

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

WRIT PETITION NO. 9967 OF 2017

Prakash s/o Askaran Jain,,
Age : 63 years, Occ. Business,
R/o Shahada, District Nandurbar.

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Food, Civil Supplies and Consumer
Protection Department,
Mantralaya, Mumbai – 32.
2. The Collector,
Nandurbar.
3. The District Supply Officer,
Nandurbar.

.. **Respondents**

Miss P.S. Talekar, Advocate for the petitioner.
Mr. A.B. Girase, Government Pleader for respondent-State.

**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE : 20.09.2017

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner has filled in tender pursuant to the notice dated 11.05.2017. The petitioner's tender was found to be the lowest, however, as the petitioner had quoted rate 47% more than the base price the Collector, Nandurbar referred it to the Government. Before the Government, the petitioner was directed to negotiate and bring the rate down to 5% above the base rate. The petitioner accepted the same, in view of that the Secretary referred the matter to the Collector with direction to accept the tender of the petitioner and enter into an agreement. The Collector called upon the petitioner to comply with the terms such as furnishing the bank guarantee and the security deposit. The petitioner complied with the same by furnishing bank guarantee of Rupees One Hundred and Fifty Lakhs and also deposited the security deposit of Rupees Fifteen Lakhs, only ministerial act of execution of agreement has remained to take place. In the interregnum, the Hon'ble Minister directed the Collector not to accept the tender above base price. The petitioner has assailed the said action in the present writ petition.

3. During the pendency of the writ petition, it appears that, the respondents had issued the fresh tender, this Court had allowed the tender process to proceed, however, had directed not to finalise the tender.

4. Miss Talekar, the learned counsel for the petitioner submits that the action of the respondents is arbitrary, in fact all the terms of the tender were complied by the petitioner. The contract was in fact almost concluded and at that point of time the respondents resiled and the same is not permissible. The respondents cannot change the terms of the tender after the tender process is completed. The learned counsel submits that in other district such as Nashik the similar tender was accepted @ 5% above the base price. The petitioner is being discriminated. The learned counsel further submits that, even the fresh tenders are issued, the respondents have received offers above @ 15% of the base price. The learned counsel submits that, even otherwise the purpose which is stated in the affidavit in reply i.e. to save the public exchequer, would not serve any purpose.

5. Mr. Girase, the learned Government Pleader submits that the whole exercise was done with a view to save the public money. No concluded contract exists between the parties, as such, the respondents had every right to withdraw the said tender before the contract is concluded. The learned Government Pleader accepts that in the fresh tenders three offers are received and all the three offers are 15% above the base price.

6. We have considered the submissions and the documents on record.

7. There is no dispute with the factual matrix that the petitioner's offer pursuant to the tender in question was found acceptable and the Collector had referred it to the Government as the said tender was 47% above the base price. It appears that the petitioner was made to negotiate before the Government. The petitioner accepted the negotiation and further consented to accept the tender @ 5% above the base price. Pursuant thereto, the Secretary of the Food and Civil Supplies communicated the decision of the Government to the Collector directing the Collector to accept the tender of the petitioner @ 5% above the base price and get the agreement executed and direct the petitioner to comply with the terms and conditions. The Collector, thereafter, asked the present petitioner to furnish the bank guarantee, which the petitioner complied by furnishing bank guarantee of Rupees One Hundred and Fifty Lakhs and also deposited the security deposit of Rupees Fifteen Lakhs. The petitioner had complied with all the terms and conditions on his part, only ministerial act of the execution of the agreement was to be performed.

8. No doubt the concluded contract would come into existence

only after the execution of the agreement and issuance of the work order, however, it would be seen that the petitioner had performed his part and complied with all the terms in its entirety. Principally the tender of the petitioner was also accepted when the Secretary on behalf of the Government directed the Collector to accept the tender of the petitioner and perform further acts.

9. It was only at the intervention of the Hon'ble Minister that the further process was stalled by the Collector. According to the respondents, it was with a bonafide intention of saving the public exchequer the Hon'ble Minister had intervened.

10. Be that as it may, for another district i.e. Nashik similar the tender was accepted @ 5% above the base price. In view of that, the action of the respondents in not accepting the tender after entire process was completed is arbitrary. Arbitrariness has no role in a civilized society governed by the rule of law. Arbitrariness is antithesis to the rule of law, justice, equity and good conscious. The State cannot have different yardsticks for different tenderists.

11. The intention of the respondent in not completing the contract on the ground that they wanted to save the public exchequer,

would not materialise, in view of the fact that after fresh tenders were issued the persons offered their tender at much higher price, one had offered @ 15% above the base price, another had offered @51% above the base price and the third one had offered @ 55% above the base price. Even otherwise, no vested right is created in favour of the persons who had offered tender pursuant to the issuance of fresh tender notice, as this Court had directed the respondents not to finalise the tender.

12. In view of the aforesaid, the respondents shall complete the further process and execution of agreement in favour of the petitioner by accepting the tender submitted by the petitioner pursuant to the tender notice dated 11.05.2017 @5% above the base price. Writ petition is accordingly allowed. Rule accordingly made absolute in above terms. No costs. None appears for the intervener, civil application also stands disposed of.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]