

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

Criminal Application (APL) No.299 of 2016

Chandan s/o Tulsiram Jibhkate,
Aged about 58 years,
Occupation – Service
(Sr. Divisional Accounts Officer),
EGS (PW), Division Gondia,
R/o 168, Ayurvedic Layout,
Umrer Road, Near Tajshree Tower,
Nagpur-440 024.

... Applicant

Versus

1. The State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya,
Mumbai-32.
2. Superintendent of Police
(Anti Corruption Bureau),
Civil Lines, Nagpur.
3. Police Station Officer,
Sadar Police Station,
Sadar, Civil Lines,
Nagpur.

... Non-Applicants/
Respondents

Shri Shashibhushan Wahane, Advocate for Applicant.
Smt. Bharti Dangre, Public Prosecutor for
Non-Applicants/Respondents.

Coram : R.K. Deshpande & Z.A. Haq, JJ.

Dated : 23rd March, 2017

Oral Order (Per R.K. Deshpande, J.) :

1. The applicant has filed this application under Section 482 of the Code of Criminal Procedure for quashing and setting aside F.I.R. No.3309/2016 registered against him for the offences punishable under Section 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 read with Sections 420, 468, 471, 109 and 120-B of the Indian Penal Code at Police Station Sadar, Nagpur.

2. The facts of the case leading to such challenge need to be narrated :

On 4-6-2009, the Vidarbha Irrigation Development Corporation (VIDC) invited bids for the work of construction of Mokhaburdi Lift Irrigation Scheme, Tail Branch Canal Work. The pre-qualification tenders were required to be purchased up to 15-6-2009, which were to be scrutinized on 26-6-2009 by a

Committee consisting of Shri S.R. Suryawanshi, Chief Engineer, Gosikhurd Project, and Shri U.V. Parvate, Member Secretary/ Executive Engineer along with some other members. The pre-qualification bids were received from (i) Joint Venture of R.J. Shah & Company Limited and D. Thakkar Constructions Private Limited, Mumbai, (ii) S.N. Thakkar Constructions Private Limited, Mumbai, and (iii) M/s. Shrinivasa Construction Company, Nagpur. The Committee scrutinized the tenders and ultimately the tender of Joint Venture of R.J. Shah & Company Limited and D. Thakkar Constructions Private Limited was accepted and the work order was placed with it on 27-8-2009.

3. Consequent upon certain directions issued in Public Interest Litigation by this Court, the offences were registered vide F.I.R. No.3309/2016 on 30-3-2016 against nine persons, including the Chief Engineer, Member Secretary of the Committee, and the Directors of Joint Venture of R.J. Shah & Company Limited and D. Thakkar Constructions Private Limited. The name of the applicant is included in it. The allegation in the

F.I.R. is that the applicant was involved in the process to scrutinize the financial capacity of the bidders along with the other papers relating to the work experience and compliance of the conditions stipulated in the tender document. It is alleged that the applicant has failed to perform his duties.

4. Shri Wahane, the learned counsel appearing for the applicant, submits that the applicant is neither an employee of VIDC nor of the Companies which participated in the process of tender, and he is an employee of the Central Government, working in the Office of Accountant General. He further submits that it was not the duty of the applicant to scrutinize as to whether the bids received were complying with the conditions mentioned in the bid document. He submits that it was the duty of the said Committee constituted for the specific purpose and the applicant having no concern with it, has been dragged into the process by including his name in the F.I.R. According to him, the applicant has not played any role in the acceptance of tender.

5. The stand of the respondents in response to the present application, is reflected in paras 4 and 5 of the affidavit filed on behalf the respondent Nos.2 and 3, which are reproduced below :

“4. The contention of the applicant in paragraph No.5 in relation to his role in the pre qualification process is that as per Rule 4.2.2 of Rules and regulations of Maharashtra Public Works Account Code, he is not duty bound to scrutinize the pre qualification documents submitted by the prospective bidders during the Pre-qualification (P.Q.) stage. He has further contended the allegations made against him in the said First Information Report are baseless. However, it is to be pointed out that the applicant being Senior Division Accounts Officer, was required to verify the pre qualification documents as per the provision in Appendix 12, of the Maharashtra Public Works Manual. The Experts committee appointed by the Government of Maharashtra for advice and guidance during the said enquiry has also given the opinion in this regard.

It is submitted that the prospective bidders had submitted pre qualification documents for construction work of Tail branch canal under the Mokhabardi Lift Irrigation Scheme. The documents submitted by the

prospective bidders were to be scrutinized by the present applicant with the help of the concerned Executive Engineer with all the stipulation with the specifications mentioned in tender notice.”

“5. It is submitted that the applicant did not infact scrutinized the documents of pre qualification submitted by the prospective bidders as per the norms and procedure to be adopted in this regard.”

6. Before us, several accused in the said F.I.R. filed similar applications to seek quashing of the F.I.R. The respondents filed an application for grant of permission to file chargesheet/report under Section 173 of the Code of Criminal Procedure before the Competent Court. In the said application, a statement is made that the investigation is complete. We expressed that the case of every accused can be examined independently in the application for discharge, if so advised, to be filed in the Competent Court and all the grounds of challenges raised in the applications before us can also be agitated in the application for discharge. Accordingly, all other accused persons have withdrawn the

applications with liberty to file the application for discharge. In all those matters, we passed an order granting same interim protection to the accused persons and liberty to the respondents to file chargesheet/report under Section 173 of the Code of Criminal Procedure. Keeping in view these aspects and the facts and circumstances of this case, particularly when the allegations, including those of cheating, abetment and conspiracy, we do not find any reason to provide different treatment to the present applicant in exercise of our inherent jurisdiction or discretionary jurisdiction under Articles 226 and 227 of the Constitution of India to examine the merits of this case.

7. We, therefore, dismiss this application with liberty to the applicant to adopt the same method, as has been permitted to be adopted by other accused persons before us. We keep all the questions open to be agitated in the application for discharge and the dismissal of this application shall not be construed as coming in the way of the applicant to urge any of the grounds available in law. The protection granted by this Court stands extended by

a further period of one month after the date of filing of the final report under Section 173 of the Code of Criminal Procedure.

8. Shri Wahane, the learned counsel, urged that the names of all the persons constituting a Committee to scrutinize the bids, have not been included in the F.I.R., though all of them were parties to the decision of accepting the tender of Joint Venture of R.J. Shah & Company Limited and D. Thakkar Constructions Private Limited. Smt. Dangre, the learned Public Prosecutor appearing for the respondents, after taking instruction from Shri Sanjay Darade, Superintendent of Police (Anti Corruption), made a statement before us that this aspect will be examined, and if it is found that the names of other members of the Committee are required to be included, appropriate steps shall be taken in the matter. We, therefore, record such statement and expect the respondents to act accordingly.

JUDGE

JUDGE