
(2023) 01 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition Lodging No. 30316 Of 2022

M/S. Sagar Lookouts

APPELLANT

Vs

Maharashtra Housing And Area Development Authority And
Others

RESPONDENT

Date of Decision : 18-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 01 BOM CK 0076

Hon'ble Judges : S.V. Gangapurwala, J;S.G. Chapalgaonkar, J

Bench : Division Bench

Advocate : Venkatesh Dhond, B.M. Chattarjee, Ashutosh R. Gole, Nikhil Waje, Vishesh Srivastav, Anushree Koparkar, Shravani Manore, Vishwali Botale, Milind Sathe, P.G. Lad, Aparna Kalathil, Shreya Shah, Hemant Haryan, A.V. Anturkar, Rajendra Haridas, Atharva Date, Sachin Dhakephalkar

Final Decision : Dismissed

Judgement

S.G. Chapalgaonkar, J

1. The petitioner / A duly registered partnership firm has approached this court under Article 226 of the Constitution of India thereby assailing/challenging the decision of the Scrutiny Committee of respondent No.2/ Mumbai Housing & Area Development Board (MHADB) dated 12.9.2022 (published on 19.9.2022), thereby declaring the petitioner as ineligible in Tender No.4 dated 18.2.2022. The petitioner has further prayed that the respondents be directed to hold the bid of the petitioner as eligible and take further proceedings accordingly.

2. On February 18, 2022, the respondent No.2 – Mumbai Housing & Area Development Board (hereinafter "MHADB" for short) had issued a request for proposal (hereinafter "RFP" for short) under swiss challenge for selection of reputed agency for advertisement rights of 106 hoardings sites at Mumbai for a term of 15 years. The RFP prescribes clause No.3.2 containing the eligibility criteria for prospective bidders which states as under :-

"3.2 The Bidder should have an experience of at least 10 (ten) years in erection and handling of city advertising/outdoor advertising media of 50 hoardings each of minimum 450 sq. ft. in corporation/Authority area."

3. The pre-bid meeting was conducted in terms of clause No. 2.5 of RFP. The pre-bid queries on RFP were called from prospective bidders. On 23.3.2022, the Scrutiny Committee of respondent had issued the clarification on the points raised by the prospective bidders during the pre-bid meeting. The clarification relating to eligibility criteria had been issued as under :-

Sr.No.

RPF Reference

Content of RFP requiring clarification

Point for clarification required

Clarification.

4.

3.2(4)

Eligibility Criteria

What is meaning of Hoarding ? And which type of hoarding are not allowed ?

Hoarding means any structure erected on ground or dead wall of the building with characters, letters or illustrations applied thereto and displayed in any manner whatsoever, out of doors, for purpose of advertising or to give information with a view to attract the public to any place, person, public performance articles of merchandise

whatsoever, and also includes advertisement by using neon bulbs/ lamps/lights, which flash and appear in a synchronized manner in one or more different colours. And does not include following type of advertisement as Electronic Display, Gantry Advertisement, Glow Skin Box Advertisement, Kiosk, Advertisement on vehicle, Scroller Display Advertisement., etc.

4. In response the RFP five tenders were received. The meeting of the Scrutiny Committee was held on 24.3.2022. The bidders were apprised of objection on their eligibility. They were called upon to submit explanation. The participating bidders were present in the said meeting. The copies of documents submitted in technical bids were made available to participating bidders. So far as the petitioner is concerned, on scrutiny of the documents relating to 96 advertising boards relied by the petitioner, Scrutiny Committee opined that he does not comply with the criteria of experience of erecting 50 advertisement boards. The petitioner was called upon to offer his explanation on his advertisement boards, which were found to be ineligible.

5. The petitioner submitted his explanation dated 25.3.2022 and justified his eligibility. The chart showing description of the Advertising Boards relied upon by the petitioner is as under: -

Sr.No.

Description

Number of Hoardings

1.

Within the jurisdiction of MCGM

51

2.

Within the jurisdiction of TMC

2

3.

Within the jurisdiction of PMC

2

4.

Within the jurisdiction of Chiplun Municipal Corporation

2

5.

Within the jurisdiction of MSRDC (State Government)

18

6

Within the jurisdiction of Forest Department

9

7.

Within the jurisdiction of Grampanchayats

16

TOTAL

96

6. On 12.04.2022, the Scrutiny Committee submitted report regarding the technical bids. The Committee accepted only 47 advertisement boards of the

petitioner are eligible and declared that petitioner fell short of the prescribed eligibility criteria of 50 hoardings. The petitioner was accordingly declared as disqualified on the technical evaluation of his bid.

7. The petitioner challenged the aforesaid decision of the Scrutiny Committee by filing Writ Petition No. 6731 of 2022 before this Court and prayed for issuance of writ of Mandamus or any other appropriate writ, order or direction to quash and set aside the decision dated 12.4.2022 and for a further direction to hold the bid of the petitioner as eligible and take further proceedings accordingly.

8. The writ petition was finally heard by this Court on 30th June, 2022 and came to be allowed vide judgment and order dated 14.7.2022.

The operative part reads as under: -

"37. The writ petition, therefore, deserves to be allowed in the following terms:-

{I} The impugned decision dated April 12, 2022 (Exhibit L) thereby declaring the petitioner as ineligible in Tender No.4 dated February 18, 2022 is quashed and set aside.

{ii} The respondent No.2 is directed to reconsider the petitioner's bid in the light of what we observed hereinabove and thereafter proceed in respect of the tender which is the subject matter of this writ petition."

9. It appears that immediately after decision of this court, respondent No.4 - M/s. Jupiter Advertising, raised an objection to the petitioner's 47 eligible advertising boards, terming them to be "Gantries" and not "Hoardings". In response to the said objection, the respondent No.2 addressed a communication to the Municipal Corporation of Greater Mumbai (herein after "MCGM" for short) requesting them to provide information regarding advertising boards of the petitioners. The opinion was specifically called on the point raised by M/s. Sagar Lookouts, that the permits submitted by the petitioner are gantries on foot over-bridge (for short, "FOB") and therefore, they are not hoardings.

10. The MCGM in response to the communication made by respondent No.2 informed that the displays of the petitioner were classified as Hoardings. After receipt of the aforesaid communication, the respondent No.2, called a meeting dated 3.8.2022 and informed the petitioner that the petitioner's bid will be de-novo scrutinized. The respondent No.4 was also invited to the said meeting. The petitioner attended the meeting in pursuance to the aforesaid communication and protested decision of respondent No.2 for re-evaluating entire bid of the petitioner.

11. The petitioner represented that, the issue as regards to the exclusion of the hoardings in the name of the sister concerns of petitioner has been considered and decided by this court and the respondent No.2 is under obligation to consider those hoardings along with 47 eligible hoardings in the name of the petitioner. He raised protest against decision of respondent to conduct de-novo enquiry

regarding entire bid.

12. The respondent No.2 issued communication dated 19.9.2022 to the petitioner, stating thus :-

"As per the letter submitted to the Committee on 12/09/2022 as per reference No.1, a re-verification was conducted of the technical bid and in the said re-verification, since as per RFP, the eligibility criteria No.3.2.4 for experience of 50 hoardings is not complied with, your technical bid is declared ineligible by the Committee and the decision of the Committee on the hoardings submitted by you is enclosed herewith."

13. The petitioner has, therefore, approached this Court challenging the decision of the respondent No.2 dated 12.9.2022 (published on 19.9.2022) in this writ petition. We have heard learned counsels appearing for respective parties.

14. The learned Senior Advocate Mr. Venkatesh Dhond appearing on behalf of the petitioner submits that the respondent No.2 had no reason to re-evaluate the entire technical bid of the petitioner, particularly when the 47 hoardings of petitioner were declared to be eligible by respondent No.2 in view of the previous decision of the Scrutiny Committee. He invited our attention to the relevant paragraphs from the judgment of this Court in W.P. No. 6731 of 2022 to submit that in light of observations of this Court, the respondent No.2 was to consider the hoardings in the name of the sister concerns of petitioner which were not considered during the earlier round. He would submit that the term "hoardings" is not defined under the request for proposal (RFP). He would submit that as per the eligibility criteria, the bidder should have experience of erecting and handling of advertisement/outdoor advertising media of 50 hoardings, each of minimum 450 sq. ft. in Corporation/Authority area. He would submit that after adding hoardings in the name of the sister concerns, along with

47 hoardings owned by the petitioner, the petitioner fulfills the requisite criteria. He invited our attention to the clarification issued by the respondent No.2 during the pre-bid meeting dated 23.2.2022. He invited our attention to certain photographs in respect of advertisement boards erected by the petitioner and tried to distinguish the same from gantries. The learned Senior Advocate Mr. Vyankatesh Dhond invited our attention to the definition of "gantries" under the guidelines framed by the MCGM, which states as under :-

"gantry : means advertisement affixed on a gantry erected across a road and usually fabricated of metal section pillars fixed on either side of a road with a beam shaped section connecting the top of the pillars across the road with the advertisement on the fact opposite to the direction of traffic."

15. The learned Senior Advocate Mr. Venkatesh Dhond would further submit that in light of the definition of "gantries", the advertisement boards of the petitioner could not have been labeled as gantries. He would further submit that after receiving the objection from respondent No.4, respondents have invited the

opinion of the MCGM regarding advertisement boards of the petitioner. The MCGM under its communication dated 27.7.2022 and 12.8.2022 clarified that the advertisement boards of the petitioners are hoardings. Similarly, the VJTI, Mumbai vide its communication dated 26.6.2022 opined that the advertisement structures of the petitioner are not gantries. He would submit that once the respondent No.2 invited opinion of the Corporation being expert, there was no reason to discard the said opinion and brand the advertisement hoardings of the petitioner as gantries. He would submit that the decision of the respondent No.2 under impugned communication dated 19.9.2022 is tainted with malafides. He would point out that only 24 out of 47 hoardings in the name of the petitioner are held to be eligible, though 47 hoardings were already declared qualified. He points out that 32 hoardings which are in MCGM Area on foot over-bridges are held to be ineligible. He would further submit that this court nowhere directed fresh scrutiny of the entire technical bid of the petitioner, however, the respondent No.2 has deliberately mis-interpreted the order to initiate fresh scrutiny of the bid of the petitioner.

16. To supplement the arguments on behalf of the petitioner, learned Senior Advocate Mr. Chatterji, submits that since respondent No.2 had already considered 47 advertisement hoardings of petitioner eligible as per the criteria provided under the Request for Proposal (RFP), the respondent No.2 is estopped from raising the plea that those 47 hoardings do not pass the eligibility criteria. He would submit that the respondent No.2 cannot be allowed to "approbate and reprobate" at the same time. Once they have taken a specific stand while evaluating the bid of the petitioner during earlier round of litigation, they cannot take contrary position at subsequent stage of litigation. They cannot blow "hot and cold" at the subsequent stages of the same litigation. He relies upon the judgment of the Delhi High Court, in the matter of Anchor Health and Beauty Care Pvt. Ltd vs. Proctor and Gamble Manufacturing (Tianjin) Co. Ltd. 2014 SCC online Del 2968. He has further relied upon judgment of the Hon'ble Supreme Court of India in the matter of B.L. Shreedhar and others Vs. K.M. Munireddy (dead) and others (2003) 2 SCC 355 as well as Premlata @ Sunita vsm Naseeb Bee and others dated 23.3.2022 Civil Appeal No. 2055-56 OF 2022.

17. Learned Senior Advocate Mr. Sathe, appearing for the respondent No.2 would submit that it is the trite that no Mandamus can be issued to accept the tender. He would submit that a careful reading of the operative part of the order of this Court in W.P. No. 6731 of 2022 would show that this Court has directed to "re-consider the petitioner's bid" in the light of the observations made therein. He would submit that the operative part of the order or even the observations made in the order of this court, do not suggest that the 47 advertising boards of petitioner which were considered during the earlier round of litigation, are to be accepted as eligible or the eligibility of the said hoardings cannot be examined.

18. Learned Senior Advocate Mr. Sathe would further submit that the Scrutiny Committee in its earlier decision had considered hoardings of petitioner located

in Corporation area of Mumbai as eligible. Petitioner has claimed 47 such hoardings in his name. Rest of the hoardings were found to be in the name of the sister concerns or outside the Municipal area of the city of Mumbai. Therefore, the petitioner was declared disqualified for want of requisite number of hoardings within the corporation area. The detail technical scrutiny to examine the eligibility of those 47 hoardings of petitioner in city area was not undertaken during the earlier round. The bid of petitioner was evaluated assuming that petitioner holds 47 eligible hoardings within the limits of corporation without going into the details. However, advertisement boards in the name of sister concerns or those out of corporation area were discarded.

19. Learned Senior Advocate Mr. Sathe would further submit that after decision of this court in W.P. No. 6731 of 2022 the objections were received from other bidders; hence, opinion was called from the corporation (MCGM) regarding the Advertising boards of the petitioner. It would reveal that the corporation has not issued separate license for gantries and they are issuing licenses only for the hoardings, though some of them may be gantries in true sense.

20. Learned Senior Advocate Mr. Sathe further invites our attention to the opinion received from the Corporation and would submit that the Corporation has not answered the specific query regarding the advertisement hoardings of the petitioner to qualify them as hoardings or gantries. He points out that the opinion given by the MCGM is not determinative to hold that the 47 advertisement boards qualify the definition of hoarding. He would submit that advertisement boards on foot over-bridges (FOB) or railway over-bridges (ROB) do not qualify the definition of hoardings. He would point out that as per the final scrutiny, the petitioner holds only 24 eligible hoardings in his name.

21. Mr. Sathe learned Senior Advocate would further point out that the petitioner refused to give inspection of the sites though there is a specific condition under the tender notice to provide inspection. He would further point out that pleading in petition sans requisite components on the point of malafides. He would also submit that the decision of the committee holding that the petitioner's hoardings are gantries in real sense, is not specifically challenged.

22. Learned Senior Advocate Mr. Anturkar appearing on behalf of respondent No.4 would submit that this court, while rendering the decision in W.P. No. 6731 of 2022 simply directed to re-consider the bid of the petitioner in the light of the observations. He would point out that there are no directions to consider or accept the 47 hoardings in the name of the petitioner as valid. He would point out that the decision in the earlier round of litigation is only pertaining to acceptance of advertisement boards in the name of the sister concerns. He invited out attention to the observations of this court from the judgment in W.P. No. 6731 of 2022 and the prayer clauses in that writ petition to submit that a prayer was limited to re-consider the decision along with advertisement boards in the name of the sister concerns. He would submit that the experience solicited under tender is for the erection and handing of hoardings. The petitioner do not

possess the experience of erection of hoardings. He would invite our attention to the definition of "hoardings" to contend that the erection on ground or on dead wall of building is the basic ingredient. He would further submit that there is a difference between the hoardings and gantries. Erection is the basic component to constitute "hoardings" whereas, affixing is the main component of "gantry". He would submit that, the so-called hoarding in the name of the petitioner do not qualify the definition of "hoardings", as adopted by the respondent No.2/Author of the tender notice. Accordingly, he would submit that the writ petition sans merit is liable to be dismissed.

23. We have heard learned counsels for respective parties. The contentious issue raised for our consideration is regarding propriety on the part of the Scrutiny Committee of respondent No.2 to venture into exercise of re-evaluation of the entire tender bid of the petitioner. According to petitioner, when his 47 advertising boards had been accepted by scrutiny committee of respondent No. 2, as hoardings, complying with the tender condition, there was no propriety in reopening the entire bid.

24. With a view to ascertain merit of the aforesaid contention, we have perused the minutes of the meeting of scrutiny committee dated 24.03.2022 which are placed on record before. The relevant paragraph of the minutes of meeting reads thus:-

"Similarly, when the documents submitted by M/s. Sagar Lookout were scrutinized, they have submitted a list of 96 advertisement in the documents submitted with the bid. Some advertisements in that, have no objection certificates, of Satara C.H.S. Limited, Consent Advertisements Pvt. Ltd. M/s. Urja Developers & Beautifications, Chiplun Municipal Corporation, Grampanchayat Savroli, Palidevde, village Panchayat Devnhal and the no objection certificate of Forest Conservator Alibag was also seen. However, as the said bidder was not seen to have experience of erecting 50 advertisement boards, when they were told to be non-eligible, M/s. Sagar Lookout when requested that they may be given time to submit their explanation, the Committee gave them time to submit the explanation upto 3.00 p.m. on 25.03.2022".

25. We have also perused the representation dated 25.03.2022 addressed by the petitioner to the Scrutiny Committee. In the said representation, the petitioner has explained the experience of sister concerns/partners and requested the Committee to consider the advertising boards in the name of sister concerns, while assessing the eligibility. We have also perused the contents of the representation dated 28.03.2022 addressed by the petitioner to MHADB/ respondent No.2. The petitioner has insisted to consider the experience of the partners/sister concerns and count 95 advertising boards as "hoardings". It appears that the issue regarding the technical specification of 47 advertising boards installed by the petitioner in MCGM area was never considered or discussed in the aforesaid deliberations.

26. We have also gone through the representations dated 8.4.2022 and 11.4.2022 addressed by the petitioner to MHADB. It shows that the petitioner has put forth his request to consider the advertising boards of sister concerns in addition to his 47 advertising boards, which were considered as eligible by the Scrutiny Committee. We have also taken into account, the final decision of the Scrutiny Committee, which would show that the petitioner was disqualified with following observations:-

"5. It is seen from the documents submitted by Sagar Lookout that the company was registered on 19.12.2007. When the list submitted by Sagar Lookout is perused, it is seen that Sagar Lookout has 47 advertisement hoardings in its own name. The remaining advertisements are in the names of Satara C.H.S., Urja Developer & Beautification, Mystical Polyplast, M/s. Mystical Thchnoplast, they have not been taken into consideration. Also, as there is mention of size in the memo issued by the Forest Conservator, Alibag, regarding erection of advertisement board, it has not been taken into consideration. Similarly, as there is no mention of size in the hoarding given by Municipal Council, Chiplun, that has not been taken into consideration.

The no objection certificates of Sarpanch and Gramsevak of Gram Panchayat Savroli, Palidevadh, Devnahe and others has been given. However, as the Gram Panchayat is not a Local Authority under the provisions of MRTP Act – 1966, the said no objection certificates are not been taken into consideration.

Therefore, as per the eligibility criteria, as the number of hoardings of Sagar Lookout being less than the eligibility criteria, their tender is considered non-eligible."

27. The decision of the Scrutiny Committee does not depict that; the 47 advertising boards of the petitioner were technically qualified as "hoardings". The decision-making process simply suggests that the petitioners 47 advertising boards which are within the jurisdiction of MCGM were taken in to consideration. The rest of advertising boards either in the name of sister concerns or beyond jurisdiction of MCGM were discarded as ineligible. Accordingly, observation is made that petitioner failed to comply the requisite experience of 50 hoardings. It is, therefore, evident that the decision of the Scrutiny Committee in earlier round of evaluation process was not based on technical assessment of the nature of 47 advertising boards of the petitioner either as Hoarding Or Gantries. The petitioner was declared disqualified because advertising boards in the name of sister concerns or advertising boards which were outside the area of MCGM, were discarded from consideration resultantly, he failed to comply with the condition of experience of installation of 50 hoardings

28. The petitioner had assailed the said decision of the Scrutiny Committee before this Court by filing Writ Petition No. 6731 of 2022. As stated earlier, the writ petition filed by the petitioner was allowed by this Court vide order dated 14.07.2022. The contention of the petitioner is that issue regarding eligibility of

his 47 hoardings was already concluded. According to petitioner, this Court has endorsed the aforesaid fact. However, after going through the reasoning recorded by this Court, we find that the core issue that was canvassed before this Court was regarding non-consideration of advertising boards standing in the name of sister concerns of the petitioner. The concluding para no. 36 of the judgment in Writ Petition No. 6731 of 2022 reads thus :-

"36....

....

.... From the stand point of MHADB, the credentials of the person who is entrusted with the performance of work viz. The background of the firm and the persons who are in control of the same and their capacity to execute the work has to be seen. The tendering authority will not go by the name of the firm but the person/s behind it. We have no hesitation in concluding that the Committee completely erred in discarding/ignoring the documents relating to the experience of the partners of the bidder firm. It is not disputed that the bid of the petitioner is held ineligible only on the ground that it does not have the experience of erecting and handling 50 hoardings and on no other ground."

The observations made in the order precisely show that the issue under consideration before this Court was, regarding exclusion of Advertising Boards owned by the sister concerns of the petitioner while evaluating his technical bid.

29. It is the contention of petitioner that, as per observations of this Court in para.15, 32 and 36 of the judgment in W.P. No. 6731 of 2022, the issue regarding eligibility of 47 hoardings of petitioner is concluded. However, we are unable to comprehend this contention because this Court has merely observed in concluding paragraph of judgment, that experience of partners of the firm who are in control of the same and their capacity to execute the work is to be seen. The Tendering Authority will not go by the name of the firm but person/s behind it. This Court concluded that the decision of the Committee was erroneous while discarding/ignoring the documents relating to experience of the partner of the bidder firm. The operative part of the judgment would suggest that the decision of the Committee dated 12.04.2022 declaring the petitioner as ineligible in tender No.4 has been quashed and set aside and the respondent No.2 was directed to re-consider petitioner's bid in the light of the observations.

30. On scrutiny of aforesaid facts, it is difficult to accept contention of the petitioner that his 47 advertising boards could not have been re-evaluated or the respondent No.2 was estopped from re-evaluating entire bid including the eligibility of 47 advertising boards in view of the judgment of this Court in W.P. No. 6731 of 2022. This discussion brings us to the judgments relied by petitioner in cases of Anchor Health and Beauty Care Pvt. Ltd vs. Practor and Gamble Manufacturing (Delhi High Court), B.L. Shreedhar and others Vs. K.M. Munireddy (dead) and others (SC) as well as Premlata @ Sunita vsm Naseeb Bee and others dated 23.3.2022 Civil Appeal No. 2055-56 OF 2022 (SC). We have no difficulty to

accept cardinal principle reiterated in these judgments, however on facts, petitioner has nothing to bank upon proposition highlighted in reported judgments.

31. The second contention of the petitioner before us, is that respondents have erroneously discarded advertising boards on foot over bridge and flyover bridge from consideration. It is contended that, the opinion of the MCGM was called regarding advertising boards of the petitioner and they have certified the advertising boards of the petitioner as hoardings. However, on perusal of the communication dated 10.08.2022 addressed on behalf of MCGM to the respondent No.2, it can be observed that, list of advertising boards in the name of the petitioner is provided without certifying the nature of such advertising boards either as "hoardings" or "gantries". In that view of the matter, there is no substance in the contention of the petitioner that the MCGM has certified that the advertising boards of the petitioner are "hoardings.". The communication dated 14.08.2022 issued by Advertising Inspector, of MCGM informs that the petitioner has been issued license for hoardings to be installed on fly-over-bridges and foot-over-bridges. However, it is brought on record that, MCGM do not issue independent licenses for gantries. The licenses for hoardings take in sweep gantries also. Hence both the aforesaid communications are not enough to gather the nature of petitioner's advertising boards.

32. The Scrutiny Committee of respondent No.2 has re-evaluated the bid of the petitioner in terms of the order passed by this Court. The 29 advertising boards which are on foot over bridge and 1 on flyover bridge are held to be ineligible as those were not installed on ground or dead wall of building to meet definition of "hoarding". As per the result of reevaluation, Petitioner has failed to comply with the eligibility criteria laid down under clause 3.2.4 of the RFP. The Annexure 'A' to communication dated 19.09.2022 addressed to the petitioner by the respondent No.2 shows that advertising boards, of petitioner are rejected since those are installed on foot-over-bridges and fly-over-bridges and therefore, non-eligible as hoardings. This court does not possess expertise to decide whether subject advertisements are categorized as hoardings or gantries.

33. At this stage, it is necessary to refer to the observations of the Supreme Court in the matter of N.G. Projects Limited Vs. Vinod Kumar Jain and others (2022) 6 SCC 127, in para. No.23, that reads thus :-

"..... The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision making process is after complying with the procedure contemplated by the tender conditions."

34. Similarly, reference can be made to certain observations of the Division Bench of this Court in the matter of Adani Ports Special Economic Zone Limited Vs The Board of Trustees of Jawaharlal Nehru Port Authority and others, in para. 43, observed thus :-

".....

.....However, in regard to interpretation of tender terms and conditions, the perspective is completely different and such an exercise, as can be taken recourse to in interpreting a statute, would be impermissible. Terms and conditions of a tender fall for consideration and the need arises for the Court to understand what is meant by a particular clause or what is the requirement of a particular clause in such tender, the tendering authority's version has to be heard by the Court. If such version of what it intended by inserting the relevant clause appears to the Court not to be manifestly unfair, utterly unreasonable, totally arbitrary, or thoroughly unjust, the Court cannot substitute its view of what would have been a better course for the tendering authority to follow to achieve the object of the tender. Deference to the view of the tendering authority by the Courts is the general rule."

35. Applying the aforesaid principles of law, we do not find convincing material on record to dislodge decision of scrutiny committee of respondent no. 2 regarding nature of Advertisement boards of petitioner. The author of the tender is the best judge regarding his requirements. The interpretation adopted by the author of the tender will prevail, even when two views are possible. The court cannot substitute its opinion with the opinion of the authority in the matter of interpretation of terms and conditions and in this case, the nature of advertisement viz. hoardings or gantries. This Court would be more concerned with the due adherence to the decision making process and may not sit in appeal over the decision of the authorities over the nature of advertisements.

36. The aforesaid discussion leads us to the conclusion that there is no merit in the writ petition. Hence, the same is dismissed without any orders as to costs.

[S.G. CHAPALGAONKAR, J.] [ACTING CHIEF JUSTICE]

37. At this stage, the learned Advocate for the petitioner seeks continuation of interim orders passed earlier.

38. The learned Advocate for the respondents opposes the said request.

39. Considering the fact that interim orders were in operation, the interim orders passed earlier are continued for a period of two weeks from today. Needless to state that on lapse of two weeks, interim protection shall axiomatically come to an end.