

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LDG.) NO. 825 OF 2018

Santosh Bholanath Shukla.	...	Petitioner.
V/s.		
Municipal Corporation of Greater Mumbai and another.	...	Respondents.

Mr.Akshay Petkar for the petitioner.

Mr.Yashodeep Deshmukh for the respondent- MMC.

Dr.Birendra Saraf with Mr.Bipin Joshi for the intervener.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 4th May 2018.

PC.:

The submission of the learned counsel appearing for the parties were heard yesterday. The subject matter of this petition is e-tender notice issued by the first respondent- Municipal Corporation. The e-tender was for operation, maintenance and management of public parking lot situated on the property more particularly described in paragraph-1 of the petition. The petitioner was one of the bidders who offered bids. According to the first respondent, the third respondent is the successful bidder. By a communication dated 16th March 2018, the first respondent informed the petitioner that the petitioner is disqualified for the bid. It was stated in the said letter that certain facts were not disclosed by the petitioner while filing the tender. It was stated in the

said letter that a contract granted by the Maharashtra State Road Development Corporation (MSRDC) for collection of toll granted to the petitioner was foreclosed on 22nd January 2011 due to overcharging by the petitioner. Secondly, it was stated that the contract executed in favour of the petitioner in respect of Juhu Airport, Juhu was terminated in May 2013 due to overcharging. It is stated in the said letter that the petitioner did not disclose the aforesaid facts in the declaration given by the petitioner in Annexure-C.

2. The submission of the learned counsel appearing for the petitioner is that the Municipal Corporation seems to have acted at the instance of the third respondent as the said respondent appears to have brought the facts stated in the impugned communication dated 16th March 2018 to the notice of the Mumbai Municipal Corporation. He submitted that as far as the contract with MSRDC is concerned, firstly no penal action has been taken against the petitioner. Secondly, it is not specifically mentioned by MSRDC in its letter dated 20th January 2011 that the contract was foreclosed because the petitioner indulged in overcharging. He submitted that for the same allegation, the petitioner was prosecuted and the prosecution has ended in acquittal. He placed reliance upon the judgment and order dated 8th March 2018 passed by the learned Judicial Magistrate First Class, Dhamangaon Railway, District- Amaravati. He submitted that the action of foreclosure was challenged by the petitioner by filing a writ petition on the original side of this Court. A Division Bench of this Court rejected the said petition by the order dated 11th April 2011 on the ground that the petitioner ought to have filed petition before the Bench at Nagpur. He further submitted that the petitioner filed a Special Leave Petition before the Apex Court for

challenging the action of foreclosure which was dismissed for non-prosecution.

3. He pointed out that as regards the so-called termination by the Airport Authority of India, the letter dated 6th April 2018 issued by the said Authority to the petitioner will show that the contract was, in fact, successfully completed and the same was extended for a further period of three months. He submitted that neither MSRDC nor the Airport Authority of India have disqualified the petitioner. He invited our attention to the declaration signed by the petitioner which is Annexure-C to the tender document. He submitted that there is no prohibitory or penal action taken by both the entities. He invited our attention to paragraph- 2 of the declaration and submitted that these actions taken by the authorities were not required to be disclosed in the declaration.

4. He further submitted that the newspaper reports placed on record shows that the first respondent is making some kind of inquiry against the third respondent, the so-called successful bidder and, therefore, the third respondent could not have been held to be eligible at all. He submitted that before declaring the petitioner as ineligible, the Municipal Corporation ought to have given an opportunity to the petitioner to offer an explanation and to produce the documents so that the petitioner could have satisfied the Municipal Corporation no disclosure of these actions was required. He submitted that the entire action has been taken at the instance of the third respondent.

5. The learned counsel appearing for the first respondent-Municipal Corporation stated that there is no inquiry which is pending

with the Municipal Corporation as against the third respondent. The learned counsel appearing for the first respondent as well as the third respondent supported the impugned action.

6. We have considered the submissions. We may note here that in this petition under Article 226 of the Constitution of India, we are examining the decision making process adopted by the first respondent. Firstly, we must refer to the declaration-cum-indemnity bond in Annexure-C signed by the petitioner. Paragraph- 2 of the said bond reads thus:

“2. I declare that I Santosh B. Shukla in capacity as Proprietor of Santosh Enterprises has not been charged with any prohibitory and/or penal action such as banning (for specific time or permanent) /de-registration or any other action under the law by any Government and/or Semi Government and/or Government undertaking.”

(Underline supplied)

There cannot be any dispute that MSRDC is the State Government owned Undertaking and the Airport Authority of India can be also said to be a Government or Semi-Government Undertaking. The declaration by the petitioner states that the petitioner has not been charged with any prohibitory action such as banning, de-registration or any other action under the law by any Government and/or Semi-Government and/or Government Undertaking. It is stated in the declaration that the penal action as aforesaid has not been taken against the petitioner by any Government and/or Semi-Government and/or Government Undertaking.

7. As far as MSRDC is concerned, there is a letter dated 9/12th February 2018 issued by the Executive Engineer of MSRDC addressed to

the Deputy Chief Engineer (Traffic) of the first respondent- Mumbai Municipal Corporation. It is specifically stated therein that the contract granted to the petitioner for collection of toll was foreclosed under clause 31 of the contract on 22nd January 2011 due to overcharging, but the petitioner was not blacklisted. Reliance was also sought to be placed on the letter dated 20th January 2011 issued by MSRDC. It quotes clause-31 of the offer document which confers full rights and powers on MSRDC to close the toll collection before expiry of contract period by giving notice of 24 hours. The said letter does not *per se* refer to overcharging. Perusal of the letter dated 9/12th February 2018 shows that the contract was foreclosed on the ground that the petitioner was indulging in overcharging. As can be seen from the judgment of the Criminal Court dated 8th March 2018, the allegation against the petitioner was of overcharging. Paragraph-10 of the said judgment shows that the prosecution could not adduce sufficient evidence to establish the guilt of the petitioner beyond a reasonable doubt. Moreover, action of foreclosure was admittedly challenged by the petitioner firstly by filing a writ petition in this Court and then by filing a Special Leave Petition. The petitioner, admittedly, failed in both actions.

8. The action of foreclosure admittedly taken by MSRDC on the ground of overcharging was not disclosed by the petitioner in the declaration. On plain reading of paragraph- 2 of the declaration cum indemnity bond, the action of foreclosure of the contract on the ground of overcharging will be a prohibitory action taken by the Government Undertaking. The action is taken under the law inasmuch as clause-31 of the concerned tender document/ contract conferred a power on MSRDC to take action of foreclosure on the ground of overcharging. As of today,

the said action of foreclosure has become final as the Special Leave Petition filed by the petitioner has been dismissed. Moreover, the order of acquittal in criminal trial does not affect the action of foreclosure on merits. Secondly, the acquittal is on the ground that the guilt of the petitioner could not be established beyond a reasonable doubt. Therefore, in our view, in view of paragraph- 2 of the declaration-cum-indemnity bond, the petitioner was under an obligation to disclose the action of foreclosure taken by MSRDC and to that extent, the statement made in paragraph- 2 of the declaration signed by the petitioner is certainly an incorrect statement, if not a false statement. Moreover, the petitioner has indulged in suppression of a fact which ought to have been disclosed in the declaration.

9. Now, as far as contract granted by the Airport Authority of India is concerned, the first respondent relied upon the letter dated 16th February 2018 addressed to the Deputy Chief Engineer by the Assistant Manager of the Airport Authority of India which records that there was a termination effected of the contract granted to the petitioner on 21st May 2013 due to complaints regarding overcharging. The petitioner relied upon the letter dated 6th April 2018 addressed to him by the Airports Authority of India wherein it is stated that the said contract was successfully completed up to 31st July 2014 and the contract period was extended by a period of three months, obviously, to enable the Airports Authority of India to make an alternate arrangement. Thus, as far as termination effected by the Airports Authority of India is concerned, the petitioner may have a case. However, as held earlier, the petitioner has indulged in suppression of fact as regards the foreclosure of the contract by MSRDC and, therefore, the statement made in paragraph-2 of the

declaration is completely incorrect. In paragraph-9 of the said declaration, the petitioner has stated that the information disclosed by him is true and correct. He was made aware of the consequences of making incorrect statement. Therefore, we find no fault with the action of the first respondent- Municipal Corporation of issuing a letter dated 16th March 2018 holding the petitioner as disqualified. The said action can be justified on the basis of suppression by the petitioner of the order of foreclosure issued by MSRDC due to overcharging.

10. Thus, it is not possible for us to find any fault in the decision making process adopted by the first respondent as far as the disqualification of the petitioner is concerned. As regards complaints against the third respondent, it is not necessary for us to record a finding of fact inasmuch as we have accepted the contention that the petitioner is disqualified. However, if there is any material placed on record of the first respondent to show that the third respondent has incurred disqualification, the first respondent shall take necessary action in accordance with law as far as third respondent is concerned.

11. Subject to the above observation, we find no merit in this petition and the same is hereby rejected.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)