IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8375 OF 2024

Sumeet Facilities Ltd.,
Office at Plot No.64/21, D-11, Block,
MIDC, Chinchwad, Pune
through Director,
Mr. Amit P. Salunkhe
Occ. Business,
Office at Plot No.64/21, D-11, Block,
MIDC, Chinchwad, Pune ***...Petitioner***

V/s.

1. Pune Municipal Corporation, Pune through its Municipal Commissioner Having office at Pune Municipal Corporation Building, Shivajinagar, Pune-411005.

2. Additional Municipal Commissioner, (General), Having office at Pune Municipal Corporation Building, Shivajinagar, Pune-411005.

3. Additional Municipal Commissioner, (Estate), Having office at Pune Municipal Corporation Building, Shivajinagar, Pune-411005.

4. Deputy Municipal Commissioner, PMC Zonal Office No.04, Having office at Late Shivajirao Dhare Udyog Bhawan, 2nd floor, Tilak Road, Pune-411030.

5. Assistant Commissioner, PMC Hadapsar, Having office at Mundhara Ward Office, Pune Municipal Corporation, Hadapsar, Pune-411038.

6. Shree Enterprises, Office at 210, Poornima towers, Shankar Sheth road, Swargate, Pune-411 037.

7. Priyank Enterprises, Office at Prime Avenue, S.No.15/19/2. A-wing, 2nd floor, nr. Chintamani Dynapeth Jaimalhar Nagar, Ambegaon, Pune-411046.

...Respondents

Mr. Chinmay Patil *for the Petitioner.*

Mr. Vishwanath Patil *with Mr. Akshay Naidu for Respondent No.1.*

Mr. Vikramjeet Garewal *with Mr. Ajinkya Udane, Mr. Vinayak Pandit and Ms. Maitereyee Garade for Respondent No.7.*

CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.
Dated : 12 JUNE 2025.

Oral Order (Per : Sandeep V. Marne, J.)

1. By this Petition, Petitioner takes exception to the decision dated 17 April 2024 of Pune Municipal Corporation, by which disqualification of Respondent Nos.6 and 7 came to be recalled by holding them as eligible to participate in the tender process. Petitioner has prayed for issuance of work order in its name by treating Respondent Nos. 6 and 7 as disqualified.

2. Respondent No.1-Pune Municipal Corporation issued tender advertisement inviting bids for the purpose of outsourcing the sweeping

work for public cleanliness for Hadapsar-Mundhwa Region for the year 2023-2024. Petitioner, Respondent Nos.6 and 7 and other bidders submitted their bids before the last date of bid submissions of 20 November 2023. Petitioner raised an objection and sought disqualification of Respondent No.7 vide letter dated 24 November 2023 alleging that Respondent No.7 had failed to meet eligibility criteria prescribed in clause 12, 13 and 14 of the tender notice. It also sought disqualification of Respondent Nos.6 and 7 on the ground of failure to deposit Earnest Money Deposit (**EMD**) with their bids. Petitioner claims that though Respondent Nos.6 and 7 are small enterprises, they are not entitled to exemption from payment of earnest money as per the Public Procurement Policy since the tender was issued for procurement of service and not for procurement of goods. After technical evaluation, Respondent Nos.6 and 7 were treated as disqualified for failure to submit EMD alongwith their bids vide scrutiny sheet dated 15 December 2023. Bids of Petitioner and M/s. Siddhivinayak Enterprises were held to be qualified. According to Petitioner, since financial bids of both entities were same, the lottery was drawn and Petitioner was selected as successful bidder. Respondent No.7 filed Writ Petition No.293 of 2024 challenging its disqualification by interim order dated 12 January 2024. This Court restrained the Municipal Corporation from issuing work order and made certain *prima facie* observations in favour of Respondent No.7. During pendency of Writ Petition No. 293 of 2024, the Municipal Corporation decided to hold Respondent Nos.6 and 7 as qualified and email to that effect was addressed to the Advocate of the Municipal Corporation on 17 April 2024. Respondent No.7 thereafter withdrew Writ Petition No.293 of 2024 on 25 April 2025. Petitioner is aggrieved by the decision of the Municipal Corporation recalling its decision of disqualification of Respondent Nos.6 and 7 and has accordingly filed the present Petition.

3. Mr. Patil, the learned counsel appearing for Petitioner would submit that Respondent No.1-Municipal Corporation has acted arbitrarily by considering the bids of Respondent Nos.6 and 7, who were validly declared as disqualified in the technical evaluation. That furnishing of EMD was a mandatory tender condition. That Municipal Corporation had rightly concluded that a micro or small enterprises is also required to furnish EMD for subject tender. He would submit that the exemption from furnishing of EMD is granted under the Manual of Office Procedure for procurements by Government Departments vide Government Resolution dated 1 December 2016 only for procurements of goods and the same is inapplicable when the tender is floated for procurement of services. That in the present case, the tender was issued for procurement of services as the work envisaged is outsourcing of sweeping for public cleanliness which does not involve an element of procurement of goods. That therefore the Government Resolution dated 1 December 2016 providing for exemption in payment of EMD has no application in respect of the impugned tender process. He would accordingly pray for setting aside the impugned decision of the Municipal Corporation and for award of the subject work in its favour.

4. The Petition is opposed by Mr. Patil, the learned counsel appearing for Respondent No.1-Municipal Corporation. He would submit that under the Government Resolution dated 1 December 2016, MSMEs are exempted from paying EMD for participation in the tender process. He would submit that definition of the term ‘goods’ under the said Government Resolution includes even services. That therefore the Municipal Corporation has rightly withdrawn disqualification of Respondent Nos.6 and 7. He would further submit that in any case, Respondent No.7 had deposited EMD without demand and on its own accord, but the instrument of EMD was not encashed by the Municipal

Corporation. He would submit that the earlier decision of the Municipal Corporation of treating Respondent Nos.6 and 7 as disqualified was not consistent as the very same bidders were found eligible in respect of other Wards of Municipal Corporation. Mr. Patil would rely upon order passed by this Court on 12 January 2024 in Writ Petition No.293 of 2024 filed by Respondent No.7. He would accordingly pray for dismissal of the Petition.

5. Mr. Garewal, the learned counsel would appear on behalf of Respondent No.7 to oppose the Petition. He would submit that Petitioner does not have any vested right to seek directions against Respondent No.1 for issuance of the work order. In support of his contention, he would rely upon judgments of the Apex Court in ***Maa Binda Express Carrier and Another vs. North-East Frontier Railway and Others***, (2014) 3 SCC 760 and ***Uttar Pradesh Avas Evam Vikas Parishad & Others vs. Om Prakash Sharma***, (2013) 5 SCC 182. That Petitioner otherwise does not have any locus in relation to the issue of disqualification between the tendering authority and Respondent No.7. That Respondent No.7 has rightly been held to be eligible as being exempted for payment of EMD. That the tendering authority has corrected its error of rejecting the bid of Respondent No.7. He would submit that Respondent No.7 has also participated in another tender for Yewalewadi by claiming EMD exemption and has been allowed to participate in the tender process. However, in respect of the impugned tender for Hadapsar - Mundhwa Region the bid of Respondent No.7 was erroneously rejected on the ground of failure to submit EMD. That the impugned decision of treating Respondent No.7 as qualified actually maintains consistency in the stand of the Municipal Corporation. That Respondent No.7 was otherwise willing to deposit EMD amount and that in fact tendered the same during pendency of the previous Petition. He would therefore submit

that no serious flaw can be found in the decision of the Tendering Authority in treating Respondent No.7 as qualified. He would pray for dismissal of the Petition.

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

7. The short issue raised by the Petitioner in the present Petition is about eligibility of Respondent Nos.6 and 7 to participate in the tender process. It appears that the financial bids of all the eligible bidders are found to be identical and accordingly selection of successful bidder is done by drawing lots. By interim order dated 25 June 2024, this Court had directed that the tender process could be continued but final decision in the matter shall not be taken. The said interim arrangement continues to operate.

8. Petitioner questions the eligibility of Respondent Nos.6 and 7 for consideration of their financial bids on the ground that they have failed to furnish EMD alongwith their bids. The Municipal Corporation initially disqualified Respondent Nos. 6 and 7 on the ground of failure to furnish EMD. Respondent No.7 filed Writ Petition No.293 of 2024 challenging its disqualification in which following interim order was passed by this Court on 12 January 2024:

> "1. Leave to amend as per the draft amendment is granted. Amendment shall be carried out during the course of the day. Re-verification is dispensed with.
> 2. Issue notice to the Respondents.
>
> 3. Learned AGP has put-in appearance on behalf of Respondent No.1-State and waives service of notice. Shri Vishwanath Patil, learned Counsel has put-in appearance on behalf of Respondent Nos.2 to 8 and

waives service of notice. Shri Chinmay Patil, learned Counsel has put-in appearance on behalf of Respondent No. 9 and waives service of notice.

4. Respondents to file their Affidavit/s-in-Reply within two weeks. A week's time thereafter shall be available for the learned Counsel for the Petitioner to file Rejoinder.

5. It has been contended by the learned Counsel for the Petitioner that the reason given for rejection of the technical bid of the Petitioner is not tenable, as under the Government Resolution dated 1 December 2016, the MSMEs are exempted from making Earnest Money Deposit and thus, non-deposit of Earnest Money Deposit cannot be a ground for technically disqualifying the Petitioner. Our attention has also been drawn to the fact that by the said tender notice, three tenders were issued for three different works in three different zones and the Petitioner applied for all the three tenders and further that in respect of two tenders, the Petitioner has been declared qualified technically, however, it is only in the third tender he has been declared disqualified technically.

6. From a perusal of the provisions contained in the Government Resolution dated 1 December 2016, *prima facie* it appears to us that irrespective of the items to be procured or purchased or services to be provided, the exemption from making Earnest Money Deposit to MSMEs is available in all such tenders. The reliance placed by the learned Counsel for the Respondent Corporation on Clause 15 of the Government Resolution dated 1 December 2016, *prima facie* does not appeal to us for the reason that if other provisions contained in the said Government Resolution are taken into consideration, it cannot be said that exemption from making the Earnest Money Deposit is available to MSMEs only in respect of the tender floated for procurement of 241 number of products as mentioned in Appendix-17.

7. Thus, we direct that till the next date of listing, the work order pursuant to the impugned tender process shall not be issued.

8. Stand over to 12th February 2024."

9. It appears that on account of interim order granted by this Court staying the work order and also on account of *prima facie* observations made in the order dated 12 January 2024, Respondent No.1 Municipal Corporation decided to recall its decision and has treated Respondent Nos.6 and 7 as qualified bidders.

10. It appears that Respondent No.1-Municipal Corporation had simultaneously floated tenders for various areas for similar work of outsourcing of sweeping services. Respondent Nos.6 and 7 had participated in such tenders in various areas. Respondent No.6 participated in three tenders for areas of Bibwewadi, Yawalewadi and Hadapsar without furnishing EMD. In respect of tender for Bibwewadi area initially objection was raised about bid of Respondent No.7 and after securing legal opinion, the Municipal Corporation adjudged Respondent No.7 to be qualified bidder for Bibwewadi area. Similarly in respect of tender for Yawalewadi area, Respondent No.7 was permitted to participate in the tender process. It was only in respect of Hadapsar-Mundhwa area (subject tender) that Respondent No.7 was declared as ineligible on account of failure to furnish EMD. With recall of decision to disqualify Respondent No.7, now the action of Respondent Municipal Corporation appears to be consistent where all bidders, who are MSMEs and had failed to deposit EMD, are treated qualified in absence of submission of EMD.

11. It is contended by the Petitioner that the exemption under the MSMEs policy is inapplicable to the present case on account of subject tender being for procurement of services and not for procurement of goods. Reliance is placed on para 2.5 of the Revised Manual of Office Procedures for Procurement by the Government Departments in which it is provided as under:

> "2.5. **Scope of the Manual**
>
> The scope of procurement under this manual is procurement of goods. It will not include the purchase of services or civil work or transportation etc. However, the contracts of services required for administrative departments can be done by Swiss challenge purchase procedure as mentioned in paragraph 3.2.7 of manual. In case of any deviations and exceptions in procurement of goods, from the process

> and guidelines mentioned in this manual, prior approvals will be required from Industries Department."

12. The Manual is issued by State Government vide Government Resolution dated 1 December 2016 for regulating the Office Procedures for procurement by the Government Departments. Under paragraph 15 of the Government Resolution dated 1 December 2016 exemption is provided for Micro, Small and Medium Enterprises from paying tender form fee and EMD. Paragraph 15 of the Government Resolution provides thus:

> "15. As per the facilities given by Ministry of Micro, Small & Medium Enterprises, of Central Government with order dated 23.03.2012; the 241 number of products are reserved for procurement from registered Micro, Small & Medium Enterprises (Appendix-17). The tender process should be accorded for the purchase of these items. In such tenders, only Micro, Small & Medium Enterprises or Maharashtra State Small Industries Development Corporation can participate. If the Procurement office invites composite tender for the items mentioned in Appendix-17, and there are chances that Micro, & Small Industries unable to participate in the tender, the reserved items can be grouped and separate tenders should be published for every group. Since, Micro and Small Industries cannot compete with large companies and the 241 items are reserved for Micro and Small Enterprises, the large companies should not participate in tender.
>
> As per provision in Appendix-8 of purchase policy, the micro and small, medium enterprises registered under MSMED Act-2006 are exempted from paying tender form fee and earnest money deposit (EMD). Government Boards/Corporations/Undertakings and Micro, Small and Medium Enterprises registered manufacturers and suppliers are exempted from the tender form fee and Earnest money deposit. This will be mandatory to all procuring offices."

13. Petitioner contends that paragraph 15 of the Government Resolution applies only in relation to tenders floated for procurement of goods and that it has no application for tenders floated for procurement of services.

14. Under clause 1 (T) of the Manual the term 'Goods' has been defined as under:

> "(T) "Goods" means raw material, commodities, equipments, products, electricity and other objects or assets of every kind and description, in solid, liquid, or gaseous form, and includes services incidental or consequential to the supply of goods if the value of those services does not exceed that of the goods themselves;"

15. Thus the term 'Goods' also includes services incidental or consequential to the supply of goods so long as the value of services does not exceed that of goods.

16. Even otherwise, the Manual lays down the procedure for undertaking procurement by the Government Department. The Manual regulates the procedure and brings about uniformity in the process to be followed while undertaking procurement of various Department of the State Government. The Manual *per se* does not deal with the issue of exemption to micro, small and medium enterprises. Therefore, even if the contention of the Petitioner that the Manual governs procurement of goods alone and not of services is to be accepted, it cannot be contended that the provision for exemption from payment of EMD to micro, small and medium enterprises would have no application for tenders governing procurement of services. The parent provision for exemption is to be found in the order dated 23 March 2012 under which 241 number of products are reserved for procurement from Micro, Small and Medium Enterprises. Under Appendix-8 of the Purchase Policy, micro, small and medium enterprises are exempted from paying tender form fees and earnest money deposit. The exemption is aimed at promoting micro, small and medium enterprises by providing them concession with a view to participate in tender processes. Exclusive reservation for specified number of goods to micro, small and medium enterprises is an altogether different concept than exemption from paying tender form fee and

earnest money deposit. It is therefore difficult to hold that the exemption for making EMD cannot be made applicable if the tender is issued for procurement of services alone.

17. The Pune Municipal Corporation has taken a decision to apply the exemption from payment of EMD to micro, small and medium enterprises in the subject tender. Accordingly, the bids of Respondent Nos.6 and 7 are held to be technically qualified. This Court cannot sit in appeal over such decision taken by the tendering authority by substituting its own conclusions over the conclusions reached by the tendering authority.

18. Petitioner otherwise does not have any vested right to have the work allotted to itself. Reliance by Mr. Garewal on judgments of Apex Court in ***Maa Binda Express Carrier and another*** (supra) and ***Uttar Pradesh Avas Evam Vikas Parishad and others*** (supra) in this regard is apposite. Petitioner cannot be permitted to eliminate the competitors by seeking disqualification of other bidders on the ground of failure to make deposit of EMD.

19. We are therefore unable to trace any error in the decision of the tendering authority in treating Respondent Nos.6 and 7 as qualified. Petition must fail. It is accordingly **dismissed** without any order as to costs.

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

SUDARSHAN RAJALINGAM KATKAM

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