



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

**WRIT PETITION NO. 12933 OF 2023**

M/s. Siddhivinayak Enterprises ..... Petitioner

Vs.

State of Maharashtra & Ors. .... Respondent

Mr. Vikramjit Garewal with Mr. Vinayak Pandit I/b. Mr. Ajinkya Udane for the Petitioner.

Mr. P. P. Kakade, Government Pleader with Mr. O. A. Chandurkar, Additional Government Pleader and Ms. R. A. Salunkhe, AGP for State.

Mr. Rajdeep Khadapkar for Pune Municipal Corporation.

Mr. Parth Shah for Respondent no. 8.

Dr. Abhinav Chandrachud with Mr. Seoul Shah, Mr. Janay Jain and Ms. Unnati Ghia I/b. Mr. Chinmay Patil for Respondent no. 9.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &  
ARIF S. DOCTOR, J.**

**DATE : DECEMBER 7, 2023**

**P.C.**

1. Issue notice to the respondents, returnable on 4<sup>th</sup> January 2024.
2. Learned Government Pleader has put-in his appearance on behalf of Respondent No.1 and waives service of notice. Shri.

Khadapkar has put-in his appearance on behalf of Respondent Nos.2 to 7 and waives service of notice upon these Respondents. Shri. Parth Shah has put-in his appearance on behalf of Respondent No.8 and waives service of notice. Dr. Abhinav Chandrachud has put-in his appearance on behalf of Respondent No.9 and waives service of notice.

3. Under challenge in this petition is the tender published on 21<sup>st</sup> June 2023 and the proceedings drawn pursuant to the said tender. The Pune Municipal Corporation (**PMC**) issued a tender notice on 21<sup>st</sup> June 2023 inviting bids for supply of contract labours for conducting the work of sweeping at Yerwada, Kalas and Dhanori. One of the conditions of tender was that the “tenderer should have an average turn-over of 75% of the value of the tender amount in last 5 years”.

4. However, submission of learned Counsel for the Petitioner is that subsequent to publishing the tender notice, the said condition was changed. Our attention has been drawn by the learned counsel for the Petitioner to paragraph (v) of the Affidavit-in-Reply filed by the PMC, wherein, it has been stated that in terms of clause 2.9 of the guidelines issued by the State

Government, the PMC had taken a decision to change the tender condition and it was, thus, decided to provide for a tender condition where "a tenderer should have a turn-over equal to 75% of the value of the tender in any of the last 5 years". It has been pointed out further by the learned Counsel for the Petitioner that the PMC, in its Affidavit-in-Reply has admitted that though the decision to have such an altered tender condition was taken by the PMC on 15<sup>th</sup> June 2023, however the said condition was not incorporated in the tender document published on 21<sup>st</sup> June 2023. Thus, the submission is that the PMC, while processing the tenders has acted upon the altered tender condition which was never published and hence such an action on the part of the Respondent – PMC cannot be approved of.

5. Learned Counsel appearing for the Corporation as also learned Counsel representing Respondent No.9 have submitted that since the Petitioner did not participate in the bid process, this Petition at his instance is not maintainable.

6. Having considered the respective submissions made by the learned Counsel for the parties for grant of interim relief, what

we find is that the Respondent - PMC in its Affidavit-in-Reply has admitted that the altered tender condition was not incorporated in the tender document pulished on 21<sup>st</sup> June 2023. It is also, thus, not disputable that the PMC has acted upon tender condition which was never advertised.

7. So far as the maintainability of the Writ Petition at the behest of the Petitioner is concerned, challenge in this Petition is based on several grounds, such as non publication of altered tender condition and acceptance of tender documents by the PMC which were submitted by Respondent No.8 subsequent to the last date of submission of tender. Learned Counsel for the Petitioner has also pointed out various other irregularities so far as acceptance of the documents submitted by Respondent No.8 in the tender process is concerned.

8. As far as the grounds other than the ground of non publication of the altered tender conditions are concerned, the Petitioner may not maintain the Writ Petition for the reason that he did not participate in the bid process, however, so far as the ground taken by the Petitioner that the Respondent PMC has acted upon a non advertised and non publicized tender condition is concerned, we are of the opinion that such an action can be

challenged by the Petitioner by instituting this Petition under Article 226 of the Constitution of India.

9. As it appears, *prima facie*, from the perusal of the affidavit filed by the Corporation, the altered tender condition was never publicized; neither was it made part of the tender document. It is not in dispute that the said tender condition has been acted upon. Thus, we are of the, *prima facie*, opinion that any tender condition not publicized and not made part of the tender document, if permitted to be acted upon at the time of processing the tenders, it amounts to denial of opportunity of participation of many eligible tenderers who otherwise would have been eligible but for altered tender condition. Accordingly, the Petitioner has been able to make out a case for grant of interim relief.

10. Thus, we provide that till the next date of listing no work order shall be issued by the Pune Municipal Corporation. We also direct the Pune Municipal Corporation to revisit the entire process and take an appropriate decision. Fresh decision, if any, shall be taken by the Corporation within two weeks. The Court shall accordingly be apprised of such decision by the next date of listing.

11. The Chief Translator of this Court is directed to get all the Marathi documents translated and place the same on record of this case by the next date of listing.

12. Stand over to **4<sup>th</sup> January 2024.**

**(ARIF S. DOCTOR, J.)**

**(CHIEF JUSTICE)**