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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION No. 1003 OF 2016
IN
WRIT PETITION No. 380 OF 2016**

M/s. Watergrace Products

....Petitioners

Vs.

The State of Maharashtra and Ors.

....Respondents

Mr. Rampal Singh Kohli for Petitioners

Ms. Manisha Jagtap a/w. Akshay Kapadia i/b. J. Shekhar & Co. for
Respondent Nos.3 to 5

Mr. V. B. Thadani -AGP for Respondent Nos. 1,2,7 and 8

***CORAM : V. M. KANADE &
M.S. KARNIK, JJ.***

DATE : APRIL 21, 2016

P.C. :

1. This civil application is filed by the Petitioners seeking leave of the Court to participate in the fresh tender process which has been initiated by the Nashik Municipal Corporation. It is submitted that the Petitioners are willing to give an undertaking that they shall pay the difference of enhanced wages which has been fixed by the Government by its G. R. dated 24.2.2015 and the wages which they have actually paid to their workers without prejudice to their rights and contentions in this petition. It is

submitted that the Petitioners are also ready to give an undertaking that they shall not withdraw the security deposit which has been given to the Corporation when they had tendered with their bid in the earlier tender process.

2. The Petitioners by this petition had challenged the order passed by Respondent No.3 regarding their blacklisting in the tender process. When the petition came for hearing before the Division Bench of Justice A.S. Oka and Justice C.V. Bhadang on 16th February, 2016, a suggestion was made by the said Division Bench to the Petitioners that if they give an undertaking that they will pay the difference of the wages which are fixed by the Government Notification and the wages which are actually paid by them, the Court would direct the Corporation to consider their bid. However, the Petitioners at that time did not give any such undertaking and as a result, the Division Bench did not grant any interim relief in favour of the Petitioners.

3. The Petitioners, thereafter, again moved at least on 2/3 occasions for further interim relief before this Bench. However, in view of the order passed by the Division Bench dated 16th February, 2016, we refused to grant

any ad-interim relief in favour of the Petitioners.

4. Thereafter, the tender process which was initiated by the Corporation on 20th January, 2016 did not proceed any further and, as such, therefore, the Corporation has now again issued a tender notice and the last date for submitting the tender is 25th April, 2016.

5. The Petitioners, therefore, have now again filed a civil application and are seeking an order from this Court for permitting them to make their bid on the online tender process.

6. The learned counsel appearing on behalf of the Petitioners submits that they are ready to give an undertaking that they will not withdraw the security deposit which they have given to the Corporation till their application for recalling of the blacklisting is considered.

7. On the other hand, the learned counsel for the Corporation has submitted that this Court was pleased to reject their application on more than three occasions and, therefore, it is now not open for the Petitioners to file a fresh civil application, seeking similar reliefs. It is submitted that the application, therefore, is barred on the principles which are analogous to the

principles of res-judicata. The learned counsel for the State has also submitted that as long as the Petitioners' name is blacklisted, they cannot be considered in the fresh tender process.

8. In our view, it cannot be said that this application is barred on the principles of res-judicata or analogous to the principles of res-judicata. It is not in dispute that the earlier tender process which was initiated by the Corporation on 20th January, 2016 has come to an end and now a fresh tender notice has been given by the Corporation. The Petitioners have now filed their application, seeking relief from this Court to participate in the said tender process by again showing their willingness to give afresh undertaking. In this view of the matter, in our view, since the cause of action is now entirely different since the new tender process has been initiated, the Petitioners are entitled to give a fresh undertaking and, therefore, it will be open for this Court to consider the Petitioners' request afresh. This application, therefore, on account of same condition and on account of subsequent events, cannot be said to be barred by principles of res-judicata. Ideally, the Petitioners should have filed a fresh petition, seeking same reliefs, which have been sought in the civil application. Since

time is not available with the Petitioners to file a fresh petition, they have chosen to file a fresh civil application in the pending writ petition since the said tender process dated 20th January, 2016 has come to an end. We, however, would like to entertain this civil application since the last date for submitting the tender is 25th April, 2016.

9. It is not in dispute that the only reason for not granting ad-interim relief is that they have not complied with the Government G.R. and they had not paid the workers' revised wages which were payable as per the Government Resolution dated 24.2.2015.

10. The Petitioners have now come forward and have stated that they are willing to give an undertaking that they shall not withdraw the security deposit of an amount of Rs.1.15 crores, The difference of wages which is payable to their workers is Rs.1.09 crores. Whereas, the security deposit is tune of Rs.1.15 crors and, therefore, even otherwise, the Corporation can adjust Rs.1.09 crores and pay the same to the workers of the Petitioners.

11. The representation of the Petitioners, therefore, can now be considered by the Competent Authority in view of the undertaking given

by them on merits and in accordance with law. However, in the meantime, it would be appropriate if the Petitioners are permitted to tender their bids in the fresh tender notice which has been issued by the Corporation. We, therefore, direct the Corporation to permit the Petitioners to complete their tender process. The Corporation shall consider their tender bid and process the same in accordance with law. In the meantime, the Competent Authority shall consider the representation of the Petitioners in respect of blacklisting, on merits and in accordance with law. Undertaking given by the Petitioners is taken on record. Civil Application is disposed of. Place the writ petition on the board on 8th June, 2016. The Petitioners also to file a further undertaking that in the event, they do not succeed in this petition, the Corporation shall be permitted to appropriate the security deposit towards payment of minimum wages to the workers within one week from today.

M.S.KARNIK, J.

V.M. KANADE, J.