

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 1604 OF 2015
WITH
CIVIL WRIT PETITION NO. 1605 OF 2015**

Amit Constructions,
through its proprietor
Amit Manohar Gambhir,
Age: 35 years, Occupation Business,
R/at M.S.E.B. Housing Society,
Shivaji Nagar, Jail Road,
Nashik Road, Nashik – 422 101

...Petitioner

Versus

1. State of Maharashtra

2. Maharashtra State Electricity
Distribution Company Ltd.,
Through The Executive Engineer (Civil),
Nashik, Civil Construction Cum
Maintenance Division, Major Store Premises,
Hanuman Nagar, Jail Road,
Nashik Road, Nashik – 422 101

...Respondents

Mr. Swapnil V. Walve for the Petitioners in both petitions

Mr. V. P. Malvankar, A.G.P, `A' Panel for Respondent No. 1 – State in both petitions

Mr. Nirav Shah I/b Little & Co. for the Respondent No.2 in both petitions

**CORAM : A. S. OKA AND
REVATI MOHITE DERE, JJ.**

**RESERVED ON : 11th JUNE, 2015
PRONOUNCED ON : 30th JUNE, 2015**

JUDGMENT (Per Revati Mohite Dere, J.) :

1. By these petitions, the petitioner has impugned the communication dated 21st January, 2015 issued by the respondent No.2 to the petitioner, informing him that the letter of intent issued vide letter dated 9th January, 2015 is kept in abeyance. The petitioner seeks quashing and setting aside of the aforesaid impugned communication dated 21st January, 2015 which is at Exhibit `E' to the petition.

2. As the facts in both the petitions are same, the said petitions are being disposed of by a common order. The narrow controversy in both the petitions is, whether the respondent No. 2 could have issued the impugned communication dated 21st January, 2015, after issuing the letter of intent dated 9th January, 2015, to the petitioner. It is not in dispute, that the respondent No. 2 had given an advertisement, inviting tenders for various electrical work. The estimated cost of the said tender was assessed at Rs. 6,04,218/- and Rs. 5,96,066/- respectively and the earnest deposit was fixed at Rs. 6,100/- and Rs. 6,000/-. It is also not in dispute that, on 9th January, 2015, the petitioner was found to be the lowest bidder and was declared as a successful bidder. Mr. Swapnil Walve, learned Counsel for the petitioner

contended that the respondent No. 2 once having issued the letter of intent to the petitioner, being the lowest successful bidder, it was obligatory on the part of the respondent No. 2 to also award the works contract to the petitioner and that subsequently, the respondent No. 2 could not have sent the impugned communication and awarded the works contract to a third party.

4. According to the learned counsel for the respondent No. 2, although the petitioner was a successful bidder, pursuant to which a letter of intent was issued on 9th January, 2015, he submitted that the respondent No. 2 was unaware of the G.R dated 31st July, 2003. He submitted that only when the Chief Legal Advisor of the respondent No. 2 company brought the aforesaid G.R to the notice of the respondent No. 2, that the communication dated 21st January, 2015 was sent to the petitioner. He submitted that pursuant to the G.R dated 31st July, 2003, the respondent No. 2 had received a letter of objection from Matoshree S.S.S.S Ltd., an Unemployed Youth Organization. He submitted that the said Matoshree S.S.S.S had objected to the award of the works contract to the petitioner, on

the ground, that the award of contract to the petitioner company was contrary to the aforesaid G.R. He submitted that as the said Matoshree S.S.S.S had agreed to do the works covered by the tender notice, a letter of intent dated 28th January, 2015 was issued to Matoshree S.S.S.S for providing the electrification work for PCPF Satpur, District Nashik and the work order was issued on 4th February, 2015 and an agreement was also executed with the said Matoshree S.S.S.S on 5th February, 2015. The respondent no.2 has also filed an affidavit of Suryabhan G. Dhapekar, Executive Engineer (Civil), Maharashtra State Electricity Distribution Company Limited, stating the aforesaid facts.

5. We have heard learned Counsel for the petitioner and perused the petition and the affidavit in reply filed by the respondent No. 2 as well as the G.R dated 31st July, 2003. Almost all the facts, as averred by the petitioner are undisputed. Admittedly, respondent No. 2 had given an advertisement inviting tenders for various electrical works. Admittedly, a letter of intent dated 9th January, 2015 was issued to the petitioner by the respondent No.2. Admittedly, the petitioner had deposited earnest money of Rs. 6,100/- and Rs. 6,000/- respectively, with the respondent No.2. It

appears that subsequent to the letter dated 9th January, 2015 declaring the petitioner as a successful bidder, that the respondent No. 2 sought legal opinion regarding the allocation of work to the petitioner. It also appears that the legal opinion sought by the respondent No. 2, brought to its notice a Government Resolution, being G.R. No. EASA 1002 Pr. Kr. 8494/Urga 5 dated 31st July, 2003, by which, it was provided that if any tender is accepted by the Government/Public Undertaking Companies through a bidding process and if an organization of unemployed objects to the same and offers to do the said work for the lowest bid amount, then the Government/Public Undertaking Company was under an obligation to award the said work to the said organization of unemployed. According to the said G.R., if the organization of unemployed expresses its inability to do the said work at the lowest bid, then the said work could be awarded to the lowest successful bidder. It appears that after the issuance of the letter of intent in favour of the petitioner, the Chief Legal Advisor brought to the notice of the respondent No. 2, the G.R of 2003, pursuant to which the impugned communication dated 21st January, 2015 came to be sent to the petitioner. The G.R dated 31st July, 2003 was issued with a view to strengthen the Unemployed Youth Organizations financially in

Government/Public Undertaking Companies. It is pursuant to this Government resolution dated 2003, that the respondent No.2 received an objection from an organization of unemployed i.e. Matoshree S.S.S.S Ltd. with an offer to do the said electrification work at the lowest bid amount. As the organization of unemployed had shown its ability to work at the lowest bid amount, it was incumbent on the respondent No. 2 vide the said G.R to award the contract to the said organization. Although, the said resolution contemplates a situation, in the event, the organization of unemployed refuses to work at the lowest bid, then the work could be awarded to the lowest successful bidder, however, the said situation had not arisen. As Matoshree S.S.S.S had objected to the letter of intent given by the respondent no.2 to the petitioner, and as the said organization had agreed to do the work at the lowest bid, the respondent No. 2 was under an obligation to award the works contract to the said organization, in accordance with the G.R. No fault can be found in the said orders awarding works/contract to the said organization of unemployed and the subsequent agreements which was entered into between the respondent no.2 and Matoshree S.S.S.S, as the same were in accordance with the G.R of 2003.

6. The learned counsel for the respondent No.2 has fairly conceded that the respondent no.2 became aware of the said G.R only after the letter of intent was issued to the petitioner. The petitioner was admittedly a successful bidder pursuant to the advertisement issued by the respondent No.2 and had deposited an amount of Rs. 6,100/- and Rs. 6,000/- respectively, as earnest deposit. It is also not in dispute that pursuant to the letter of intent, no work order was issued by the respondent No. 2 to the petitioner. The petitioner cannot be faulted for the ignorance of the respondent No.2 to the G.R of 2003. At the same time, the respondent No.2, by awarding the contract to Matoshree S.S.S.S has acted in accordance with the G.R. The petitioner has not challenged the validity of the G.R. The respondent No. 2 was bound by the G.R. Hence, the action of the respondent No. 2 cannot be faulted. Moreover, a contract was not executed in favour of the petitioner. Considering the fact, that the petitioner had deposited a sum of Rs. 6,100/- and Rs. 6,000/- respectively, by way of earnest money, and was a successful bidder, the petitioner in the facts of the case, would be entitled to receive a refund of the said sum of Rs. 6,100/- and Rs. 6,000/- respectively, with an interest of 9% p.a. on the

same, from the date of deposit. Accordingly, we pass the following order :

ORDER

- (i) The petitions are rejected;
- (ii) The respondent No. 2 shall refund the sum of Rs. 6,100/- and Rs. 6,000/- respectively, to the petitioner along with interest @ 9% per annum from the date of deposit of the said sums. The said amounts shall be paid by the respondent No.2 to the petitioner within four weeks from today.
- (iii) Parties to act on the authenticated copy of this Judgment.

(REVATI MOHITE DERE, J.)

(A. S. OKA, J.)