, it is seen that Petitioner has not challenged award of the Work to Respondent No.2 vide Work order dated 5 January 2024. Also, substantial time has elapsed since the work is allotted to Respondent No.2, who has already made huge investment for running of the Plant. This is yet another reason why we are not inclined to interfere in the impugned decision of Respondent No.1-Municipal Corporation.

19) Also, the impugned tender process has resulted in the Municipal Corporation securing higher royalty for operation of its Bio Waste plant as the bid of Respondent No.2 (24%) is found to be higher than the bid of Petitioner (21.21%). The impugned tender process has resulted in the Municipal Corporation securing higher amount of royalty than the bid submitted by the Petitioner. If the bid of Respondent No.2 is directed to be rejected and contract is awarded to the Petitioner on technical ground of submission of net worth certificate beyond the stipulated date, the same would cause financial loss to the Respondent No.1-Municipal Corporation.

20) Considering the overall conspectus of the case, we are not inclined to grant any relief to the Petitioner in the facts and circumstances of the case. The Writ Petitioner must fail. It is accordingly **dismissed** without any order as to costs.

[SANDEEP V. MARNE, J.] **[CHIEF JUSTICE]**