



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO.2717 OF 2024**

Janadhar Sevabhavi Sanstha, Latur,  
A Public Charitable Trust having  
Registration No.F17206 (Latur),  
Through its President,  
Sanjay Digambar Kamble,  
Age: 52 years, Occu.: Agril. & Business,  
R/o. Shamkunj, Shamnagar,  
Ambejogai Road, Latur,  
District Latur.

**.. PETITIONER**

**VERSUS**

1. The State of Maharashtra  
Through Department of  
Urban Development,  
Mantralaya, Mumbai-32.
2. Latur City Municipal Corporation,  
Latur, Through its Administrator,  
Municipal Corporation, Latur,  
Tq. And District Latur.
3. The Municipal Commissioner @  
Administrator,  
Latur City Municipal Corporation,  
Latur Tq. And Dist. Latur.

**.. RESPONDENTS**

...  
Mr. D. P. Palodkar, Advocate for the petitioner.  
Mr. A. B. Girase, Government Pleader for respondent No.1.  
Mr. S. P. Urgunde, Advocate for respondent Nos.2 and 3.  
...

**CORAM : SMT. VIBHA KANKANWADI AND  
S. G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 19<sup>th</sup> MARCH, 2024.  
PRONOUNCED ON : 2<sup>nd</sup> APRIL, 2024.**

**JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-**

. Rule. Rule made returnable forthwith. Heard learned Advocates for the appearing parties finally by consent.

2. Present petition has been filed by the petitioner for following reliefs :-

"A) The Hon'ble High Court may be pleased to issue any appropriate writ, order or direction in the nature of writ, and thereby quash and set aside request for proposal issued by the Latur City Municipal Corporation vide Tender Notice No.1-2023/2024 dated 28.02.2024 for selection of operator for Collection, Transportation and Processing of Municipal Solid Waste in Latur City Municipal Corporation, Latur.

B) The Hon'ble High Court may be pleased to issue writ of mandamus or writ or order in the nature of writ, and thereby to direct the respondent tendering authority to issue fresh Tender Notice only after complying the various norms set out by of Central and State Government by way of various Government Resolutions and Rules described in the Writ Petition."

3. Learned Advocate Mr. D. P. Palodkar appearing for the petitioner submitted that the petitioner is a registered Society and it is engaged in various social activities of Rag Pickers Community and their welfare. The petitioner is also engaged in the Solid Waste Management, processing, disposal and value addition which are also helpful for the livelihood of the Rag Pickers and their families. It gives employment

to around 750 men and women in Latur city. There are more than 15 self-help groups of women engaged in collecting waste per day from door to door by making use of GHANTA GADI (the vehicle with bell). The petitioner has received various awards for doing the work. The petitioner and respondent No.3 had entered into an agreement dated 12.09.2017 for five years collecting waste and its disposal. Respondent No.3 had extended the term for two years i.e. up to 12.09.2024, however, now respondent No.2 has floated Tender Notice No.1/2023-24 on 07.02.2024. The petitioner was intending to participate in the tender notice. Pre Bid meeting was conducted on 15.02.2024, which was attended by the petitioner. Petitioner raised objections regarding several conditions. Other bidders also have raised written objections regarding the eligibility criteria pertaining to turnover, past experience, net worth, solvency certificate and blacklisting. The tendering authority has prepared the minutes of Pre Bid meeting. Several objections were considered and clarifications were issued, however, the objections raised by the petitioner and some others were not considered. Since the petitioner was already working with respondent No.2 and the present period was up to 12.09.2024, in respect of issue of pending bills with respondent No.2, the petitioner has filed Writ Petition No.13723 of 2023 and it came to be disposed of on 01.09.2023. There are several irregularities those have been done by respondent Nos.2 and 3. Those are as follows.

i) The last submission of Bid expired on 28.02.2024 up to 2.00 p.m., however, then the extension was granted beyond the said period. The time was then extended to 05.03.2024.

ii) The eligibility criteria was arbitrary and high-handed.

iii) The respondent authority has not given the amount of work for which the tender has been issued, but still on arbitrary basis is charging the security deposit and the bank guarantee.

iv) It was stated that there was only single bidder who was qualified and, therefore, the extension of bid after the time period was over, is not justified.

4. Affidavit-in-reply on behalf of respondent Nos.2 and 3 has been filed by one Kanchan Babruwan Tawade, Deputy Commissioner, Municipal Corporation, Latur. She does not deny that there was an agreement with the petitioner in respect of collection of solid waste in Latur Municipal Corporation area, however, according to her, the petitioner society has failed to perform duty to collect the solid waste. More than 30 notices in the year 2023 were issued and, there were several complaints of the citizens as well as political leaders against the petitioner. The petitioner had participated in the Pre Bid meeting and, therefore, has no right to raise objection in respect of terms and conditions. The tender was required to be in consonance with

directions issued by the Government Resolution dated 26.10.2006. The population of Latur city is estimated at 5 lakhs and everyday 150 tons of garbage is generated from the city, therefore, considering all these things and the past experience of the petitioner society, conditions were placed that it should be by the experience contractors. Some of the suggestions given in the Pre Bid meeting have been accepted. The bank guarantee in E-tender was kept at 20% of the tender amount, but as the price of the work was not fixed, the bank guarantee was kept Rs.4 Crores instead of 20%. Regarding extensions, only after the E-tender was opened after the time was over i.e. 2.00 p.m. on 28.02.2024, it was realized that only one tender document has been received within the prescribed time and, therefore, the tender was extended till 06.03.2024 till 14.00 hours. Further, the reason for extending the deadline is code of conduct of upcoming Lok Sabha Election and current garbage issue of Latur city. As regards the Turnover Net Worth condition is concerned, it is said that the financial condition of the contractor should be capable because the financial condition of the Municipal Corporation is poor. If the payment of work is delayed in the future, then the contractor should be able to make the cost of all the work.

5. The learned Advocate for the petitioner submits that the Government Resolution dated 27.09.2018 issued by the Public Works

Department is applicable to the tenders of all the departments of Government as well as the Municipal Corporation also, wherein Rule No.4.3 prescribes for Procedure Regarding Processing Single Tender, it is said that, "Single Tender / Bid means, only one bid is received during the tendering process or only one bidder is technically qualified after opening of bid Envelope No.1. In such cases, all the tenders shall be rejected without opening their 2<sup>nd</sup> Envelope and fresh tenders shall be invited immediately. However, no changes in the draft of the tender paper shall be made while going for re-invitation of tenders. If changes are not done in the draft tender document, then this shall be treated as 'second call'." Therefore, on 28.02.2024, after it was realized by respondent Nos.2 and 3 that there is only one bid, it ought not to have gone ahead, but there ought to have been re-tendering. Further, the action on behalf of respondent Nos.2 and 3 was arbitrary when arbitrary changes have been made and, therefore, in view of the three Judge Bench decisions of the Hon'ble Apex Court in **Vice Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. And Another Vs. Shishir Realty Private Limited and others, [2021 SCC OnLine SC 1141]** and **Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and others, [(2000) 5 SCC 287]**, interference by this Court is necessary.

6. Learned Advocate for respondent Nos.2 and 3 relied on the decisions of the the Hon'ble Apex Court in **Tata Motor Limited Vs. The Brihan Mumbai Electric Supply and Transport Undertaking**, [2023 (5) ALL MR 306 (S.C.)], **N. G. Projects Limited Vs. Vinod Kumar Jain and others**, [(2022) 6 SCC 127] and **Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers Vs. New J. K. Roadways, Fleet Owners and Transport Contractors and others**, [(2021) 16 SCC 808], wherein the Hon'ble Supreme Court has held that *"the Court ordinarily should not interfere in the matters relating to tender or contract. Initiating fresh tender process may consume lot of time and also lose the public exchequer to the tune of crores of rupees. While invoking the power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluation of tenders and awarding contracts are essential commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in the public interest, Courts will not interfere by exercising power of judicial review even if the procedural aberration or error in assessment or prejudice to a tenderer, is made out."*

7. Many facts are not in dispute. At the outset, we would like to clarify that as regards the petitioner's claim that the tender ought not to have been issued in view of the directions by the Government to

give such contracts to the societies working for the Rag Pickers is concerned, we may not go into the same, as it will not be in the interest of the Municipal Corporation. As regards inviting bid is concerned, it would be giving competition to the eligible persons and with the competitive price, the Municipal Corporation may gain. Therefore, as regards the eligibility criteria mentioned in the tender, we are not considering the same, as the authority inviting tender has to decide the eligibility to whom they should invite. However, as regards the other points are concerned, certainly we would like to re-look the facts and assess the same.

8. As per the tender document, the bid was to be opened at 2.00 p.m. on 28.02.2024, however, the documents on record, which are not in dispute, would show that the first corrigendum came to be issued around 6.04 p.m., which was after the 2.00 p.m. deadline given earlier. The bid submission end date was then extended till 2.00 p.m. of 06.03.2024 and the bid opening date was 07.03.2024 at 3.00 p.m. The justification for such corrigendum is stated in the affidavit-in-reply that as after the time was over when it was opened i.e. after 2.00 p.m. of 28.02.2024, there is only one bidder who has uploaded the documents. The affidavit-in-reply is totally silent as to why the guidelines issued in Government Resolution dated 27.09.2018 were not followed. It is not the case of respondent Nos.2 and 3 that the



said Government Resolution issued by the Public Works Department is not applicable to them. If that is applicable to respondent Nos.2 and 3, then without opening Envelope No.1 of single bidder and also when no changes were proposed in the draft of the tender paper, then re-invitation ought to have been given. No documentary proof has been produced along with the affidavit-in-reply as to on what point or reason, decision was taken to extend the bid time without following the Government Resolution dated 27.09.2018.

9. Further, it can be seen from the affidavit-in-reply that the price of the tender is not fixed. This is more dangerous. At-least the person who is inviting tender should know as well as should quote the price of the work, then only appropriate bidders would come. Initially, the bank guarantee was kept at 20% of the tender amount when in fact the tender amount is not fixed. Then after negotiations in the Pre Bid meeting when it was pointed out, it is said that it was then fixed at Rs.4 Crores instead of 20% of the tender amount. In the affidavit-in-reply there is absolutely no justification as to on what basis the said amount of Rs.4 Crores was arrived at. This shows the arbitrariness on the part of respondent Nos.2 and 3 and the approach with which they have undertaken the E-tender process. Certainly, the decisions in **Tata Motors (Supra)**, **N. G. Projects (Supra)** and **Galaxy Transport Agencies (Supra)** are binding on this Court, however, taking into consideration

the facts of the case and even as per the ratio laid down in those cases as well as the three Judge bench decision of the Hon'ble Apex Court in **Vice Chairman and Managing Director (Supra)**, there cannot be change in the tender conditions after it is floated as it is observed that "*after all one cannot change the rules of the game, once it is started.*" In **Monarch Infrastructure (P) Ltd. (Supra)**, it is observed that "*broadly stated, the Courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide*". As aforesaid and at the cost of repetition, the extension of the bid opening is arbitrary. When there was single bid received, the Government Resolution dated 27.09.2018 ought to have been followed and basically, since beginning when no efforts were taken to fix the price even approximately, the authorities were not justified in going for the tender and, therefore, interference is required.

10. No doubt, it appears that respondent Nos.2 and 3 has issued many show cause notices to the petitioner in respect of the work that was undertaken by the petitioner. Even the photographs those have been shown shows pathetic situation in respect of lifting of garbage. Throwing waste/garbage by general public on the road is certainly a menace. Unless there is public awareness on the point and public participation, the situation will not improve, however, when

institutions/persons like petitioner are undertaking the contracts of collecting waste and that too with aim that has been stated in the petition, then it is expected that the petitioner should deliver and work as expected with no or less complaints. But on that point respondent Nos.2 and 3 cannot estop the petitioner from participating in the tender. The tender was open for public i.e. to the specific persons as per the eligibility and, therefore, it is for respondent Nos.2 and 3 to accept the tender document and, thereafter to scrutinize the same. A fair play is certainly expected.

11. Learned Advocate for respondent Nos.2 and 3 has raised that now re-tendering would cause loss to the public exchequer. This ought to have been in fact considered by respondent Nos.2 and 3 before going for the tender. Respondent Nos.2 and 3 ought to have ensured that every aspect is clear in the tender document itself and, thereafter on the second occasion when there was a single bid received, they ought to have followed the Government Resolution dated 27.09.2018. Respondent Nos.2 and 3 have not considered the said point and loss to the public exchequer and, therefore, we need not consider the same.

12. For the aforesaid reasons, following order is passed.

**ORDER**

I) The Writ Petition stands allowed.

II) The E-tender Notice No.1 of 2023-24 dated 07.02.2024 is hereby quashed and set aside.

III) Respondent Nos.2 and 3 are directed to issue fresh tender notice as per the existing laws and Government Resolution.

IV) Rule is made absolute in the above terms.

[ S. G. CHAPALGAONKAR ]  
JUDGE

[ SMT. VIBHA KANKANWADI ]  
JUDGE

scm