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

WRIT PETITION NO.15766 OF 2022

VAIBHAV
RAMESH
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Date: 2024.10.17
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1 R and B Infra Project Limited

Having its registered office at B-1,
Neela Apartment, Opp. Mandpeshwar
Industrial Estate, S. V. P. Road,
Borivali West, Mumbai 400 092

2 Rinkesh Doshi

Authorised signatory of
R & B Infra Project Limited
Having its registered office at B-1,
Neela Apartment, Opp. Mandpeshwar
Industrial Estate, S.V.P. Road,
Borivali West, Mumbai 400 092

... Petitioners

V/s.

1 Mira Bhaindar Municipal Corporation

Bhayandar (W), Taluka & District – Thane.

2 Commissioner

Mira Bhaindar Municipal Corporation,
Bhayandar (W), Taluka & District – Thane.

3 Dy. Commissioner (Health)

Mira Bhaindar Municipal Corporation
Bhayandar (W), Taluka & District – Thane.

4 Konark Infrastructure Limited

Having its registered office at
1st Floor, Konark Plaza, Sapna Talkies,
Near Sapna Garden, Ulhasnagar-421 003

**5 Global Waste Management Cell
Private Limited**

Having its registered office at 20/21, First
Floor, 10, Atul Niwas, 7th Khethwadi Lane,
Mumbai – 400 004

... Respondents

Mr. Aspi Chinoy, Senior Advocate with Ms. Shilpi Jain, Mr. Hitesh Rajpurohit, Mr. Rajeev Sharma and Mr. Bishwajeet Mukharjee i/by Ami Oza for the petitioners.

Mr. J. P. Sen, Senior Advocate i/by Mr. Mayuresh Lagu with Mr. Sagar Patil for respondent Nos.1 to 3 (MBMC).

Mr. Ashutosh Kumbhakoni, Senior Advocate i/by Mr. Akshay Shinde for respondent No.4.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ
& AMIT BORKAR, J.**

RESERVED ON : SEPTEMBER 12, 2024

PRONOUNCED ON : OCTOBER 17, 2024

ORAL JUDGMENT.: (PER AMIT BORKAR, J.)

1. Under challenge in this petition filed under Article 226 of the Constitution of India is the decision pertaining to tender Zone No.2, dated 12 December 2022, declaring respondent No.4 eligible to participate in the tender process and allotment of work of daily sweeping and cleaning of roads, footpaths, public places, sweeping in commercial areas/market/roads at night and cleaning of gutters (drainage) for period of five years.

2. On 6 October 2022, Respondent No.1 issued Notice No. MBMC/Health/307/2022-23 inviting online tenders from experienced contractors via E-Tendering for the daily sweeping and cleaning of roads, footpaths, and for the collection and transportation of solid waste for a period of five years in Zone

No.2. The estimated cost of the tender was Rs.91,92,51,405/-, and bidders were required to deposit earnest money in the amount of Rs.1,37,88,771/-.

3. Clause 8 of the tender document formed the basis for the bid evaluation process. Clause 8.6 stipulated that the financial bid of a contractor who does not qualify technically would not be opened. Clause 21 specified that only contractors who met the eligibility criteria outlined in the tender terms and conditions (Envelope-1 of the tender notice) would be eligible for the opening of the financial bid. Clause 25.8(A) required contractors to submit documents relating to their experience in Envelope No.1-technical bid, along with proof certificates. Clause 21.3.b., to be submitted in Envelope No.1, mandated that contractors must have successfully executed, completed, or be engaged in similar services over the past five years, with valid certificates as detailed in Clauses (i), (ii), and (iii). Clause 31, dealing with clarification of offers, empowered Respondent No.1 to seek technical clarification, provided that such clarification requests and responses were to be in writing. It further required that the original copy of the document detailing the clarification be submitted to Respondent No.1. Clause 32 dealt with the rejection of tenders, stipulating that tenders could be rejected if the contractor failed to submit a valid experience certificate.

4. Four bidders, including the petitioners, Respondent Nos.4 and 5, participated in the tender process. On 12 December 2022, Respondent No.1's technical scrutiny committee met at 12:30 p.m. to open the technical envelopes of all four bidders.

After scrutiny, it was found that the petitioners, Respondent No.4, and another bidder, AG Enviro Infra Projects Pvt. Ltd., met the criteria and were qualified. Respondent No.5 was declared non-eligible, and their Earnest Money Deposit was returned.

5. The petitioners downloaded the applications of all bidders from the E-Tender website and discovered that Respondent No.4 had submitted a certificate dated 23 June 2022, issued by the Additional Commissioner, Ulhasnagar Municipal Corporation, in the name of Konark Enviro Project Ltd. (SPV of M/s. Konark Infrastructure Ltd.). The certificate stated that a contract for the collection and transportation of solid waste had been awarded on 10 June 2013 for a period of eight years, at an approximate project cost of Rs.130 crores, commencing on 5 December 2013. It certified that the work and performance were up to the mark, with contractual obligations being fulfilled. Respondent No.4 also submitted a Chartered Accountant's certificate certifying its holding in Konark Enviro Project Ltd. and a certificate from Konark Enviro Project Ltd. stating that all its assets and liabilities belonged to Respondent No.4.

6. On 13 December 2022, the petitioners received an email from Respondent No.1 stating that their technical bid had been accepted and that the financial bid opening was scheduled for 13 December 2022 at 10:15 a.m. Upon opening of the financial bids, Respondent No.4 was declared the L-1 bidder with a bid of Rs.1,46,984.64 per day, while the petitioners were the L-2 bidder with a bid of Rs.1,53,008.00 per day. On

the same day, the petitioners addressed a letter to Respondent No.1 objecting to the tender process and requesting reconsideration of the decision dated 12 December 2022. The petitioners specifically objected to the certificate submitted by Respondent No.4, which, though issued by the Ulhasnagar Municipal Corporation, failed to provide details of the work completed year-wise over the past five years as required by Clause 21.3.b. of the tender. The petitioners further contended that the certificate was not valid, as it was issued in the name of M/s. Konark Enviro Project Pvt. Ltd., and not Respondent No.4. Since no communication was received regarding their objections, the petitioners filed the present petition on 19 December 2022. On 20 December 2022, Respondent No.2 issued a letter accepting Respondent No.4's bid. This Court, on 21 December 2022, permitted the petitioners to amend the petition to add Respondent Nos.4 and 5, but directed that any further steps undertaken would be subject to the decision in this petition.

7. Respondent No.4, in an affidavit dated 16 January 2023, stated that on 9 December 2022, Respondent No.1 had sought clarification regarding the fulfillment of Clause 21.3.b. In response, Respondent No.4 submitted a Chartered Accountant's certificate providing year-wise turnover for the last five financial years. The Chartered Accountant's certificate, dated 5 November 2022, certified the annual consolidated turnover of door-to-door collection and transportation of municipal solid waste by M/s. Konark Infrastructure Ltd. through its subsidiary/special purpose

vehicle, M/s. Konark Enviro Project Pvt. Ltd., showing a total turnover of Rs.87.19 crores over the past five years. It was further stated that, as per the tender condition, Respondent No.4 was required to execute the task of solid waste management by incorporating an SPV, hence the formation of M/s. Konark Enviro Project Pvt. Ltd. Respondent No.4 holds 90% of the shares in the SPV, while the remaining 10% is held by its directors and promoters.

8. On 17 January 2023, Respondent No.1 filed an affidavit-in-reply stating that it had allowed Respondent No.4 to submit the necessary clarifications and corrections regarding its eligibility criteria, and that Respondent No.4 had submitted the requisite details as per Clause 21.3.b.(i), (ii) and (iii). The letter dated 9 December 2022 from Respondent No.4, which was annexed as Exhibit-A, included a year-wise turnover report for similar projects, certified by the Chartered Accountant, along with the certificate dated 5 November 2022.

9. On 17 February 2023, the petitioners filed an affidavit-in-rejoinder, pointing out that Respondent No.1 had illegally allowed Respondent No.4 to clarify and correct its bid by submitting the Chartered Accountant's certificate on 9 December 2022. The certificate failed to meet the requirement under Clause 21.3.b., which mandated proof of successful completion or execution of work amounting to 80% of the contract value, certified by the authority that had awarded the contract. Furthermore, the petitioners contended that the certificate submitted by Respondent No.4, which bore the Unique Document Identification Number (UDIN)

22138716BFKYXQ3960, was fraudulent, as the UDIN was generated only on 14 December 2022, though the certificate was dated 5 November 2022.

10. In response, on 17 August 2023, Respondent No.4 filed an affidavit-in-sur-rejoinder, stating that the Chartered Accountant's certificate dated 5 November 2022, submitted on 9 December 2022, did not originally contain a UDIN. Upon a request from Respondent No.1, Respondent No.4 obtained a revised certificate with a UDIN on 14 December 2022, which was identical to the earlier certificate, save for the inclusion of the UDIN.

11. On 10 October 2023, Respondent No.1 filed an additional affidavit-in-reply, stating that on 9 December 2022, Respondent No.4 had submitted a copy of the Chartered Accountant's certificate dated 5 November 2022 without UDIN. On 13 December 2022, Respondent No.4 submitted the original certificate to Respondent No.1. On 14 December 2022, Respondent No.4 was asked telephonically to provide a certificate bearing UDIN. Later that evening, Respondent No.4 submitted a copy of the Chartered Accountant's certificate with the UDIN. The original certificate with the UDIN was submitted on 15 December 2022 and placed before the tender scrutiny committee, which was convened to finalize the tender.

12. Mr. Chinoy, learned Senior Advocate appearing for the petitioners, submitted that the technical bid of respondent No. 4 was declared responsive based on a certificate issued by a Chartered Accountant, who lacked the authority to certify the

successful completion of similar work. He drew our attention to the tender condition regarding past experience, arguing that the certification of successful execution of similar services over the past five years could only have been issued by the Ulhasnagar Municipal Corporation, and not by the Chartered Accountant. He emphasized that it was only upon the submission of a valid certificate, as required under Condition No. 21.3.b concerning past experience, that respondent No. 4's bid could have been deemed responsive. Additionally, Clause 31 of the tender document stipulated that any request for clarification regarding technical conditions had to be made in writing, with the original copy of the document providing technical clarification being submitted to respondent No. 1 in person. Furthermore, Clause 32 mandated rejection of the tender if the contractor failed to submit a valid experience certificate or a successful completion certificate. The certificate issued by the Ulhasnagar Municipal Corporation was in the name of Ms. Konark Enviro Project Pvt. Ltd. and did not certify the extent or value of the work completed in each of the five years from 2017-18 to 2021-22. Therefore, in accordance with Clause 32(d), respondent No. 1 was required to reject respondent No. 4's tender for failing to submit a valid experience certificate.

13. Mr. Chinoy further argued that respondent No. 4's letter dated 9 December 2022, purportedly forwarding their Chartered Accountant's certificate dated 5 November 2022, could not have justified the acceptance of respondent No. 4's technical bid in the technical scrutiny committee meeting held

on 12 December 2022 at 12:30 p.m. The in-house certificate issued by respondent No. 4's Chartered Accountant, attesting the value of the work performed over the past five years, could not be considered as a valid certificate; such certification could only have been issued by the Ulhasnagar Municipal Corporation. Furthermore, the record indicates that respondent No. 4's letter dated 9 December 2022 should not have been considered by the technical scrutiny committee during its meeting on 12 December 2022. Additionally, the certificate submitted to the technical committee was not the original document. The certificate bearing the UDIN number was generated only on 14 December 2022 at 4:53 p.m., after the petitioners had raised an objection on 13 December 2022 regarding respondent No. 4's ineligibility. Mr. Chinoy also pointed out that the affidavits filed by respondent Nos. 1 and 4 contained contradictory statements under oath, which further vitiated the process of awarding the contract to respondent No. 4. He contended that the explanation provided by respondent No. 4 in the affidavit-in-sur-rejoinder was implausible and inconsistent with their earlier statements.

14. Drawing our attention to the notification dated 2 August 2019, he submitted that the Institute of Chartered Accountants of India had mandated its members, by that notification, to generate UDIN for all certifications issued after 1 February 2019. As a result, at the time of scrutinizing respondent No. 4's eligibility, the Chartered Accountant's certificate without the required UDIN was on record, which is evident from the fact that the UDIN was generated only on 14

December 2022 at 4:53 p.m. In support of his arguments, he relied on the judgments in ***Glodyne Technoserve Limited vs. State of M.P. & Ors.***, reported in **2011 (5) SCC 103**, and ***M/s Patelpurta Agro Farm vs. State of Uttarakhand & Ors.***, reported in **AIR 2023 Uttarakhand 125**.

15. In contrast, Mr. Sen, learned Senior Advocate appearing for respondent Nos. 1 to 3, defended the decision of the technical evaluation committee by contending that respondent No. 1 had permitted respondent No. 4 to submit the necessary documents to clarify fulfillment of the eligibility criteria. In response, respondent No. 4 duly submitted the required documents demonstrating compliance with Clauses 3.b. (iii). He stated that on 9 December 2022, respondent No. 4 had submitted a copy of the Chartered Accountant's certificate without a UDIN number. Subsequently, on 13 December 2022, respondent No. 4 submitted the original certificate, again without a UDIN. Following a telephonic request, respondent No. 4, on 14 December 2022, submitted the Chartered Accountant's certificate with the UDIN after the registry department had closed. Accordingly, the original Chartered Accountant's certificate bearing the UDIN was submitted on 15 December 2022, before the tender scrutiny committee, which was convened to finalize the tender on that day. In support of his contentions, respondent No. 1 has relied upon the unreported judgment of this Court in ***Writ Petition No. 8525 of 2024, M/s. Surendra Infrastructure (P) Ltd., Through Its Authorized Signatory, Shri. Liyakhat Ahmed Shaikh vs. The State of Maharashtra & Ors.***, as well as the

judgment of the Supreme Court in ***N.G. Projects Limited vs. Vinod Kumar Jain & Others***, reported in **(2022) 6 SCC 127**.

16. Mr. Kumbhakoni, learned Senior Advocate for respondent No. 4, submitted that prior to the initiation of the present tender process, respondent No. 1 had conducted the tender process seven times, and the subject work was only finalized on the eighth attempt. Moreover, he contended that the petitioners had not alleged that respondent No. 4 was technically unqualified or ineligible. The petitioners' sole objection was that the documents proving eligibility were not submitted to the tendering authority in accordance with the procedure prescribed in the tender document. He further argued that the tender had been awarded to the lowest bidder in terms of the commercial aspects, and therefore, the impugned decision to award the tender to respondent No. 4 was in the public interest, given the previous seven failed attempts to finalize the tender process due to inadequate responses. According to him, Clause 21.3.b. did not require the work completion certificate to be issued by the agency for which the work was undertaken, unlike Clause 3, which contains such a requirement. Clause 21.3.b. merely required the submission of a valid certificate, and hence, the certificate issued by the Chartered Accountant on behalf of respondent No. 4 fulfilled the criteria set forth in Clause 21.3.b.

17. He also submitted that the tender document did not mandate submission of the Chartered Accountant's certificate with UDIN, and therefore, the scrutiny carried out by

respondent No. 1, based on the certificate without UDIN, was lawful and proper. He explained that the Chartered Accountant's certificate was issued as far back as on 5 November 2022, and generation of UDIN was required to be done within a 60-day period. As such, the UDIN generated on 14 December 2022 did not invalidate the original Chartered Accountant's certificate. He further submitted that Ms. Konark Enviro Project Pvt. Ltd. is controlled by respondent No. 4, with 90% of the shares being held by respondent No. 4 and the remaining 10% held by the promoters and directors of Ms. Konark Infrastructure Ltd. He, therefore, argued that the petition lacks merit and deserves to be dismissed with costs.

18. For effective adjudication of issues involved, it is necessary to extract following tender conditions:

"8. The Basis for Bid Evaluation

8.1 to 8.5

8.6 The Financial Bid of only technically qualified contractors will be opened on the date and time fixed. The Financial Bid of the Contractor who does not qualify technically will not be opened.

21. Eligible Contractors

Only those Contractors who fulfill the eligibility criteria as mentioned in tender terms and Conditions (Envelop No.1) of the Tender notice are eligible to open financial bid (Envelop No. 2).

25. Inspection of Site and Sufficiency of Tender

25.1. to 25.3

Manner of Submission of Tender and its accompaniments.

25.4. At the time of Technical bid opening the contractor should remain present before the tender committee with all original documents.

25.5. to 25.7.

25.8. After filling data in predefined forms contractors need to click on final submission link to submit their encrypted bid.

A. Envelope No.1 TECHNICAL BID : The Contractor should submit all the documents mentioned as below :

1. The contractor should be experienced company Partnership Firm/Public Company/Private Company/One Person Company registered under Companies Act of 1956 or 2013. Certificate of proof should be attached. Joint venture will not be allowed.

2. Financial capability

Average Annual Financial turnover of similar services during the last Five years (2017-18, 2018-19, 2019-20, 2020-21 and 2021-22) ending 31st March of previous financial year should be at least 30% of estimated cost.

OR

Average Annual Financial turnover of all Govt. Contracts during the last Five years (2017-18, 2018-19, 2019-20, 2020-21 and 2021-22) ending 31st March of previous financial year should be at least 30% of estimated cost.

Bidder must have net worth of Rs. 50.00 Crores as on 31st March 2021.

Bidder must have CC/OD limit of Rs. 10.00 Crores./Bank Solvency of 25.00 Crores.

3. Past Experience

a(i).

b. *The Contractor must have successfully executed / completed / ongoing similar services over the last Five years ending last day of month previous to the one in which bids are invited as a prime contractor. i.e., current financial year and the last Five financial years (2017-18, 2018-19, 2019-20, 2020-21 and 2021-22). Valid certificate to be submitted.*

i. *Three similar successfully executed / completed / Ongoing similar services costing not less than the amount equal to 40% (Forty per cent) of the estimated cost; or*

ii. *Two similar successfully executed / completed / Ongoing similar services costing not less than the amount equal to 50% (Fifty per cent) of the estimated cost: or*

iii. *One similar successfully executed / completed / Ongoing similar service costing not less than the amount equal to 80% (Eighty per cent) of the estimated cost.*

31. Clarification of Offers

To assist in the scrutiny, evaluation and comparison of offers, the Mira Bhaindar Municipal Corporation may at its discretion, ask some or all Contractors for technical clarification of their offer. The request for such clarification and the response shall be in writing.

To speed up the Tender process, the Mira Bhaindar Municipal Corporation at its discretion may ask for any technical clarification to be submitted by means of hard copy. In such cases, Original copy of the document describing the technical clarifications must be sent to the Mira Bhaindar Municipal Corporation by hand.

32. Rejection of Tenders

The Tenders are liable to be rejected if the Contractor.

(a) to (c)

(d) *Does not submit valid experience Certificate.*

(e) *Does not submit successfully completed certificate.*

(f) to (p)

(q) *Individual person or joint venture (proprietorship), consortiums are not eligible to participate. Such tender will be rejected."*

19. The scope of judicial review in tender awards is well-settled. Courts, while exercising jurisdiction under Article 226, do not interfere with administrative decisions unless there is evident illegality, arbitrariness, or mala fides. In ***Tata Cellular v. Union of India, (1994) 6 SCC 651***, the Hon'ble Supreme Court laid down that judicial interference in tender processes should be minimal, focusing only on issues of arbitrariness, irrationality, or procedural impropriety. This principle limits the extent to which courts can scrutinize technical matters, provided they align with the tender conditions. Judicial review in such cases is restricted to examining the decision-making process, not the merits of the decision. As long as the tendering authority's actions conform to the terms of the tender, public interest considerations, and the law, courts are generally reluctant to interfere.

20. In ***N.G. Projects Limited v. Vinod Kumar Jain, (2022) 6 SCC 127***, the Hon'ble Supreme Court reiterated that tender conditions must be strictly adhered to by the tendering authority. However, the Court recognized that tendering authorities have the discretion to seek clarifications from bidders, provided that such clarifications do not alter the fundamental terms of the bid. This discretion must be

exercised fairly and consistently with the tender conditions.

21. The Supreme Court has repeatedly emphasized that public interest is paramount in tender matters, and awarding contracts to the lowest bidder serves this interest unless there are compelling reasons to deviate. In ***Central Coalfields Limited v. SLL-SML (Joint Venture Consortium)*, (2016) 8 SCC 622**, the Court held that while tendering authorities must ensure transparency and fairness, they should not lose sight of the objective to secure the best possible deal for the public.

22. In ***Tata Motors Limited vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST)*, 2023 SCC OnLine SC 671**, Tata Motors challenged the tender process initiated by BEST, alleging that the evaluation criteria and technical specifications were altered after the submission of bids, favoring a competing bidder. Tata Motors argued that such post-submission changes were arbitrary and violated the principles of fairness in public procurement. One of the key grievances was the alleged change in technical specifications after the bids were opened, which, according to Tata Motors, impacted competition and resulted in an unfair advantage to the other bidder. Tata Motors also raised concerns regarding the evaluation criteria used by BEST for assessing the financial and technical capabilities of the bidders, questioning whether the criteria applied were consistent with the original tender conditions. The Supreme Court reaffirmed the principles governing judicial review in tender matters, emphasizing that courts should be reluctant to intervene in contractual matters

involving public bodies unless there is clear evidence of arbitrariness, mala fide action, or irrationality. The Supreme Court reaffirmed the limited scope of judicial review in tender-related disputes. The Supreme Court also held that the authority issuing the tender has the discretion to interpret its terms. The Supreme Court declined to interfere with BEST's decision-making process, concluding that there was no evidence of mala fides or bias in favor of any particular bidder. It upheld BEST's discretion to amend the tender terms, provided such amendments were justified by technical and operational considerations. The judgment reaffirmed that public authorities have broad discretion in managing tenders, as long as their actions are transparent and serve the public interest. Courts will only intervene where such discretion is exercised in a manifestly unreasonable or arbitrary manner. The Supreme Court emphasized the need to strike a balance between the discretion of tendering authorities and the principles of fairness and transparency in public procurement. The Court's reluctance to interfere in administrative decisions, unless there is clear evidence of mala fides or irrationality, reaffirms the boundaries of judicial review in tender-related disputes.

23. Procedural fairness in the tendering process mandates equal treatment of all bidders, adherence to the tender terms, and transparency throughout. The eligibility criteria specified in the tender document constitute the benchmark for evaluating bids, and any deviation from these criteria may compromise the fairness of the process. Courts have

consistently held that procedural fairness is a fundamental principle in public procurement, aimed at preventing arbitrary decisions and ensuring accountability. Furthermore, the court must balance the importance of procedural fairness with the need to avoid practical consequences detrimental to the public interest.

24. Generally, every tender document prescribes a specific procedure for the evaluation of bids. This procedure is designed to ensure that all bidders are treated equally and that the evaluation process remains transparent, objective, and consistent with the tender's terms. The tendering authority is obligated to open the bids in accordance with the tender schedule. This must be done transparently, and often in the presence of representatives of all bidders to avoid any perception of bias. The evaluation of eligibility criteria must be based strictly on the documents submitted by the bidders. The authority must objectively assess whether each bidder meets the minimum requirements. While the authority may seek clarifications or additional information from bidders to resolve ambiguities, this should not amount to allowing a bidder to cure material deficiencies in their bid after submission, as such actions could violate the fairness of the process. Upon satisfaction of the technical criteria, the authority must then proceed to evaluate the financial bids. The principles of natural justice, which are essential in administrative actions, require that all parties be given a fair opportunity to present their case. In the context of tendering, this means that no bidder should be unfairly disqualified without being given an

opportunity to clarify or address objections regarding their bid. The process must be free from bias, and decision-makers must act impartially. Any perception of favoritism towards a particular bidder would violate this principle. The authority must provide reasons for its decisions, especially when a bid is accepted despite potential non-compliance with certain conditions. These reasons must be logical, clear, and based on the documents submitted during the bidding process.

25. All bidders must comply with the same rules, and any relaxation of conditions could give rise to legitimate grievances from other bidders. It is essential that all bidders have an equal opportunity to compete, with the assurance that the tendering authority will strictly adhere to the rules and evaluate all bids on the same criteria. Any deviation from this could result in allegations of bias or arbitrariness. On the other hand, practical considerations, particularly in cases involving essential public services such as sweeping, cleaning, and solid waste management, must also be taken into account. Rejecting the lowest bidder and restarting the tender process could lead to significant delays in the provision of essential services, which would be detrimental to public interest.

26. It is now accepted principle that a rigid interpretation of tender conditions can sometimes defeat the purpose of public procurement, especially where the deviation does not adversely affect public interest. The principle of proportionality suggests that the decision to accept or reject a bid should be proportional to the harm caused by the alleged deviation from the tender conditions. If the harm to procedural fairness is

outweighed by the public harm caused by delays and increased costs, the authority's decision to accept the lowest bidder may be justified.

27. In this context, public interest is often aligned with ensuring that the tendering process remains competitive and results in the selection of the most economical and effective service provider, provided such selection is made in accordance with the terms of the tender and applicable law. The lowest bid generally serves the public interest as it represents a cost-effective solution, unless there is a significant legal or procedural flaw in the bidder's eligibility or in the process itself. Judicial review in such cases focuses on whether the decision was arbitrary, irrational, or made in bad faith, rather than on the correctness of the decision.

28. A decision in a tender process must also serve the broader public interest, especially in cases involving public contracts or services that affect the public at large. Any decision that compromises the quality or effectiveness of these services by selecting an unqualified bidder would be contrary to public interest. Public confidence in the fairness and transparency of the tender process is paramount. In tender processes, public interest is not determined solely by the selection of the lowest bid. Public interest also involves ensuring that the contract is awarded to a bidder who can successfully complete the project or provide the services as specified in the tender. The bidder must balance the cost-effectiveness of the bid with the quality and standards expected of the services. Compliance with the principles of

fairness, competitiveness, and adherence to the terms of the tender is crucial to fostering public confidence in the process. The primary purpose of the tender is to ensure efficient service delivery.

29. In the present case, the public interest is closely linked to the proper management of services such as sweeping, cleaning, and solid waste management. If the decision to declare Respondent No.4 eligible was made in a manner that undermines the integrity of the process, such as through favoritism, manipulation, or violations of mandatory procedures, it would be contrary to the public interest.

30. For the purpose of adjudicating issues involved in the petition, the Court directed the respondent-Corporation to produce the original records, which have been duly perused by the Court. A communication dated 9 December 2022, issued by Respondent No.1 to Respondent No.4, sought clarification regarding the details of the amount of work completed during the years 2017-18 to 2021-22 and called upon Respondent No.4 to submit an explanation along with appropriate supporting documents within two days. The original outward register of Respondent No.1 for the year 2022-23 contains an entry indicating that Respondent No.4 was called upon to submit clarification concerning the documents submitted along with the tender. The original communication issued by Respondent No.1, dated 9 December 2022, bearing outward No.406 of 2022-23, appears to have been received by Respondent No.4 on 9 December 2022. The inward register of Respondent No.1 for the year 2022-23 contains entry No.249,

dated 12 December 2022, recording the receipt of a reply on behalf of Respondent No.4 in response to the letter issued by Respondent No.1 bearing outward No.406 of 2022-23, dated 9 December 2022. The communication submitted on behalf of Respondent No.4, received on 12 December 2022, includes a certificate issued by Respondent No.4's Chartered Accountant, detailing the annual consolidated turnover from door-to-door collection and transportation of municipal solid waste for the five years preceding the financial year 2021-22. Additionally, the inward register for the year 2022-23 contains an entry at serial No.933, dated 13 December 2022, in the name of Respondent No.4's Chartered Accountant, indicating the receipt of the certificate issued by him. Respondent No.1 has also produced the original file related to the tender process, which forms the subject matter of the present petition. This original file contains the minutes of the meetings of the tender evaluation committee, held on 9 December 2022, 12 December 2022, 14 December 2022, and 15 December 2022. From the proceedings of the aforementioned meetings, it appears that the tender evaluation committee, during its meeting on 9 December 2022, considered the request of M/s. Global Waste Management Cell Pvt. Ltd. for permission to withdraw its offer, which was accordingly granted. The file also contains a chart on compliance with the tender conditions.

31. Upon a careful examination of the record regarding respondent No.4's bid in relation to the subject tender, as reflected from the original records, it is evident that all pertinent documents were duly considered. This includes the

certificate dated 23rd June 2022, issued by the Ulhasnagar Municipal Corporation, and the Chartered Accountant's certificate detailing the turnover for the five financial years preceding 2021-22. These documents were evaluated to determine respondent No.4's eligibility under the tender.

32. Clause 21. 3(b) prescribes objective standards such as financial capacity, technical qualifications, and prior experience in the relevant field, which in this case involves sweeping, cleaning, and solid waste management services. Such provisions are designed to ensure that only qualified and reliable contractors are allowed to participate, thereby safeguarding the public interest and ensuring efficient execution of the project. The central question is whether respondent No.4 met these requirements, which involves a two-part analysis:

Whether respondent No.4 submitted documents that, on their face, complied with the requirements of Clause 21. 3(b); and

Whether the substance of the material submitted by respondent No.4 demonstrated that it fulfilled the tender's purpose under Clause 21. 3(b).

33. The assessment of respondent No.4's submission must focus on the specific evidence provided in relation to Clause 21.3(b). If the clause mandates experience in solid waste management or similar services, respondent No.4 needed to have provided certificates evidencing its involvement in

projects of a comparable scale. Tendering authorities have some discretion in interpreting eligibility criteria, provided their interpretation aligns with the tender terms and broader principles of fairness and transparency. The petitioners contend that the certificate dated 23rd June 2022 from the Additional Commissioner, Ulhasnagar Municipal Corporation, only mentions the total value of the contract and does not provide a year-wise breakup of the value of work completed over the past five years, as required under Clause 21.3(b) of the tender conditions. Clause 21.3(b), which has already been extracted above, stipulates that the contractor must have successfully completed, or be currently engaged in, similar services over the past five years. Note (iii), which is crucial to determining respondent No.4's eligibility, requires that the tenderer must have successfully executed or be engaged in an ongoing project of similar services, with a value not less than 80% of the estimated cost. The estimated cost of the work under consideration is Rs.91,92,51,405/-.

34. The certificate dated 23rd June 2022 from the Ulhasnagar Municipal Corporation indicates that the contract for the collection and transportation of solid waste from street sweeping, community bins, and door-to-door collection for an eight-year period was awarded on 6th October 2013. The certificate further states that the total project cost was approximately Rs.130 crores and confirms that M/s. Konark Enviro Project Pvt. Ltd. handled the operations from 5th December 2013 to 5th December 2021. Additionally, the certificate attests the satisfactory performance and fulfillment

of the contractual obligations by the said company. The requirement for submitting a certificate of prior successful completion of similar work is intended to ensure that the tenderer possesses the necessary experience and competence to undertake the project at hand. Accordingly, we find that the certificate issued by the Ulhasnagar Municipal Corporation satisfactorily establishes respondent No.4's experience in solid waste management or similar services.

35. The submission of a certificate by respondent No.4's Chartered Accountant, detailing the financial turnover from similar services, is contested by the petitioners on the grounds that it does not meet the requirement of Clause 21.3(b), which necessitated certification by the contracting authority, i.e., the Ulhasnagar Municipal Corporation. The petitioners argue that the Chartered Accountant lacks the authority to certify the completion of work and, thus, respondent No.4's bid ought to have been rejected. However, respondent No.1 argues that the tendering authority allowed respondent No.4 to clarify its bid and submit the requisite documents, including the Chartered Accountant's certificate, after the initial scrutiny. The tendering authority exercised its discretion under Clause 31, which permits seeking of clarifications and submission of supplementary documents. Regarding the financial aspects of the previous contract, a Chartered Accountant is competent to certify financial details, such as turnover, profitability, and net worth, and can provide a year-wise breakdown of the work completed. While the authority for whom the work was performed is entitled to issue a certificate attesting to the

nature of the work, the Chartered Accountant may validly verify financial capacity, which is a criterion under Clause 21.3(b).

36. One of the principal grievances raised by the petitioners concerns the alleged improper latitude given to respondent No.4 by respondent No.1 to submit clarifications and rectify its initial submission, particularly regarding the omission of the UDIN number on the certificate issued by the Chartered Accountant. Clause 31 of the tender document permits the tendering authority to request clarifications in writing but requires original documents to be submitted. In our opinion, given the scope of work and essential eligibility conditions, the telephonic request for clarification and the subsequent submission of a revised Chartered Accountant's certificate by respondent No.4 constituted a permissible deviation under the tender terms and does not amount to conferring an undue advantage.

37. Moreover, the argument that the technical scrutiny committee overlooked critical discrepancies in respondent No.4's documents, including the missing UDIN and non-compliance with Clause 21.3(b), must be weighed against the broader principle that public contracts should be awarded in a manner that protects public interest and prevents arbitrary decision-making. While respondent No.4 submitted the lowest financial bid (L1), it is equally essential that the bid complies with technical requirements. Clause 31 of the tender conditions expressly allows for seeking clarifications, and respondent No.4 was given an opportunity to rectify the

omission of the UDIN number in the Chartered Accountant's certificate. The submission of the revised certificate with the UDIN number on 14th December 2022 did not alter the substance of the original certificate submitted earlier. We are of the opinion that if acceptance of the lowest bid serves the public interest, or if the tender process has not been vitiated by procedural irregularities, the balance between ensuring competitive pricing and upholding fairness in the tender process must be maintained in this adjudication. Applying these principles, it is evident that respondent No.1's decision to allow respondent No.4 to clarify its bid and submit supplementary documents was not arbitrary or unreasonable.

38. The petitioners' reliance on the UDIN guidelines issued by the Institute of Chartered Accountants of India is insufficient to establish that respondent No.4's bid was non-compliant at the time of scrutiny. The UDIN number was subsequently provided, and there is no evidence to suggest any intent to mislead the tendering authority. Clause 21.3(b) of the tender document requires a valid certificate of successful completion of similar work over the preceding five years. The UDIN, while mandated by the ICAI, was not expressly mentioned in the tender document. The late submission of the UDIN does not materially affect respondent No.4's eligibility. As reiterated in ***Jagdish Mandal (supra)***, the focus must remain on whether the process was conducted fairly and in accordance with the tender conditions. The submission of the revised certificate with the UDIN number was in furtherance of compliance with the tender terms, not in

violation thereof. Respondent No.4's submission substantially complies with Clause 21. 3(b). Therefore, unless there is clear evidence of arbitrariness or bad faith, the tendering authority's decision to accept the bid should be upheld.

39. The tendering authority has acted within its discretion in allowing respondent No.4 to clarify its bid and submit the requisite documentation. Additionally, awarding the contract to the lowest bidder-respondent No.4, aligns with the public interest, especially in light of the seven prior unsuccessful attempts to conclude the tender process. The decision to award the contract to respondent No.4-the lowest bidder, serves the public interest by ensuring timely and efficient execution of the work. The Court must exercise caution in interfering with such decisions unless there is a clear violation of law or procedural impropriety. In ***N.G. Projects Limited***, the Supreme Court held that minor deviations or procedural lapses that do not prejudice the rights of other bidders or affect the fairness of the tender process, are not grounds for judicial interference. Therefore, we hold that the tender authority's decision to accept the Chartered Accountant's certificate, and subsequently the revised certificate with the UDIN, at the most constitutes a minor procedural lapse which does not amount a material deviation from the tender conditions.

40. The doctrine of unreasonableness in the context of administrative decision, often analyzed in the context of *Wednesbury* unreasonableness, applies where a decision is so unreasonable that no reasonable authority could have arrived

at it. In the present case, we are of the view that the decision to declare respondent No.4 eligible is not so unreasonable that no reasonable authority could have reached the same conclusion under the circumstances. The tendering authority must balance the objective of selecting a qualified bidder for the project with the need for strict compliance with eligibility criteria.

41. The question, therefore, is whether the discretion exercised by the tender evaluation committee was fair and in accordance with the principles laid down in **Tata Cellular** and **Jagdish Mandal**. In **Jagdish Mandal**, the Supreme Court emphasized that in contractual matters, the Court should not substitute its own judgment for that of the tendering authority, provided the decision is based on relevant facts. The Court further held that intervention in tender matters should only occur where there is evidence of mala fides or procedural violations that affect the public interest. The Court reiterated that minor deviations from tender conditions, which do not affect fairness or the core objectives of the tender, may be excused, provided the public interest is preserved. Similarly, in **Tata Cellular**, the Supreme Court emphasized that the judiciary should refrain from interfering in the technical aspects of tenders unless there is a clear case of mala fides or arbitrariness. This principle is particularly pertinent in cases involving large public projects, where minor deviations or procedural errors may be excused if the ultimate decision serves the public interest.

42. We are, thus, of the opinion that if the acceptance of the

lowest bid serves the public interest, or if the tender process has not been vitiated by procedural irregularities, the balance between ensuring competitive pricing and upholding fairness in the tender process must be maintained in this adjudication. Respondent No.4's bid complies with the requirements of Clause 21.3(b) of the tender. Respondent No.1's decision to allow clarifications and subsequent submissions by respondent No.4 is consistent with the principles of fairness and transparency. Applying these principles, it is evident that respondent No.1's decision to allow respondent No.4 to clarify its bid and submit supplementary documents was not arbitrary or unreasonable. We, therefore, conclude that respondent No.4 substantially complied with the eligibility criteria, and the minor deviation in the submission of the UDIN number did not prejudice the fairness of the tender process. The award of the contract to respondent No.4, being in the public interest and free from arbitrariness, needs to be upheld.

43. Upon a comprehensive analysis of the facts in the light of the relevant judicial precedents, it is apparent that, although the petitioners have raised legitimate concerns regarding procedural irregularities, the pertinent issue is whether these irregularities are of such material nature as to justify judicial intervention. The Hon'ble Supreme Court, has held that public interest and the necessity for efficient governance should guide judicial scrutiny in matters of tender. In view of the fact that Respondent No.4 ultimately emerged as the lowest bidder, and considering the urgent need to finalize the tender, coupled with the absence of any cogent evidence to establish

favoritism or manipulation, this Court is inclined to sustain the decision of the tendering authority, as the procedure adopted does not appear to have caused undue prejudice to the petitioners.

44. Likewise, while strict compliance with tender conditions is mandatory, a degree of flexibility may be exercised when it furthers the broader public interest, provided that such deviations do not undermine the fundamental principles of fairness and transparency. It is evident that the decision-making process adopted by the Respondent No.1 cannot be classified as arbitrary or unreasonable. The tender committee's decision to allow Respondent No.4 to rectify its submission and furnish the UDIN subsequently falls within its discretion and does not render the tender process invalid. Consequently, we find no reason to interfere with the decision to award the contract to respondent No.4.

45. For the reasons given and discussion made above, we do not find any illegality in the impugned decision. The impugned decision, in our opinion, does not suffer from arbitrariness, irrationality or unfairness.

46. The writ petition is, thus, dismissed.

47. There shall be no order as to costs.

48. Interim application(s), if any, stand disposed of.

49. The original file tendered by Mr. Sen, learned Senior Advocate for the respondent No. 1 be returned to him after

keeping a photocopy of the same on the file of this writ petition.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)