

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10719 OF 2016

M/s. R.K. Sawant,
Civil Engineers and Contractors ...Petitioner
vs.
State of Maharashtra and Another ...Respondents

Mr. Yogendra Singh i/b. Auris Legal, for the Petitioner.
Mr. Kirit J. Hakani a/w. Ms. Reena Rana, for Respondent No. 2.
Mr. Vikas Mali, AGP for Respondent No. 1 -State.

ORDER RESERVED ON : 6th DECEMBER, 2016
ORDER PRONOUNCED ON : 8th DECEMBER, 2016

CORAM : SHANTANU KEMKAR &
PRAKASH NAIK, JJ.

ORDER: (Per Shantanu Kemkar, J.)

. The Petitioner claims to be a Government approved Contractor engaged in the business of civil engineering and construction work for the Government agencies.

2. It is the case of the Petitioner that in the e-tender process for the construction of "Proposed 'D' Type Building (Fruits and Vegetables Market) Main Market Yard initiated by the K.A.P.M.C., Kalyan (Respondent No. 2), the Petitioner submitted his bid. After considering the bids received in response to e-tender process, the

Market Committee took a decision informing the Petitioner vide letter dated 1st September, 2016 that the Committee has decided to reject all the bids and decided to re-invite the tender for the work in question. Being aggrieved by the said order dated 1st September, 2016 passed by the Market Committee, the Petitioner filed this Petition.

3. On 21st September, 2016 while issuing notice to Respondents, the interim order was passed against Respondent No. 2 Committee restraining them from proceeding further in pursuance to the e-tender Notice, the direction was also issued that the Committee shall not award tender to any third party.

4. On being noticed, the second Respondent has raised a preliminary objection that in view of Section 52 (B) of the Maharashtra Agricultural Produce Marketing (Development and Regulation Act), 1963, (for short "*the Act*") the Petitioner has an efficacious alternate remedy of appeal against the impugned decision dated 1st September, 2016 taken by Respondent No. 2 - Committee. In the circumstances, according to the Respondent No. 2 - Committee, this Petition may not be entertained on account of availability of

alternate efficacious remedy, against the impugned order of the Committee before the Director.

5. In reply to the aforesaid preliminary objection, the Petitioner submits that since the action of Respondent No. 2 - Committee is arbitrary the Petitioner has rightly approached this Court through this Petition under Article 226 of the Constitution of India. He also submits that in case this Court comes to a conclusion that the Petitioner has an alternate remedy, the interim protection granted by this Court may be continued for some time enabling the Petitioner to approach the Appellate Authority and seek interim order.

6. Having heard learned counsel for the parties at length and having gone through the Section 52 (B) of the Act, we are of the view that against the impugned order/decision, the Petitioner is having alternate and efficacious remedy of appeal where the Petitioner can raise all the grounds as may be available to him. In the circumstances, without going into the merits of the matter, we dispose of this Petition with liberty to the Petitioner to approach the Appellate authority for redressal of his grievance.

7. In case the Petitioner files an Appeal before the Appellate Authority on or before 17th December, 2016 the same shall not be dismissed by the Appellate Authority on the ground of limitation.

8. The interim order passed earlier shall continue for a period of three weeks enabling the Petitioner to seek appropriate order from the Appellate Authority.

9. While considering and deciding the Appeal or prayer for interim relief of the Petitioner, the Appellate Authority shall not be influenced by the interim order passed by this Court and shall decide the matter on its own merits in accordance with law as expeditiously as possible.

10. With the aforesaid liberty, observation and direction, the Petition is disposed of.

(PRAKASH NAIK, J.)

(SHANTANU KEMKAR, J.)