

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

7 WRIT PETITION NO. 7730 OF 2016

PRASHANT NAGNATHRAO PALDEWAR ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. Sushant C. Yeramwar, Advocate for the
Petitioner.

Mr. N. T. Bhagat, AGP for Respondent-State.

Mr. Vilas D. Sonwane, Advocate for the Respondent
No.4.

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**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATED : 18th SEPTEMBER, 2018.

PER COURT:-

1. Mr. Yeramwar, learned counsel for the petitioner submits that the respondent no.4 was issued with the contract for transportation of food grain. The respondent no.4 committed many defaults and gave false information while obtaining the contract for the period 2006-2009. The petitioner had participated in the said tender. The tender was allotted to respondent no.4. The contract issued pursuant to the tender of the year 2006 is continued from time to time and even till date in favour of respondent no.4. The respondent no.4 furnished experience certificate dated 01.01.2002 for transportation of sugar showing that he has

made turn over of Rs.24,76,185/- for the year 1999-2000 and turn over of Rs.63,23,989/- for the year 2000-2001. The said certificates produced by respondent no.4 is forged and fabricated documents. The petitioner has obtained information under the Right to Information Act and according to the said information the respondent no.4 had turn over of Rs.9,40,050/- for the year 1999-2000 and Rs.49,91,352/- for the year 2000-2001. This shows that the certificates produced by respondent no.4 were false.

2. The learned counsel submits that the respondent no.4 transported more food grain in his vehicle than its sanctioned capacity, which is also not permissible. The petitioner did not lift the food grain within the prescribed period, as such there is violation of condition number 33 of the Contract and contractor should be penalized at the rate of 10% on the amount of non-lifted food grain which comes to the tune of Rs.37,32,800/-. Respondent no.4 was allowed to withdraw security deposit of Rs.50,00,000/- before conclusion of the contract. As per condition no.21 the security deposit was to be kept with Government till existence of the contract. The learned counsel submits that the Collector has rejected the complaint filed by the petitioner only on the ground that it is not filed within time.

3. Mr. Sonawane, learned counsel for the respondent no.4 submits that at present the respondent no.4 is not awarded with the work for transportation of food grain. In the year 2017 pursuant to the fresh tender process the work is allotted to new contractor for transportation of food grains. According to the learned counsel no illegality has been committed by respondent no.4 during the subsistence of his contract. The Collector has rightly considered all the aspects.

4. The learned A.G.P. also supports the order passed by the Collector and submits that the Collector has considered all the aspects.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. The complaint was filed by the competitor contractor who had lost in the tender process to respondent no.4.

7. The Collector though found that the complaint is not within the prescribed time has considered each and every objection and the complaint made by the petitioner. There was no proof produced by the petitioner to show that respondent no.4 had transported more quantity of food grain in his vehicle than sanctioned. The security deposit of Rs.50,00,000/- was allowed to

be withdrawn under the order of Collector. As far as non-lifting of food grain, as per the tender within stipulated period, it is observed by the Collector that there are circumstances beyond the control of the contractor for which food grains could not be lifted.

8. The grievance of the petitioner with regard to the false certificate of turn over is concerned, the Collector observed that the petitioner has made submissions merely on the basis of profit and loss account. The profit and loss account would not depict the entire turn over. The certificates were produced and they were considered by the Collector. It was for the Collector to consider all the aspects. The Collector in the order has considered each and every objection raised by the petitioner. This Court would not sit in the appeal over the decision taken by the Collector. The decision making process has been adhered to.

9. Considering the above, writ petition is dismissed. No costs.

(S. M. GAVHANE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/September-18

Devendra
Nandkumar
Kale

Digitally signed
by Devendra
Nandkumar Kale
Date: 2018.09.24
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