

(2008) 03 BOM CK 0053

In the Bombay High Court

Case No : Public Interest Litigation No. 185 of 2007

Kishore Chandrakant Shah

APPELLANT

Vs

State of Maharashtra, Urban Development Department,
Sangli Miraj Kupwad City Municipal Corporation and S. Motilal
Plywood House

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Citation : (2008) 3 ALLMR 230 : (2008) 3 BomCR 271 : (2008) 3 MhLj 760

Hon'ble Judges : Swatanter Kumar, C.J.; J.P. Devadhar, J

Bench : Division Bench

Advocate : S.S. Patwardhan, for the Appellant; P.M. Patil, G.P. and S.C. Prabhu and S.S. Kanetkar, instructed by G.S. Godbole, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Devadhar, J.—Rule. Rule made returnable forthwith. By consent of parties, the writ petition is taken up for final hearing.

2. The short question raised in this Public Interest Litigation ("PIL" for short) is, where the tender condition provides that the tenders received below the minimum bid amount would be rejected and the highest tender received pursuant to the said tender is below the minimum bid amount, then, is it open to the Government/Corporation to award contract to that highest tenderer without inviting fresh tenders?

3. The petitioner, ex-mayor of Sangli and presently a Corporator/Councillor in the Sangli Miraj Kupwad City Municipal Corporation "Corporation" for short) has filed this PIL to challenge the order of the State Government dated 6th November, 2007 wherein the proposal submitted by the Corporation to award the contract to the respondent No. 3 below the minimum bid price fixed under the tender has been approved. On such approval, the Corporation has awarded the contract to the respondent No. 3 for collecting octroi duty within the jurisdiction of the

Corporation for a period of one year. According to the petitioner, the contract awarded to the respondent No. 3, which is below the minimum bid fixed is not in public interest.

4. Relevant facts are that by a public notice dated 26-3-2007 tenders were invited by the Corporation for collection of octroi within its city limits for the period from 1-5-2007 to 30-4-2008. It was specified in the tender that the minimum bid price was Rs. 47,38,00,000/- and tenders below the minimum bid price would be rejected. It may be noted that in the previous year (2006-2007) the contract for collecting octroi was awarded to a private party for Rs. 43,06,00,000/- and increasing the said amount by 10%, the minimum bid price for 2007-2008 was fixed at Rs. 47,38,00,000/-.

5. As there was no response to the said tender, time to submit the bids were extended by a public notice dated 12-4-2007 and again on 17-4-2007. However, only one tender was received for an amount of Rs. 35,10,00,000/- which was less than the minimum bid price. Therefore, fresh tenders were invited on 30-4-2007 wherein the period for collection of octroi was stated to be for the period from 1-6-2007 to 31-5-2008, however, the minimum bid amount remained the same. In response to the said notice, respondent No. 3 submitted its tender for Rs. 37,69,00,000/-. As the said amount was also less than the minimum bid amount fixed, fresh notice was again issued on 10-5-2007 pursuant to which two tenders were received, one, from Konark Infrastructure Private Limited ("Konark" for short) for Rs. 37,97,99,999/- and another from the respondent No. 3 for Rs. 38,97,99,999/-. As both the bids were below the minimum bid price, the Corporation did not accept the tender and once again issued a notice on 23-5-2007 inviting fresh tenders.

6. In response to the said notice dated 23-5-2007, two tenders were received, one by Konark for Rs. 40,00,99,995/- and another by the respondent No. 3 for Rs. 41,04,00,000/-. This time the Standing Committee of the Corporation, in the light of the report submitted by the Administration decided to accept the highest tender of the respondent No. 3 even though the same was below the minimum bid price set out in the tender. Thereafter, the Corporation sought approval of the State Government and by the impugned order dated 6-11-2007, the State Government after recording its reasons approved the proposal for awarding the contract in favour of respondent No. 3. Accordingly, the contract has been awarded to the respondent No. 3 for a period of one year. Challenging the aforesaid action, the present PIL is filed.

7. Mr. Patwardhan, learned Counsel appearing on behalf of the petitioner submitted that awarding contract to the respondent No. 3 below the minimum bid price is not in public interest because firstly, by awarding contract for Rs. 41,04,00,000/- as against the minimum bid price fixed at Rs. 47,38,00,000/=-, the Corporation stands to lose more than Rs. 6 crores in a year. Secondly, when the minimum bid price was fixed by the General Body of the Corporation, the Standing Committee could not have approved the contract below the minimum

bid price fixed by the General Body of the Corporation.

Thirdly, the contract for a price lesser than the minimum bid price would seriously affect the budget of the Municipal Corporation and it will cause serious prejudice to the development work in the city limits of the Corporation. Fourthly, the Municipal Corporation itself could have carried on the work of collecting octroi, as there were enough staff in the octroi department and in fact the octroi department of the Corporation has been collecting octroi after the previous contract for 2006-2007 came to an end. Lastly, it is contended that once the tender conditions are altered, no contract could be awarded without inviting fresh tenders.

8. Relying on a decision of this Court in the case of Konark Infrastructure Pvt. Ltd. and etc. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, which is upheld by the Apex Court (M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, , Mr. Patwardhan submitted that although it is open to the Government or to the Corporation to alter the conditions of tender, once the condition of tender is altered, it is obligatory on the part of the Government/Corporation to issue fresh tenders. Failure to do so would be contrary to the dictum laid down by the Apex Court referred to hereinabove. Accordingly, the counsel for the petitioners submitted that the impugned action of the State Government/Corporation are not in public interest and the same are liable to be quashed and set aside.

9. Counsel for the respondents, on the other hand supported the action of the Government/Corporation and submitted that the PIL filed by the petitioner is in abuse of process of law. They submitted that even though in the previous year (2006-2007), the contract was awarded for Rs. 43.06 crores, in the year 2007-2008 the collection of octroi was bound to be lower because, the Corporation with a view to boost the industrial development within its jurisdiction had granted 50% octroi concession to various Industrial Units situated within the jurisdiction of the Municipal Corporation & had granted 100% octroi concession to Miraj MIDC, as a result whereof there were not many bidders in spite of repeated public notices issued by the Corporation. In these circumstances, in public interest, it was decided to award the contract to the Respondent No. 3 who was the highest bidder, even though the same was below the minimum bid price set out in the tender. Accordingly, it is submitted that the petition is without any merit and the same is liable to be dismissed.

10. We have carefully considered the rival submissions.

11. It is well established in law that the Government is entitled to enter into any contract with the citizens and the judicial review in such cases is restricted and the Court can interfere only where the Government action is arbitrary, unreasonable or contrary to the public interest or the same discriminates between persons similarly situated. [see decision of the Apex Court in the case of Monarch Infrastructure (P) Limited (supra) , especially para 10 thereof]. Thus,

the question to be considered in the present case is, whether the decision of the Government/Corporation in awarding contract to the respondent No. 3 for Rs. 41,04,00,000/- as against the minimum bid price of Rs. 47,38,00,000/- is arbitrary, unreasonable and contrary to the public interest.

12. At the outset, it may be noted that in the present case, neither mala fides are alleged against the Corporation/State Government nor is there any allegation of collateral motive in awarding the contract to the respondent No. 3. It is not even the case of the petitioner that if fresh tenders were invited after relaxing the minimum bid amount, then the petitioner or any other bidder would have submitted their tenders for an amount higher than the amount offered by the respondent No. 3. In other words, it is not the case of the petitioner that a willing bidder could not submit the tender for want of knowledge that the Government/Corporation has decided to accept the tender below the minimum bid amount. Therefore, the grievance that the Corporation is deprived of higher revenue by not inviting fresh tenders is only in the realm of conjectures and is not supported by any material.

13. The State Government/Corporation have satisfactorily explained the reasons for accepting the tender of the respondent No. 3 which is below the minimum bid price. It is stated that inspite of repeated advertisements, there were only two tenderers, namely Konark and the respondent No. 3. Konark had initially offered Rs. 35,10,00,000/-, thereafter Rs. 37,97,99,999/- and finally had offered Rs. 40,00,99,995/- whereas, the respondent No. 3 had initially offered Rs. 37,69,00,000/- and thereafter Rs. 38,97,99,999/- and finally offered Rs. 41,04,00,000/-. It is pertinent to note that these tenders were submitted despite a condition that the tenders below the minimum bid price were liable to be rejected. When the intending bidders have participated in the tender process and submitted tenders below the minimum bid price, in the absence of any bidder claiming that he would have offered higher price if it was made known that the minimum bid amount has been reduced, the decision of the Government/Corporation to accept the highest tender of the respondent No. 3 even though the same is below minimum bid price cannot be said to be unreasonable or improper.

14. Moreover, admittedly in the present case, the Corporation with a view to boost the industrial growth within its jurisdiction had decided to give 50% octroi concession to some of the major industries within the municipal limits and had given 100% octroi concession in some cases. As a result of these concession which are not disputed, there was bound to be fall in octroi collection. Therefore, irrespective of the fact that in the year 2006-2007 the contract for collecting octroi was given at Rs. 43.06 crores, in view of the concession in octroi granted by the Corporation, it appears there were not many bidders in this year. It is worth noting that even Konark who is the unsuccessful bidder has not complained that failure to invite fresh tenders after altering the minimum bid price has caused any prejudice to them. In these circumstances, the decision to

award the contract to the respondent No. 3 below the minimum bid price cannot be said to be arbitrary, discriminatory or that the Corporation has suffered loss by awarding contract to the respondent No. 3 below the minimum bid price. Consequently it cannot be said that any development work of the Corporation has suffered.

15. As rightly contended by the respondents, whether the Corporation should collect the octroi itself or should it be given to a third party is a matter of policy decision and the same cannot be a subject matter of judicial review. Therefore, the argument that the Corporation ought not to have given the contract to a private party for a lesser amount and that the Corporation which is having full fledged octroi department ought to have continued to collect octroi cannot be accepted. The argument that the decision to award contract below the minimum bid price vested in the General Body and not with the Standing Committee of the Corporation is also totally vague and is not supported by any rule or regulation to that effect. Since the Corporation, after giving repeated advertisement of tenders at a considerable expenditure could get the highest offer of Rs. 41,04,00,000/-, the decision to accept the tender of the highest bidder appears to be bona fide and reasonable. Therefore, in the facts of the present case, the decision to accept the tender of the respondent No. 3 without inviting fresh tenders cannot be faulted.

16. Reliance placed on the decision of the Apex Court in the case of Monarch Infrastructure (P) Limited (supra) does not support the case of the petitioner. In that case, the aggrieved party had approached the High Court complaining that a departure from qualifications set out in the tender had kept him out of the race and the said arguments was accepted by the High Court. While upholding the decision of the High Court, the Apex Court held that the Government or the Municipal Corporation was free to alter the conditions of tender, but in such a case inviting fresh tender was the only alternative permissible. In the present case, it is not the case of the petitioner that he was kept out of the race because of the higher minimum bid price. No one has complained that had it been known that the tender condition has been relaxed, it would have submitted its own bid. Even the unsuccessful tenderer, namely, Konark has not made any grievance in awarding the contract to the respondent No. 3 without inviting fresh tender. Therefore, the decision of the Apex Court in the case of Monarch Infrastructure (P) Limited (supra) is distinguishable on facts and has no application to the facts of the present case.

17. As held by the Apex Court in the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, where any relaxation is granted for bona fide reasons and the decision is arrived at for legitimate reasons after a fair consideration of the case, the Court should hesitate to intervene. In the present case, the tender condition did not expressly bar the Corporation from accepting the tender below the minimum bid price. Therefore, in the facts and circumstances of the case, the discretion exercised by the Government/

Corporation in accepting the tender of the respondent No. 3 without inviting fresh tenders cannot be said to be unjustified.

18. Thus, in this PIL, the petitioner has failed to demonstrate as to how the administrative decision taken by the Government/Corporation to award contract to the highest tenderer without inviting fresh tenders has caused prejudice to the Corporation or that the public interest has suffered. It is neither the case of the petitioner that he is kept out of the race by not inviting fresh tenders nor the petitioner is espousing the case of any intending bidder who was willing to offer amount higher than the amount offered by the respondent No. 3, if fresh tenders were invited. Mere suspicion or likelihood of some prejudice to public interest by not inviting fresh tenders without any corroborating material would not entitle the petitioner any relief in this petition.

19. For all the aforesaid reasons, we hold that in the present case, the decision of the Government/Corporation to accept the tender of the respondent No. 3 without inviting fresh tenders was bona fide and the said decision has neither resulted in arbitrariness nor discrimination. In other words, in the present case, the decision of the Government/Corporation to relax the tender condition and award contract to the respondent No. 3 without inviting fresh tenders has neither caused any prejudice to the interests of the Corporation nor the interests of the general public.

20. Accordingly, we see no merit in the PIL and the same is hereby dismissed. Rule is discharged with no order as to costs.