(2019) 02 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 13820 Of 2018

Ag Enviro Infraprojects Pvt. Ltd — APPELLANT

Vs

State Of Maha. Thru The Ministry Of Urban Development Dept. Thru Gp And Ors — RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Maharashtra Municipal Corporations Act, 1949 — Section 20, 36, 45, 53, 67, 69, 70, 71, 73, 73(c), 74

Constitution Of India, 1950 — Article 12, 14, 226, 298

Citation : (2019) 3 BCR 327

Hon'ble Judges : Ranjit More, J;Bharati H. Dangre, J

Bench : Division Bench

Advocate : Milind Sathe, Saket Mone, Vivesh Kalra, Subit Chakrabarti, Neha Joshi, Vidhii Partners, A.A. Purav, G.S. Godbole, R.P. Sakhadeo

Final Decision : Allowed

Judgement

1 Heard. Rule.

2 By consent of the parties, Rule is made returnable forthwith and heard finally.

3 The Petitioner Company, incorporated under the provisions of the Companies Act, 1956 and engaged in the business of providing solid waste management for cities, has approached this court, seeking issuance of a writ in the nature of certiorari and for quashing and setting aside the order dated 31st October, 2018 passed by Respondent No.3- the Municipal Commissioner of the Pimpri-Chinchwad Municipal Corporation, Pimpri, Pune. A direction is also sought to quash and set aside the communication dated 28th June, 2018 and also the order passed on 15th September, 2018, inviting the tenders for four zones.

4 A brief sequence of events needs to be mentioned in order to appreciate the claim raised by the Petitioner in the present petition.

5 The Petitioner claims to be a company which is in the business of providing

solid waste management for cities and claims to be a part of the renowned Antony group, which has the distinction of running the only compliant solid waste management for city of Mumbai and it is claimed that the said group has received various accolades for the work done in the field of solid waste management. The Petitioner also stake a claim that the petitioner company has successfully carried the work of solid waste management for various municipal corporations such as Municipal Corporation of Delhi and Navi Mumbai. It is also asserted that the petitioner company has received awards for solid waste management from the Government of India under the "Swachh Bharat Abhiyan".

6 The Pimpri-Chinchwad Municipal Corporation (PCMC) which is responsible for providing Municipal and civic services, was desirous of improving the solid waste management services for Pimpri Chinchwad city floated a tender on 05th December, 2017, inviting bids for collection, transfer and transportation of the municipal solid waste and related allied work within the jurisdiction of the Municipal Corporation. The Petitioner participated in the said process and on being technically qualified, the commercial bids were opened on 16th January, 2018 and on 27th February, 2018 after negotiations with the petitioner were completed, a letter of intent was issued to the petitioner and concession agreement was also executed on 28th February 2018. The petitioner also deposited requisite bank guarantee and complied with requirements of payment of stamp duty etc.. Thus, according to the petitioner, on 27.02.2018, the contract stood concluded in his favour and the petitioner took steps for mobilization of work. It is the case of the petitioner that the concession agreement was executed on 28.02.2018 for a period of eight years and as it was executed only after the standing committee passed resolution on 27.2.2018, according its approval for awarding the work to the petitioner. The petitioner submitted performance bank guarantee of Rs. 1,14,79,910/- in addition to EMD of Rs. 27 lakhs. The work allotted to the petitioner covered the project area of South of old Pune-Mumbai Highway within the municipal jurisdiction.

7 The chronology of events further disclose that on 11.04.2018, the standing committee of PCMC issued two resolutions vide nos. 2551 and 2552, thereby cancelling the Tender No. 10/2017-18. It is pertinent to note that the petitioner was awarded the contract for South Area; whereas, one M/s.BVG India Limited was allotted contract for North Area. The resolution was passed by the standing committee to cancel the contract awarded for both North and South Areas. The Petitioner is concerned with resolution no. 2551, by which the decision was taken to cancel the contract of South Area which was allotted to the petitioner. On 02.05.2018, a resolution was passed by the standing committee to issue a fresh tender by dividing the city into eight zones. In pursuance of the said resolution, on 15th September, 2018, fresh tenders were floated by the Respondent No.2 - Corporation for collection and transportation of the garbage by dividing the city in four parts. The petitioner preferred representation on 05th October, 2018, reducing the tonnage rate to Rs. 1570/- metric tonne and the standing committee on 9th October, 2018, passed a resolution vide No. 3314, by which it

cancelled its earlier resolution no. 2551 dated 11.04.2018. It also cancelled earlier resolution no. 2626 dated 02.05.2018, by which it had resolved to issue a fresh tender and by the said resolution, the standing committee stayed the E-tender issued on 15.09.2018. The said resolution of the Standing Committee provided for complete redressal of petitioners grievance. Further, on 12.10.2018, a letter was addressed by the PCMC/ Respondent No.2, requesting the petitioner to submit his concurrence to the resolution no.3314 passed by the Standing Committee on 09.10.2018 and accordingly, on 15.10.2018, the petitioner submitted its acceptance. It is the case of the petitioner that then, all of a sudden, on 31.10.2018, the Respondent No.3 i.e. The Municipal Commissioner of PCMC passed an order to implement the cancelled resolution nos. 2551, 2552 and 2626 and to continue with the tender process initiated on 15.09.2018.

It is a specific case of the petitioner that he was made aware of the said decision only when the affidavit came to be tendered in writ petition no. 3219 of 2018 which was filed by one Mr. Moreshwar Madhu Bhondve, challenging the award of contract in favour of the petitioner.

8 It is in sequence of these events, the petitioner is aggrieved by the action of Respondent No.3-Municipal Commissioner and has assailed the said action as being arbitrary, being arrived at without following due procedure of law. The petition assails the said action on the premise that in pursuance of the Tender No. 10/2017-18, a contract was executed by the PCMC with the petitioner and this contract was concluded one. Abruptly, the standing committee took a decision, not to give effect to the said contract and fresh tenders came to be floated, however, on the grievance being raised by the petitioner, the standing committee passed resolution no. 3314, cancelling its earlier decision and in fact the petitioner was asked to give his consent to act in terms of the said resolution but suddenly there was a turn around, resulting in refraction of the earlier course of action and the fresh process initiated is carried forward by cancelling process emanating from Tender No. 10/2017-18. This action is condemned by the petitioner as arbitrary and in utter derogation of the principles of administrative law and the principles of estoppel is pressed in service and the petitioner seeks a relief of issuance of direction to the PCMC to implement standing committee resolution no.3314 by quashing and setting aside the decision of the PCMC to proceed with the subject tender process.

9 In support of the petition, we have heard learned senior counsel Dr. Sathe. The submission of Dr. Sathe is that the tender was published by Corporation for both - North and South Areas and the bid of the petitioner was technically evaluated and since the petitioner was held to be qualified, his financial bid was considered for collection and transportation of municipal solid waste. According to the petitioner for validation of the tender process, the petitioner complied with necessary formalities which include the execution of the concession agreement with the Corporation.

Dr. Sathe would submit that the concession agreement was entered into between the PCMC and the petitioner company, incorporated under the provisions of the Companies Act and the said agreement is signed by Shri Manoj N. Lonkar, Health Executive Officer of PCMC, on behalf of the Corporation and in exercise of the powers delegated to him by the Commissioner of the Municipal Corporation vide his order No.Account/1A/Kavi/60/2017 dated 18.01.2017. The Corporation confirmed in the said agreement that an amount of Rs. 1,14,75,910/-, as performance security was deposited in favour of the Corporation in terms of the obligations under the Agreement. According to Dr. Sathe, the said agreement reveals a concluded contract between the petitioner and respondent corporation. He makes a submission to the effect that since the Agreement was singed by a delegatee of Commissioner, it is binding upon the Commissioner and it is as good as signed and executed by him. Further the recitals of the Agreement also disclose that before the concession agreement was executed the Standing Committee had accorded its approval and the procedure contemplated for award of contact under Section 73 of Act was complied with. Inspite of this, his submission is that the standing committee passed resolution on 11.04.2018, thereby taking decision that instead of inviting two tenders, it would be more appropriate to invite four or eight tenders by dividing the city in eight zones and this would minimize any financial loss. It was, therefore, resolved that the eight tenders would be freshly invited. He submitted that at the time of passing of the said resolution, no decision was taken to terminate the concluded contract entered into with the petitioner and without dosing so, a decision was taken on 02.05.2018 to invite fresh tenders. Accordingly, on 15.09.2018 fresh tenders were invited but the perusal of the tender notice would disclose that the tenders were invited for four zones with clarification that a single bidder will be awarded maximum of only two tendering packages. The Request for Proposal (RFP) was for selection of operator for operating and managing the door to door segregated collection and transportation of Solid Waste to Depot and for maintenance of the project for year eight years. Dr. Sathe would invite our attention to the representation preferred by the petitioner to the Chairman of the Standing Committee in which a proposal was submitted to reduce the rate to Rs. 1570/- per ton and a clarification was offered that the reduction has been made possible because of following modifications :

(i) It is observed that on mini tippers out of two labours, one labour remains idle and hence, the work can be handled with one labour. Under the circumstances, one labour will be reduced on each mini tipper vehicle in all shifts.

(ii) In the escalation formula stated in the tender, the escalation of minimum wages applicable to the Driver and Labour should be covered at the rate of 70% for the labourer and 30% for the driver.

10 It was thus clarified that the petitioner company had reduced their profit margin, considering the project is a prestigious one and being a service to the citizens of Pimpri Chinchwad. Dr. Sathe, learned senior counsel would submit that the said proposal put-forth by the petitioner was duly considered by the standing

committee and he would invite our attention to the resolution no. 3314 passed by the standing committee in its meeting held on 09.10.2018. In the said meeting, there was a detailed discussion about the proposal submitted, by virtue of which the petitioner had proposed to reduce the rate to Rs. 1530/- per metric tonne. On consideration of this proposal the standing committee accorded its approval to the said proposal and also clarified that the original agreement should be suitably modified to include the changes proposed and, if required, a supplementary agreement should be executed. It is in this background, Dr. Sathe submits that the standing committee's resolution which was passed in presence of the Commissioner, ought to have been given effect to, but on the contrary, the Commissioner has taken a contrary decision which is reflected from the noting on the file of the the Corporation, which have been produced on record by the Respondent and which divulge that the Commissioner was of the opinion that since the earlier tender was canceled and fresh tenders were floated, it will not be proper to implement the resolution of the standing committee being resolution no. 3314.

11 Dr. Sathe would invite our attention to the statutory scheme as contained in the Maharashtra Municipal Corporations Act, 1949 and would place reliance on section 73, which empowers the Commissioner to execute contract on behalf of the corporation. He would also place reliance on para-5 of the schedule "D" of the said enactment which enumerates detail procedure about execution of the contract and he would submit that every contract entered into by the Commissioner on behalf of the Corporation shall be binding on the Commissioner, as if such contract was executed on his own behalf. In the backdrop of the aforesaid provisions, Dr. Sathe would submit that public body like the Corporation could not have adopted the procedure to rescind from the concluded contract and once the contract was entered into by the person duly authorized by the Commissioner, then it was not open for it to take a contrary decision.

12 On behalf of the Corporation, the learned counsel Shri Godbole has tendered appearance and he relies on the affidavit filed by Manor Lonkar, Health Executive Officer, working with the Pimpri Chinchwad Municipal Corporation. Shri Godbole would make a categorical submission, by relying on the scheme of the enactment namely Maharashtra Municipal Corporation Act he would invite attention to the powers of the Commissioner and in specific to the Chapter-VI of the enactment, which deals with the duties and power of the Municipal Authorities and Officers. He makes a submission that in no case in terms of the scheme envisaged in the statute, the Commissioner can be held to be a sub-ordinate to the standing committee. According to Shri Godbole, the Commissioner acts a trustee of the Corporation and all the executive powers of the corporation vests in him. By placing reliance on section 73 of the said enactment, he makes a submission that no contract involving an expenditure exceeding to Rs. 25 lakhs but below Rs. 50 lakhs shall be made by the Commissioner, except with the previous approval of the Mayor and for any contract which involves an expenditure in excess of Rs. 25 lakhs, a previous approval of the standing committee is imperative. Shri

Godbole, thus makes a categorical submission that the Commissioner is empowered to interfere in the resolution passed by the standing committee, if it amounts to changing the tender conditions and if it is in the larger public interest. He makes a submission that after a decision is taken, it would be placed before the standing committee and therefore, the present petition is premature as no writ of mandamus can be issued to the corporation. Thus, the submission of Shri Godbole is that in terms of the scheme of the enactment the municipal government of the city vests in the corporation and he would also placed heavy reliance on section 67 of the enactment, where the duties are cast on the respective municipal authorities.

Shri Godbole has also taken us through the affidavit filed by the Health executive officer. In the said affidavit, the factual aspects are not disputed and it admits that the standing committee passed resolution no. 2626 in the meeting dated 02.05.2018 and it decided to make certain modifications to the decision taken in its earlier resolution nos. 2551 and 2552 and granted permission to re-tender the work, by inviting four tenders for eight regions, by grouping two regions.

The affidavit then proceed to state that the Commissioner of the Corporation gave administrative approval in respect of the above mentioned resolutions of the standing committee in the month of May, 2018 and further administrative process was undertaken by the Corporation. It is also stated that in pursuance of decision of the standing committee and the Municipal Commissioner's administrative approval, the Corporation vide its letters dated 28.06.2018 addressed to the Respondent Nos. 4 and 5 communicated the decision of the standing committee and the Commissioner's in respect of cancellation of the E-tender No.10/2017-18 and the decision to undertake a fresh tender process. Accordingly, the respondent undertook a fresh tender process and E-tender notice came to be published on 15.09.2018 in the daily newspapers and it was also displayed on the official website of the Government of Maharashtra. There is no denial about passing of resolution no. 3314 by the standing committee by the Corporation in its meeting on 09.10.2018. It would be appropriate to make reference to the relevant portion in the said affidavit i.e. para nos. 9, 10 & 11 which is reproduced below :

"9. I say that, Standing Committee of the Corporation passed two resolutions in respect of the subject matter of the Petition in its meeting dated 09/10/2018. The Resolutions were numbered as Resolution Nos. 3313 and 3314 respectively. The Standing Committee considered the issue of staying the new tender process initiated by way of public notice dated 15/09/2018 and reviving the earlier Agreements executed with Respondent nos.4 & 5 in pursuance of Tender Notice No.10/2017-18 and 2017-18 with certain modifications. The Standing Committee by passing the above referred Resolutions Nos.3313 & 3314 decided that, certain modifications would be necessary in the terms and conditions in respect of the scope of work and amount of consideration/tipping fees (details mentioned in the Resolution) mentioned in Corporation's Tender Notices bearing Nos. 10/2017-18 and 11/2017-18. By the said Resolution, it was resolved to co-relate. It was also decided to reduce the rate to Rs. 1530/- per M.T. and 1570/- per M.T. in respect of respondent no. 4 and

5. The Resolution further stated that, the modifications (more particularly described in the Resolutions) should be carried out in the respective Agreements executed with Respondent nos.4 & 5. It was further resolved that, the earlier Standing Committee Resolution Nos. 2551,2552 & 2626 dated 11/04/2018 & 02/05/2018 respectively passed by it are cancelled. Hereto marked and annexed as Exhibit R-5 (Colly) are the copies of the Standing Committee's Resolution Nos.3313 & 3314 both dated 09/10/2018.

10. I say that thereafter vide Corporation's public notice dated 16/10/2018 published/uploaded on www.mahatenders.gov.in., the date of submission of bids is extended by a period of 15 days i.e. from16/10/2018 to 30/10/2018. In the meanwhile the Common Set of Deviation (CSD) was published on on 20/10/2018 by the Corporation.

11. I say that, till the date of execution of this Affidavit, the Administration of the Corporation has not taken any final decision in respect of implementation or otherwise of the Standing Committee Resolution Nos. 3313 & 3314 both dated 09/10/2018.".

Alongwith the said affidavit the office notings have also been placed on record.

13 Another affidavit on which Shri Godbole has placed reliance is filed by the same officer, and this affidavit is filed on 12.12.2018. Apart from annexing the relevant office notings, the affidavit raises objections to the petition on the ground that it is filed belatedly. It is stated in the said affidavit that the petitioner became aware of the resolution dated 02.05.2018 in the month of May 2018 itself. However, he approached this court by filing the petition only on 03.12.2018. It is also attempted to be canvassed that in the earlier writ petition filed by the two persons, the petitioner was a party but he did not make any grievance about cancellation of the tender in question and the petition has, therefore, came to be dismissed on the ground of delay and latches.

The affidavit has also referred to the reasons why the resolution passed by the standing committee cannot be given effect to and paragraph nos. 6 and 7 of the affidavit is the gist of the stand of the Corporation. It is stated in the affidavit that the Municipal Commissioner vide his decision dated 31.10.2018 has decided that since administration of the corporation has already implemented the standing committee's earlier resolutions (bearing nos. 2551 and 2552) both dated 11.04.2018 and the resolution no. 2626 dated 02.05.2018, cancelling the tender process commenced by tender notice no. 10/2017-18 and 11/2017-18 and has undertaken a fresh tender process by issuing a new tender notice on 15.09.2018, the fresh tender process will have to be continued. The Municipal Commissioner, therefore, took a decision on 30.10.2018 to extend the time limit for submission of bids till 13.11.2018. It is also further stated in the affidavit that the impugned tender notice published on 15.09.2018 was never cancelled by the Corporation nor the intimation of its cancellation was given to the public at large and it is this impugned tender process continued to remain in operation till 06.12.2018, when this court passed order restraining the Respondent Corporation from opening the financial / commercial bids. This is sought to be putforth as the reason for not implementing the resolution dated 9.10.2018 passed by the standing committee. It is further stated in the affidavit that on second tender notice been published, the petitioner chose not to participate in the fresh tender process, without prejudice to his rights in the petition and in fact it is stated that another concessioner i.e. M/s. BVG India Limited, who was also one of the successful bidders, participated in the fresh tender process.

14 It is through this affidavit, the Respondent Corporation has made their stand clear and Shri Godbole heavily placed reliance on the said affidavit and he makes oral submission to the effect that reduction of rates by the petitioner which came to be accepted, by the standing committee's by its resolution no. 3314 passed on 09.10.2018 is against the public interest. Shri Godbole makes a submission that the offer given by the petitioner company to reduce one employee on the tipper, amounts to deviating from the tender conditions and he submit that the reduction of rate of Rs. 1570/- by the petitioner would have open flood gates for other eligible bidders to quote the said rate and the corporation could have probably avail a better competition.

He is highly critical about the second aspect of the matter as regards importance of escalation formula, where the petitioner company has proposed that the escalation of minimum wages applicable to the driver and labour should be covered at the rate of 70% for the labourer and 30% for the driver and his further contention is that on deleting the supply of 5 metric ton green waste processing equipment and its operation and maintenance as well as capacity building and awareness clauses, which has brought the competent rate to Rs. 1.70 per metric ton. He thus makes a submission that since the Commissioner was interested in the larger public interest in tapering the prices of the work involved for which the tenders were invited, he was perfectly justified in interfering with the decision of the standing committee and no malice can be attributed to him.

15 We have perused the copy of the writ petition alongwith its annexures and also affidavits filed by the corporation alongwith the annexures and also heard the respective counsels.

16 The Maharashtra Municipal Corporation Act, is an enactment to provide for the establishment of Municipal Corporations for all larger urban areas in the State of Maharashtra with a view to ensure a better municipal governance. The Act enumerates various Municipal Authorities charged with the duty to carry out the provisions of the enactment for each city and include within its sweep, the Corporation, the Mayor, Municipal Commissioner, various Committees including the Standing Committee. The Municipal Government of the city vests in the

Corporation. Every Corporation is a body corporate, having perpetual succession and common seal and by such name it may be sue and sued. Section 36 provides for appointment of the Municipal Commissioner, who is to be appointed by the State Government whereas Section 20 provides for constitution of Standing Committee, which consists of 16 councillors. Chapter VI contains provisions relating to the duties and power of the Municipal Authorities and its officers. Section 67 sets out functions of several municipal authorities and it provides that the municipal government of the city vests in the Corporation and the executive power, for the purpose of carrying out the provisions of this Act and or any other Act for the time being in force, which imposes any duty or confers any powers on the corporation vests in the Commissioner, who shall exercise it, subject to a rider that whenever it is expressly directed in the Act, to seek the approval or sanction of the corporation or the standing committee and also subject to all other restrictions, limitations and conditions imposed under the Act. The Commissioner, subject to aforesaid restrictions, is expected to perform all the duties and exercise all the powers, specifically imposed or conferred upon him by this Act and is also empowered to prescribe the duties of, and exercise supervision and control over the acts and proceedings of all the municipal officers and servants other than the municipal secretary and the municipal chief auditor and the municipal officers and servants immediately subordinate to him. He is also empowered to, in case of an emergency to take such immediate action for the service of safety of the public or the protection of the property of the corporation as the emergency shall appear to him to justify except or to such action cannot be taken without the sanction, approval or authority of some other municipal authority or of the State Government. This power is circumscribed by a stipulation that the Commissioner shall report forthwith to the standing committee and to the corporation, the action which he has taken and his reasons for taking the same and the amount of costs, if any, incurred or likely to be incurred in consequence of such action. Section 70 of the said enactment empowers the corporation to call for extracts from proceedings of any committee including the standing committee and similarly by exercise of power conferred under Section 71, the Corporation may, at any time, require the Commissioner to produce any record, correspondence, plan or other document which is in his possession or under his control as Commissioner or furnish any return, plant, estimate, statement, account or statistics concerning with any matter appertaining to the administration of the Act or the municipal Government of the city.

Section 73 has also been pressed into service and it would be appropriate to reproduce the said section, which finds its place under Chapter 7 of the said Act. Section 73 reads thus :

"73. Power to Commissioner to execute contracts on behalf of Corporation :

With respect to the making of contracts under or for any purpose of this Act, including contracts relating to the acquisition and disposal of immovable property of any interest therein, the following provisions shall effect namely :-

(a) every such contract shall be made on behalf of the Corporation by the Commissioner;

(b) no such contract or any purpose which, in accordance with any provision of this Act, the Commissioner may not carry out without the approval or sanction of some other municipal authority, shall be made by him until or unless such approval or sanction has first been duly given;

(c) no contract, other than a contract relating to the acquisition of immovable property or any interest therein or any right thereto, which will involve an expenditure exceeding rupees twenty-five lakhs but not exceeding rupees fifty lakhs shall be made by the Commissioner, unless the same is previously approved by the Mayor. However, the total amount of all contracts approved by the Mayor shall not exceed rupees two crores and fifty lakhs during a year. Subject to the above, for any contract which involves an expenditure in excess of rupees twenty-five lakhs, the previous approval of the Standing Committee shall be necessary.

Provided that, notwithstanding anything contained in Schedule 'D' in Chapter II, in rule 3, in clause (k), where the approval of the Standing Committee is sought by the Commissioner for any contract, the Standing Committee shall consider and dispose of the proposal made by the Commissioner in that behalf within fifteen days reckoned from the date of the meeting of the Standing Committee held immediately after the proposal is received by it, whether the item pertaining to such proposal is taken in the agenda of such meeting or not, failing which the approval to such contract shall be deemed to have been given by the Standing Committee and a report to that effect shall be made by the Commissioner to the Corporation.]

(d) every contract made by the Commissioner involving an expenditure exceeding (five lakhs) rupees and not exceeding (twenty five lakh) rupees or such higher amount as may for the time being prescribed under clause (c) shall be reported by him, within fifteen days after the same has been made, to the Standing Committee.

(e) the foregoing provisions of this section shall, as far as may be, apply to very contract which the Commissioner shall have occasion to make in the execution of this Act; and the same provisions of this section which apply to an original contract shall be deemed to apply also to any variation or discharge of such contract."

Perusal of the above provision implicitly reveal that every contract on behalf of the corporation shall be executed by the Commissioner. However, if there is any restriction imposed under the provisions of the Act, then the Commissioner shall execute the said contract only after obtaining prior approval or sanction of other municipal authorities and it would act as a pre-requisite condition for executing a contract. Sub-section (c) of Section 73 imposed fetters on the power of the Commissioner and it stipulates that no contract which involves an expenditure in excess of Rs. 25 lakhs would be executed without prior approval of standing committee. However, all contracts executed by the Commissioner involving an expenditure exceeding Rs. 5 lakhs and not exceeding Rs. 25 lakhs or such higher amount as may be prescribed, shall be reported by him within 15 days after decision is made to the standing committee and this provision would apply in every case of any variation or discharge of such a contract executed.

17 In the backdrop of the existing statutory scheme, we have examined the factual matrix involved in the present matter before us. The PCMC accepted the tender of the petitioner for collection and transportation of the solid waste being lowest and offering a price at Rs.1890/- per metric ton. The price was further negotiated and the petitioner agreed to the rate at Rs. 1780 per metric ton. The standing committee passed a resolution on 21.02.2018, approving the petitioner'stender and in terms of the said resolution, the letter of acceptance was issued to the petitioner. On 28.02.2018, the standing committee resolved to execute the concession agreement. On behalf of the corporation, this agreement was executed by the Health Executive Officer, who was delegated the powers of the Commissioner. The agreement includes the details of the payments and its computation as well as price adjustment, for the labour component, adjustment for fuel component etc. The agreement also contain the clause for termination of the agreement in event of default and also in case of a force majeure. The concession agreement executed between the parties permitted its termination in the event of default, on giving a termination notice, setting out in sufficient detail the underlying event of default, the date of termination and also the estimated termination payment including the details of computation etc.

The said agreement signed by the Health Executive Officer of Pimpri Chinchwad Municipal Corporation and the Chief Executive Officer of the AG Enviro Infraprojects Pvt. Limited i.e. the Petitioner Company falls within the category of the one it is contemplated under section 73 of the said Act and in terms of section 73, the said agreements binds the Commissioner, as if it was signed by him, in terms of Chapter- V Schedule "D" of the said Act, which is a part of the enactment by virtue of Sections 45 and 53.

18 The said agreement executed on 28.02.2018 between the petitioner and respondent corporation is the concluded agreement and it has been executed after the entire process under the scheme of the statute, specifically Chapter VI had been complied with after obtaining necessary approval of the standing committee. We are, therefore, in agreement with the submission of Dr. Sathe that the concluded contract was executed by the PCMC with the petitioner. The said contract executed on behalf of the corporation by a delegated authority of Commissioner clearly binds the Corporation. The standing committee however, resolved to cancel the contract of the petitioner unmindful of its nature being conclusive in nature on the specious ground that it was unanimously agreed that

instead of two tenders, if eight tenders were invited, the rate fetched would be on much lower side and therefore it would be in the financial interest of the corporation. The earlier resolutions by which the petitioner and one M/s. B.V.G.

India Limited, were alloted the work tendered came to be cancelled by Standing Committees resolution and permission was granted to float eight fresh tenders. Accordingly on 15.09.2018, fresh tenders were invited for improving the solid waste management services for the Pimpri Chinchwad city. Perusal of the new tender would disclose that the fresh proposals are invited to appoint an operator in four solid waste zones. As regards this, it is to be noted that resolution no. 2551 mentions that the tenders were being cancelled so as to divide the city into eight zones and for similar areas, the bids fetched would yield more low rates. The petitioner however, submitted his proposal to the standing committee that he is ready to reduce the rate further since the possibility of fetching the lower rate was the sole criteria for inviting the fresh tenders. The standing committee on 09.10.2018 cancelled the earlier resolution no. 2551 by which the earlier resolution dated 11.04.2018 came to be cancelled and it also cancelled its earlier resolution dated 02.05.2018 by which it had resolved to issue a fresh tender and not only this, it also stayed the tender notice dated 15.09.2018. This resolution continues to be in force.

Though Mr. Godbole has attempted to canvass before us, on the basis of the said resolution, that though the petitioner has reduced the rate, the rate the corporation could have been able to fetch on bids at much more lower rate is merely a speculation. In any contingency both the affidavits filed by the corporation do not disclose any reason of loss to the public exchequer or to the corporation, being a ground for its cancellation on account of the resolution dated 09.10.2018 being passed by the standing committee.

19 Another significant development to be noted is that the delegatee of powers by the Commissioner i.e. to the Health Executive Officer of Pimpri Chinchwad Municipal Corporation, who is also the deponent of both the affidavits before us, addresses a letter to the petitioner company on 12.10.2018 in the reference to the resolution dated 3314 passed by the standing committee on 09.10.2018. After making reference to the resolution, the said letter further communicate that in order to take further steps in pursuance of the said resolution passed by the standing committee, the petitioner should accord his consent to the proposal of his willingness to work at the rate of Rs.1570/ per metric ton and the response be submitted within a period of three days. In response to the said letter, the petitioner addressed a letter to the Health Officer and he confirms his assent in terms of the subject letter and also expressed that he expects the work order to be issued at the earliest. Perusal of the said letter would thus makes it clear that the Health Officer, who was acting as a delegate of the Commissioner, is the one who sought consent of the petitioner company for proceeding in terms of the resolution no. 3314 passed by the standing committee on 09.10.2018 and in the backdrop of these affidavits, it does not lie in the mouth of the corporation now

to say that the Commissioner was not aware of any such developments.

20 Another interesting fact is reading of the noting which has been placed before us alongwith the affidavit filed by the corporation. The said notings are also signed and prepared by the same Health Officer, who has communicated the letter dated 12.10.2018 to the petitioner. Perusal of the said notings makes a reference to the last date of time line for filing fresh tender in pursuance of the tender notice dated 15.09.2018 and it was to come to end on 15.10.2018. Perusal of the notings dated 28.10.2018 which has been put forth by the Chief Accountant Officer of the PCMC, the only reason that is stated is what finds place in the affidavit and it proceeds to stay the resolution, on the solitary ground that the tender process is already implemented and the earlier contract stands cancelled and therefore, it would not be proper to revive the said tender process and therefore, the resolution no. 3314 passed by the standing committee, cannot be given effect to and the new tender process is permitted to continue. The said notings are also approved by the Commissioner. We are surprised by the said reasonings in the notes which is also cited in the affidavit. We would not have taken notings as a conclusive orders, however, the corporation makes its stand clear in the affidavits as to why it was not ready to implement the resolution no.3314 and though Mr. Godbole has vehemently attempted to argue before us that the significance of the action of reducing the rates by the standing committee at the request of the petitioner and which, according to him, was the sole basis on which the Commissioner's interference was sought. We are unable to accept this submission since it is not permissible to substitute the reasoning by way of an affidavit and surely not merely on an oral argument by a counsel. This reasoning is not reflected in any of the noting remarks and hence, we are unable to accept the said submission of Shri Godbole.

We also do not find substance in the submission of Shri.Godbole that the Resolution of the standing committee rather amounts to rewriting of the tenders conditions, as we have noted that the new tender floated by the Corporation contains a stipulation for engagement of one labour on the mini tipper, thereby reducing the work force. This reflects that the Corporation itself was not aggrieved by the reduction of labour on the mini tipper to engaged for carrying out the tendered work.

21 Reliance placed on by Shri Godbole on the judgment of the Apex Court in the case of Vice-Chancellor, University of Allahabad & Ors. vs. Dr. Anand Prakash Mishra & Ors., reported in (1997) 10 Supreme Court Cases 264 is, according to us, not applicable to the facts of the present case. Shri Godbole has invited our attention to paragraph 13 of the said judgment to draw home the point that a writ of mandamus cannot be issued to violate the law or to act in violation of the law and in fact in the said case, it was held that the direction issued by the High Court, directing to appoint the respondent as per the order issued by the Chancellor, in violation of the Act and therefore, issuance of mandamus was clearly illegal. It is no doubt true that a writ of mandamus can be issued,

directing performance of legal duty and no illegal action can be sought to be enforced by issuance of such writ. However, in the present case, we have observed above that the action of the corporation in not acting on the concluded contract with the petitioner finds no explanation or justification except the one which is offered i.e. a fresh process of tender had already advanced. No other justification finds place in the affidavits also and the justification which is sought to be submitted by Shri Godbole in his oral submission is conspicuously absent in the affidavits or the notings of the corporation. The corporation being the local authority is amenable to the writ jurisdiction of this falling within the meaning of the State under Article 12 of the Constitution of India. It is settled position of law that every action of the State instrumentality in exercise of its executive power must be informed by reason and in appropriate cases, the actions uninformed by reasons, may be subjected to judicial review under Article 226 of the Constitution of India. The said act of Corporation is in exercise of its power under Article 298 of the Constitution to enter or not to enter into contract with the individual party. The said action of the State in entering into the contract cannot fall outside the ambit of Article 14 and when Article 14 is applicable, the exercise of writ jurisdiction cannot be ousted even though the rights involved, are in the nature of the contractual rights. The manner and the method of a decision of entering or not entering into a contract are subjects of judicial review and the parameters of reasonableness, fair play, equality, arbitrariness are the touch-stones on which the said action can be decided. In ABL International Ltd. & Another v/s Export Credit Guarantee Corporation of India Limited and Ors., reported (2004) 3 SCC page 553, the Hon'ble Apex Court has observed thus in para nos. 22 and 23 :

"22. We do not think the above judgment in VST Industries Ltd. (supra) supports the argument of the learned counsel on the question of maintainability of the present writ petition. It is to be noted that VST Industries Ltd. against whom the writ petition was filed was not a State or an instrumentality of a State as contemplated under Article 12 of the Constitution, hence, in the normal course, no writ could have been issued against the said industry. But it was the contention of the writ petitioner in that case that the said industry was obligated under the concerned statute to perform certain public functions, failure to do so would give rise to a complaint under Article 226 against a private body. While considering such argument, this Court held that when an authority has to perform a public function or a public duty if there is a failure a writ petition under Article 226 of the Constitution is maintainable. In the instant case, as to the fact that the respondent is an instrumentality of a State, there is no dispute but the question is: Was first respondent discharging a public duty or a public function while repudiating the claim of the appellants arising out of a contract ? Answer to this question, in our opinion, is found in the judgment of this Court in the case of Kumari ShriLekha Vidyarthi & Ors. vs. State of U.P.& Ors. [1991 (1) SCC 212] wherein this Court held :

"The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters."

"23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent.

22 We are conscious of the settled legal position that ordinarily remedy available for a party complaining breach of contract lies for seeking damages or seeking a relief of specific performance if the contract was capable of being specifically enforced in law and the remedy for breach of contract being purely in the realm of contract are to be dealt by Civil Court. However, when the contractual dispute invoked a public law element, we do not think that our power under Article 226 can be constricted.

A tender is an offer, by which something is invited and it is communicated to notify acceptance. The bidders participating in the process cannot claim as a matter of right or insist that the public functionary must enter into a contract with it and it is a right of the State or its instrumentalities to accept or reject even a lowest offer. The petitioner participated in the tender process and a contract was executed on behalf of the corporation and the petitioner makes a grievance about the unilateral revocation of the said contract in the backdrop of the facts and circumstances narrated in the petition. We do not find that there is any supervening public interest which prompted the Commissioner to change its stand and we find that the petitioner is justified in claiming application of the doctrine of promissory estoppel as a binding contractual obligation came into existence when the contract came to be executed with the petitioner after following the procedure enumerated under the enactment. The Corporation which was expected to act in just, fair and reasonable manner has not offered any justification while paving path of deviancy from the concluded contract. When the decision of the Corporation is based on illegality and a procedural impropriety and is found to be arbitrary and unreasonable we do not feel it proper to relegate the petitioner to Civil Court but we deem it appropriate to exercise our writ jurisdiction.

23 In the light of the said settled position, when we scrutinized the action of the Pimpri Chinchwad Municipal Corporation we can fairly reach to a conclusion that the Municipal Commissioner did not act in a good faith and his action can only be described as unreasonable and specifically when we did not find any justification

coming from the Commissioner, justifying his action in the larger interest of the Corporation, a concluded contract with the Petitioner, giving rise to the legitimate expectation on his part and the Corporation by its whims and fancies, as a public body cannot recoil from the concluded decision. We do not find that exercise of powers by the Commissioner in the present case, to be sustainable.

24 In the aforesaid circumstances, we are satisfied that the present case calls for exercise of our power of judicial review and in the light of the concluded contract, we hold that the concession agreement executed on 28.02.2018 between the Petitioner and the Municipal Corporation binds the Commissioner in whom the executive power of the Corporation vests. The said decision being taken in accordance with the procedure prescribed in sections 69 and 74 of the Act and when the approval of the standing committee was sought by the Municipal Corporation for this particular contract, we do not think that the Commissioner was justified in law, nullifying the said contract and follow the course of a fresh tender process only on the ground that the earlier tender was cancelled and the fresh process was initiated.

In the present petition, we are concerned about the rights of the Petitioner and the concluded contract in his favour. The Petitioner has complied with the requirements of the terms and conditions and also submitted a performance of the bank guarantee in pursuance of the concessional agreement. Considering the efforts made by the Petitioner to reduce his rates to Rs. 1570 per metric ton, the standing committee on 09.10.2018 had resolved to cancel its earlier resolution by which the petitioner's contract was cancelled, needs to be implemented, since it also server the fiscal purpose of Corporation to be able to get a lower rate.

25 Shri Godbole has attempted to canvass before us that now the decision of the Commissioner would be placed before the standing committee and the petition is premature. We are unable to consider the said argument of Shri Godbole, as the response of the Commissioner did not satiate us to what promoted him to cancel the concluded contract executed with the petitioner and when the standing committee in the interest of the Corporation has accepted the lower rate offered by the Petitioner. We may at the most give benefit of the argument of Shri Godbole that the Municipal Commissioner had acted in a good faith and there is no malice attributed to him.

In any contingency, we have noted that the rates quoted by the Petitioner have been reduced considerably as compared to its earlier rate and therefore, the submission of receiving better offer in the changed conditions, advanced by Shri Godbole is taken care of.

26 In the result, for the aforesaid discussion, we are inclined to allow this writ petition and quash and set aside the decision taken by the Commissioner on 31.10.2018 and issue direction to the respondent to implement the concluded contract executed with the petitioners on 28.02.2018 in furtherance the Resolution No.3313 passed by the Standing Committee.

27 With the aforesaid direction, Writ Petition is allowed. Rule is made absolute. No order as to costs.

[SMT.BHARATI H. DANGRE,J.] [RANJIT MORE, J.]

28 After the judgment is pronounced by us, Mr.Godbole, learned counsel for the respondent Nos.2 and 3 seeks stay of the judgment, which is opposed by the counsel for the petitioner. Since we have already held that there is a concluded contract between the petitioner and the respondent Corporation which binds the Corporation, we are not inclined to grant stay.

Request is refused.

