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

WRIT PETITION NO.296/2018

Chandraprakash Sitaram Sharma
...Versus...
Municipal Council Shegaon, through its Chief Officer having office at Shegaon, Tah. Shegaon, Dist. Buldhana

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

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Shri H.R. Gadhia, Counsel for petitioner
Shri D.M. Kale, Counsel for respondent

CORAM : B.P. DHARMADHIKARI AND ARUN D. UPADHYE, JJ.
DATE : 06/04/2018

1. Heard.

2. Petitioner turned out to be lowest bidder in response to a tender invitation and hence, two agreements for two tender works have been entered into between petitioner and respondent in August, 2017. Accordingly, petitioner was expecting work order and work was to be completed within ninety days.

3. However, on 19/12/2017 by two separate communications, respondent informed him about ineligibility pointing out that instead of demand draft petitioner submitted banker's cheques. Banker's cheques dated 27/7/2017 were also sought to be returned to petitioner. For said works, fresh tenders were invited

4. Being aggrieved by this action, present petition has been filed. On 17/1/2018 this Court issued notice and permitted tender process to continue but then restrained respondent from issuing work order. With the result, till date no work orders are issued after fresh tender process.

5. Learned Counsel for petitioner has invited our attention to clarification issued by his banker, namely, Akola Urban Cooperative Bank Limited, Akola on 5/1/2018. According to him, as said Bank does not have branch at Shegaon, as per its standard practice, a banker's cheque issued by H.D.F.C. or other similar bank has been given to petitioner. To demonstrate that banker's cheque is not different in nature and is same as demand draft, he is relying upon the guidelines issued by Reserve Bank of India, particularly Chapter - III on Payment Instruments in India. He points out that in Clause 3.5, Reserve Bank of India has commented upon nature of demand draft and in Clause 3.6 it explains nature of banker's cheque. He submits that both clauses stand on same pedestal as draft.

6. Learned Counsel for respondent does not dispute this position. He however submits that instructions issued to respondent by State Government in this respect on 12/2/2016 are very clear. As per Clause No.2 thereof the bidder has to submit demand draft only as performance security. When the fact that petitioner did not submit demand drafts and instead banker's cheques were supplied came to notice, the mistake has been corrected.

7. The fact that petitioner is lowest bidder for both works is not in dispute, execution of agreement between parties is also not in dispute. The banker's cheque was accepted initially

and for a period of four months no action was taken by respondent. Thereafter, suddenly realizing the alleged error, the mistake has been corrected.

8. No doubt on 12/2/2016, State Government has obliged the respondent – Municipal Council to seek demand draft only as performance security. The guidelines issued by Reserve Bank of India (supra) clearly show that demand draft and banker's cheque are not different. The banker of petitioner, namely, Akola Urban Cooperative Bank Limited has also indirectly accepted the equivalence by pointing out that at places where it does not have branches, instead of issuing demand draft it is issuing banker's cheques issued by some other bank. The banker's cheque is an obligation undertaken by banker issuing that cheque to pay to addressee the amount unconditionally.

9. In present facts, we therefore do not see any violation of a material condition by petitioner.

10. We therefore quash and set aside the impugned communications dated 19/12/2017 and restore the agreements entered into between parties in August, 2017.

11. Writ petition is thus partly allowed and disposed of. No costs.

JUDGE **JUDGE**

Wadkar