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

WRIT PETITION NO. 3858 OF 2015

(M/s Shreeamchandra Construction, Nagpur Vs. The State of Maharashtra & others)

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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Shri B. G. Kulkarni, Advocate for the petitioner.
Smt. K. S.Joshi, A.G.P. for respondent No.1.
Shri V. G. Palshikar, Advocate for respondent Nos.2 to 5.

CORAM : B. P. DHARMADHIKARI AND
P. N. DESHMUKH, JJ.
DATED : 10 MARCH, 2016

The petitioner challenges communication dated 13/3/2015 cancelling the tender process wherein the petitioner had participated on the ground that new policy has been evolved on 18/10/2014.

Effort of learned Counsel Shri Kulkarni for the petitioner is to urge that policy decision dated 18/10/2014 envisages tenders for works in excess of Rs. 3 crore and in any case as the tender of the petitioner was accepted on 21/9/2013 itself, the new policy could not have been applied to it. He has invited our attention to communication dated 28/4/2015 sent by Superintending Engineer to the Chief Engineer pointing out that as the tender of another contractor by name Shri Musle Constructions was accepted before 18/10/2014, the new policy has not been applied to it.

We have heard respective Counsel for the parties.

We find that initially tender of the petitioner was about 24% above the upset price and during negotiation, he brought it down. In the result, the price quoted by him was 15.74% above the upset price. This is, after considering the appreciation in value of contract on account of passage of time.

However, here, when the question whether the bid of the petitioner was accepted and any concluded contract came into existence is required to be addressed, it is seen that the petitioner is relying on office note, which, after disclosing various facts recommends acceptance of tender of the petitioner. It appears that the Sectional Engineer, who prepared the note, sent it to his superiors and it has gone to Executive Director, Managing Director and thereafter to the Chairman of the V.I.D.C. Thus, it appears that the said note was accepted by the Executive Director and Managing Director. The respondent has come up with the case that the Chairman of the V.I.D.C. has not accepted the note and, therefore, tender of the petitioner was not accepted. Internal notings prepared to facilitate consideration by an artificial person does not clothe the petitioner with any right.

Undisputedly, the petitioner has not received any communication stating that his tender has been accepted and as such no concluded contract came into existence in the present matter. In this situation, on account of change in policy, when the Authorities found it proper to cancel the entire tender process, in absence of any challenge on account of mala fides, no case for interference is made out. The new policy dated 18/10/2014 also envisages some change in norms in consideration of tenders below Rs. 3 crore.

In any case, here as there is no concluded contract and no mala fides are shown, we are not in a position to intervene into the matter in writ jurisdiction. Hence, allowing the petitioner to take such other steps as are open in law, we dispose of the petition. No costs.

JUDGE **JUDGE**