

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5040 OF 2016

Shri Mohammad Hanifuddin S/o
Mohammad Jamaluddin

...PETITIONER

versus

The Union of and others

...RESPONDENTS

.....
Mr. S.B. Talekar, Advocate for petitioner

Mr. S.B. Deshpande, ASG for respondents No. 1 to 4 and 6.

.....

**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 4th MAY, 2016.

Order :-

1. Issue notice to respondents.
2. Mr. Deshpande, Assistant Solicitor General waives service of notice for respondent Nos. 1 to 4 and 6.
3. Mr. Talekar, learned counsel for petitioner submits that, initially, the auction was held on 09-03-2016 by the Cantonment Board, to award contract for collection of fees and brokerage for cantonment weekly market, the same was by public auction. Said auction was cancelled. Again auction was held on 16-03-2016. The petitioner was the highest bidder. Initially, the petitioner was not communicated about acceptance of his tender. In the Board Meeting held on 30-03-2016, out of 12 members, 08 members decided to accept bid of the present petitioner. Thereafter, immediately petitioner deposited 25% amount as contemplated.
4. Learned counsel submits that after bid was accepted by the Board, right is accrued in favour of the petitioner. The Chief Executive Officer had

malice against the petitioner and did not want to award contract to the petitioner, as such, put up a note of dissent stating erroneous facts and prevailed upon the Director to issue impugned communication. Learned counsel further submits that till now policy of adopting e-tender process was never followed by the respondents and the details about the same are given in the memo of writ petition. Learned counsel for petitioner submits that extension is given to the person who is blacklisted. The petitioner was not communicated about his bid being accepted and upon getting the knowledge that his bid has been accepted necessary compliance was done by the petitioner as per the tender policy. Learned counsel submits that e-tendering process, which was never followed, is being made ground to cancel said auction proceeding in favour of petitioner.

5. Learned counsel submits that said policy according to impugned communication is in vogue since 2014, but in 2015 also contracts of huge amounts were awarded without e-tender process. The same would substantiate the fact that it is only to defeat the right of the present petitioner, ground of e-tender is being taken. Respondents accept that petitioner deposited the amount as contemplated pursuant to acceptance of his bid. The respondents are estopped. Even principle of legitimate expectation demands that respondents should abide by public auction held. The petitioner is the highest bidder ought to have allotted the work order.

6. We have heard learned Assistant Solicitor General.

7. The Director has issued order to cancel public auction on the ground that it was undertaken without e-tendering process. Said policy to give contract of rupees Two lakhs and above by e-tender is in vogue since

2014, as per said communication. Only because in the past said policy was not followed, we cannot direct that same need not be followed. Further, when a policy is in vogue, it has to be followed. If some wrong was committed in the past by the Board while allotting contracts without following e-tender process that cannot be a ground to desist the Board from adopting such a policy. Present auction which is cancelled by the impugned communication cannot be set aside on the ground that in the past contracts are not cancelled even though they were allotted without resorting to e-tender process. No work order as yet is issued in favour of petitioner. As such, no vested right can be said to have been created in favour of petitioner in that regard.

8. Considering the above conspectus of the matter, prayer made by the petitioner cannot be entertained and, as such, writ petition is dismissed. No costs.

9. Mr. Talekar learned counsel submits that respondent No. 5 is blacklisted in December, 2015 and as such, extension could not have been granted to such a contractor. The petitioner is willing to pay more amount for the period of extension. The petitioner in this regard may make appropriate application to the respondents, and the authority concerned shall decide such application on its own merits as per the policy expeditiously, preferably within a period of two weeks from the date of the application.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]