

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**WRIT PETITION No. 1507/2014.**

M. Sathyanarayana M. Balakishtaish

**VERSUS**

The State of Maharashtra and others.

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's Orders.

Court's or Judge's orders.

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**CORAM : B.P. DHARMADHIKARI**  
**& A. P. BHANGALE, JJ.**

**DATED : FEBRUARY 10, 2015.**

Heard Shri V.G. Bhamburkar, learned  
Counsel for the petitioner, Mrs. B.H. Dangre, learned  
Government Pleader for respondent nos. 1 to 3 and  
Shri R.D. Kalra, learned Counsel for respondent no.4.

Perused reply-affidavit. Effort of Shri  
Bhamburkar, learned Counsel is to demonstrate that  
there was a bonafide difference between parties about  
interpretation of Clause providing for additional

security/E.M.D. Petitioner therefore, vide two representations placed the same for consideration of the Authorities and requested them for leave to make up the shortfall, however, those have not been properly considered. He further adds that the petitioner being lowest ought to have been awarded the work and by allotting it to the respondent no.4, a loss in excess of Rs.4 lacs is suffered by public revenue. He further contends that in this situation, the petitioner is entitled to work order, or if that is not possible, a declaration that the contract has been illegally awarded to the respondent no.4, must follow. He further submits that loss caused to the public revenue must be made good. He further submits that the work order could not have been issued without previous approval of the Executive Director of V.I.D.C. and that approval was obtained much later.

Mrs. Dangre, learned Government Pleader as also Shri Kalra, learned Counsel appearing on behalf of respondents submit that work was of repairs of Tank and it is already over. Advertisement inviting

tender has not been provided to this Court. Contention that previous approval of the Executive Director of V.I.D.C. was necessary, is being raised for the first time during oral arguments. It is further submitted that figure of loss worked out by the petitioner is imaginary.

Whether petitioner was always under a bonafide error about interpretation of clause providing for additional security/EMD is the main issue. The tender document which contains terms and conditions, has not been made available by the petitioner to this Court. Similarly, petitioner has recently received a communication which shows that some approval from Executive Director of V.I.D.C. was attempted to be obtained. What is relevance of that approval or its impact on the work order, cannot be appreciated unless and until terms and conditions are placed on record.

However, the statement made by the learned counsel appearing for respondents that the work of repairs is already over, can be taken on record.

In this situation, as several disputed questions arise for determination, without recording any finding on merits of the matter, we dispose of the petition with liberty to petitioner to take recourse to such other remedy as is available to him in law. No costs.

**JUDGE**

**JUDGE**

Rgd