

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION No.1356 OF 2014

(Sacchidanand Laxminarayan Malani .vs. Executive Engineer, Public Works Division,
Akola and Ors.)

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

Court's or Judge's orders

Dr.Anjan De, Adv. for the petitioner.
Mr.T.R.Kankale, A.G.P. for respondent nos. 1 to 4.

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

DATE : 10.2.2015.

Heard. Perused the Court's order dt.3.12.2014.

The petitioner was registered as a Contractor in 1A category. This registration for a period of five years was to expire in 2012. The petitioner, therefore, within time applied for renewal and sought further registration/continuation. Decision on renewal is to be taken within a period of 90 days. However, if decision is not taken, the deemed renewal is presumed for a period of 180 days. In case of the petitioner, this deemed date was 16th February, 2013.

According to Dr.Anjan De, learned Counsel only to eliminate the petitioner from competition, the request for renewal was kept pending and no decision was taken up till 31.10.2013. Two tenders issued in the meanwhile could have been allotted to the petitioner, but as he was not having registration, he was not considered. The petitioner

was constrained to approach this Court in Writ Petition Nos. 2541 of 2013 and 2542 of 2013. The petitions were ultimately disposed of as the work itself was over in the meanwhile and liberty was given to the petitioners to seek damages and other consequential reliefs. Other contentions were kept open.

On 31.10.2013, by the impugned order, the petitioner has been downgraded as 1B contractor for a period of two years. He submits that the renewal to be granted is normally for five years and only to harass the petitioner, such a decision drastically bringing down his entitlement has been taken. The decision is without any reason. The learned Counsel submits that ultimately said renewal for a period of two years from 2012 as a Grade 1 B Contractor expired on 31.10.2014. Though the petitioner has again completed all formalities and applied for renewal within time, no decision has been taken.

Our attention has been drawn to communication dt.6.4.2013 sent by the Deputy Secretary of Public Works Department. Dr.Anjan De, learned Counsel submits that this communication was placed in one of the Writ Petitions as annexure by the respondents and then the petitioners got its knowledge. He points out that, by the said communication, a proposal to suspend the request of the petitioner for renewal/registration was moved.

The learned Counsel also submits that the petitioner had, in fact participated in hearing in absence of knowledge of the said communication and thereafter, the impugned order came to be passed.

The learned Counsel also invites our attention to other communication dt.15.4.2013 sent by the Superintending Engineer to the Executive Engineer on repairs of Loni Watpur Sakhara road. He submits that this communication mentions decision dt.8.4.2013 by which the request of the petitioner to renew the registration was suspended and kept pending.

Dr.Anjan De, learned Counsel submits that the petitioner is without any work from October, 2014. He relied upon the provisions of the Maharashtra Public Works Manual dealing with registration of Contractors for the said purpose.

The learned A.G.P. is relying upon the reply-affidavit. He submits that though there is no material to blacklist the petitioner, a decision was taken to wait till adjudication of the trial under Sections 353, 332 r/w. 34 of the Indian Penal Code.

We have perused the reply filed on record by respondent nos. 2 and 3 on 4.8.2014 and latter affidavit of respondent no.4 filed on 15.12.2014. The affidavits do not show that the petitioner is accused in the offence noted supra. The respondents have filed copy of First Information Report as Annexure-R-1. Dr.Anjan De, learned Counsel is tendering before the Court copy of the charge sheet. It is seen that the petitioner is not accused in the said crime.

The powers available to the respondents against a registered Contractor are contained in the Maharashtra Public Works Department Manual mentioned supra. Clause 11 thereof deals with renewal. The respondents have fairly stated that they do not have any material to blacklist the

petitioner. Only material with them is a crime registered under the provisions of Sections 353, 332 r/w. 34 of the Indian Penal Code. When the petitioner is not accused in that crime, we fail to understand relevance thereof insofar as entitlement of the petitioner to registration or his eligibility to renewal is concerned.

The impugned orders do not contain any reason as to why the petitioner has been downgraded from his earlier registration category i.e. as Class IA category Contractor to Class IB category Contractor. There is no explanation also for that. No fault in his earlier work has been pointed out to this Court. This Court has, on 3.12.2014, has put the respondents on notice to explain as to why punishment only of reducing grade of license was imposed rather than ultimate punishment of blacklisting upon the petitioner and asked them to file an affidavit. The affidavit has been filed on 15.12.2014. Though the Court found serious allegations, the respondents could not support those allegations and have clearly stated that they do not have any material sufficient in the eyes of law to warrant blacklisting.

In this situation, we direct the respondents to take a suitable decision on the application of the petitioner for renewal of registration, which is pending since October, 2014, within a period of four weeks from today. If necessary, an opportunity of hearing shall also be extended to the petitioner. While considering the said request for renewal, the fact that the petitioner was earlier registered as Class I Contractor shall also be taken into account and his request, if any, for upgrading him or for restoration of said category shall also be evaluated. While evaluating such

request for restoration of status of Class 1A Contractor, the impugned orders dt.31.10.2013 shall not come in the way of respondents. Needless to mention that the said order dt.31.10.2013 by itself shall not be used to the prejudice of petitioner.

With these directions, we partly allow the petition and dispose of the same. No costs.

JUDGE

JUDGE

jaiswal