

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

WRIT PETITION NO.5409 OF 2015

**Mehtar Samaj Magaswargiya Sarwangan Vikas Sanstha, thr its President Ravi
Ramuji Kalose**

..vs..

**Maharashtra State Road Transport Corporation (MSTRC), thr its Vice Chairman
and Managing Director and anr**

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

Court's or Judge's Order

**Shri Firdos Mirza, Counsel for the Petitioner.
Shri R.S. Charpe, Counsel for the Respondents.**

**CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.**

DATED : FEBRUARY 10, 2016.

**Heard finally learned counsel for the
petitioner Shri Firdos Mirza and learned counsel for the
respondents Shri R.S. Charpe.**

**Short submission of learned counsel for the
petitioner Shri Firdos Mirza is that having allowed the
petitioner to spend amount in excess of Rs.2.00 Lacs on
4 toilet blocks under it and agreed to a tenure of total 8
years, the respondents cannot cut it short arbitrarily on**

the basis of the alleged complaints without due verification. He has invited our attention to the certificates of satisfactory performance issued by the Depot Managers at Katol, Kalmeshwar, Emamwada/Morbhawan (Nagpur), and Ganeshpeth (Nagpur). He also states that only one complaint was received on 24.6.2015 in relation to an alleged incident of charging more at Ganeshpeth Bus Stand and the petitioner paid fine amount of Rs.500/-. He, however, submits that even in that certificate the Depot Manager has certified satisfactory performance. According to him, in this situation, action of inviting fresh tenders for maintenance of these 4 toilet blocks is arbitrary. He submits that tenure of 5 years was to come to an end on 24.8.2015 and complaints dated 14.8.2015 have been received on 28.8.2015. All complainants are identical. The complaint in relation to Ganeshpeth Depot is by a lady and very same lady has also submitted a tender in response to the impugned advertisement.

Learned counsel for the respondents Shri R.S. Charpe relied upon the reply-affidavit. He submits that though initial tenure of 5 years has been agreed to, it was subject to satisfactory performance and 3 yearly extensions thereafter are also subject to satisfactory performance. The petitioner has not produced on record any certificate issued by the competent authority i.e. the Divisional Controller about such satisfactory performance. He has invited our attention to the fact that the petitioner did not dispute imposition of penalty of Rs.500/-. He points out that in very same complaint there was a grievance of cleaning of ladies blocks by male employees.

In this situation, he submits that as the matter pertains to contract and there is no arbitrariness, the writ petition should not be entertained. He has also relied upon the judgment of the Division Bench of this

Court in the case of Sonalaxmi Machhimar Sahakari Society Ltd., Thane ...vs.. State of Maharashtra and ors reported at 2010 (6) Mh.L.J. 254.

With the assistance of respective learned counsel for the parties, we have perused the papers.

The resolution of the respondent Maharashtra State Road Transport Corporation (MSRTC) dated 19.12.2007 shows that a decision to award such contract for a period of 8 years if contractor has spent amount in excess of Rs.2.00 Lacs. Initially, period is of 5 years and there are 3 yearly extensions. It is also stipulated that after expiry of this tenure, for renewal of such contract fresh tenders will be invited. The Bord of Directors accepted this arrangement. Thus, the total period for which the petitioner can be awarded contract of maintenance is of 8 years.

The agreement entered into between the petitioner and the respondents vide Clause 10 stipulates after expiry of initial period of 5 years, if it is found that the performance was satisfactory, 3 extensions of one year each shall be allowed.

Thus, the petitioner, who has been selected after following a open competitive process and spent amount in excess of Rs.2.00 Lacs on repairs etc., has acted on the basis of this understanding. There is no dispute that in relation to 3 Depots, there are no complaints about its working. Only complaint is in relation to Ganeshpeth Bus Depot. However, the Depot Manager there, has found its work satisfactory.

The contention of learned counsel for the respondents Shri R.S. Charpe that the petitioner has not obtained certificate from the Divisional Controller cannot be accepted. It was open to the respondents to

produce before this Court an inspection note or the records of inspection maintained by the Divisional Controller showing that whenever he visited or inspected toilet blocks, he noticed some deficiencies. In absence of such notice or affidavit, certificate issued by the Depot Manager, who is immediate person incharge of each Bus Stand, needs to be accepted.

In any case, if agreed tenure was to be cut short and the petitioner was not to be given any extension because of some complaints received against it, the petitioner ought to have been given a show cause notice and an opportunity to explain, that admittedly has not been done in the present matter.

In the reported judgment (*supra*), the Division Bench of this Court has found the necessity of following an open competitive process while awarding such works because of mandate of Article 14. It is not

in dispute that the petitioner has been selected after such process. We are concerned here only with the issue of its tenure.

In this situation, we find that the petition needs to be allowed and accordingly we quash and set aside the advertisement/notice dated 9.9.2015 to the extent it relates to Katol, Kalmeshwar, Emamwada/ Morbhawan (Nagpur), and Ganeshpeth (Nagpur).

If the respondents wish to take any step to the prejudice of the petitioner with a view to curtail its tenure in relation to any of these 4 Bus Stands, the respondents shall issue appropriate show cause notice to the petitioner giving an opportunity and then proceed further in accordance with law.

The writ petition is thus allowed with no orders as to costs.

Needless to mention that the respondents shall process the advertisement further in relation to other Bus Stands.

At this stage, learned counsel for the petitioner Shri Firdos Mirza submits that a positive direction to extend tenure of the petitioner as per the agreement and resolution by the Board should be issued. We have already found about that, that the petitioner is entitled to initial grant of 5 years thereafter 3 extension of one year each if its performance is satisfactory. We have also directed the respondents to proceed in accordance with the principles of natural justice if they wish to cut it short. As such, no such direction is called for.

JUDGE

JUDGE

!! BRW !!

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