

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

**WRIT PETITION NO. 7474 OF 2019**

M/s. Saudagar Agnecies (Contractor),  
Through its Proprietor,  
Mohd Rafi Mohd Khaja

.. **Petitioner**

**Versus**

The Union of India and others

.. **Respondents**

Mr. V. D. Sapkal, Advocate for Petitioner.

Mr. D. G. Nagode, Standing Counsel for Respondents  
No. 1 and 2.

Miss P. S. Talekar i/b. M/s. Talekar and  
Associates, Advocate for Respondent No. 4.

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

**RESERVED FOR ORDERS ON: 05.07.2019**

**ORDER PRONOUNCED ON: 10.07.2019**

**ORDER (Per S. V. Gangapurwala, J.):**

1. Respondent no. 2 issued tender notice dated 18.04.2019, inviting tender for collection of vehicle entry fees for a period of one year. The petitioner and respondents No. 3 to 5 submitted their tenders. Total five bids were received by respondent no. 2. The technical bids

were opened initially, and thereafter final bid was opened on 14.06.2019. The technical bid of the petitioner was returned on the ground that the petitioner's firm was blacklisted under order dated 17.12.2015 by the Cantonment board.

2. Mr. Sapkal, learned counsel for the petitioner strenuously contends that the respondents ought not to have incorporated different terms and conditions under the tender notice dated 18.04.2019. In fact, earlier tender notice was issued on 15.02.2019 with corrigendum dated 02.03.2019. It was assailed before this Court and this Court directed fresh tender process. The fresh tender process ought to be on same terms and conditions. Clause no. XX, in the fresh tender pursuant to the tender notice dated 18.04.2019 is purposefully incorporated. The learned counsel submits that the petitioner was blacklisted by the Cantonment board vide CBR no. 11 dated 17.12.2015. The said order blacklisting the petitioner was revoked vide CBR no. 11

dated 27.07.2017.

3. Mr. Sapkal, the learned counsel further submits that Resolution dated 17.12.2015, blacklisting the petitioner was without hearing the petitioner and without giving opportunity to the petitioner. The petitioner had submitted application to respondent no. 2 for illegal action. Respondent no. 2 after obtaining opinion from the Advocate of the board had resolved to revoke the decision of blacklisting and the same is revoked.

4. As the Resolution dated 17.12.2015 blacklisting the petitioner is revoked by the Resolution dated 25.07.2017, the original order of blacklisting does not subsist and is nullified. Once there is revocation of resolution blacklisting the petitioner, it means that Resolution is wiped out and the petitioner is not blacklisted. The dictionary meaning of revocation will have to be considered. The word 'revocation'

means abolishment or abrogation i.e. cancellation. The communication is also made to that effect wherein it is communicated to the petitioner that petitioner's blacklisting is revoked.

5. The respondents have illegally rejected the technical bid of the petitioner. Respondent no. 2 would suffer huge loss of Rs.1,10,00,550/- The petitioner firm has quoted an amount of Rs.4,72,72,000/- which is much higher than respondents no. 3 to 5.

6. The learned counsel for respondent no. 2 submits that the fact that the petitioner was blacklisted from 17.12.2015 to 25.07.2017 is a matter of record. As per the tender condition no. XX, the tenderer should not be blacklisted anywhere in India during preceding five years. In view of the said fact, respondent no. 2 has rightly rejected the technical bid of the petitioner. The terms and conditions are incorporated to get genuine tenderers.

7. The learned counsel for respondent no. 2 further submits that the petitioner was blacklisted by passing Resolution no. 11 on 17.12.2015. The petitioner never sought cancellation of his blacklisting. The petitioner only wanted withdrawal of notice dated 16.11.2016. The petitioner is in habit of trying to get contract directly without following tender process. On 29.04.2019, he wrote to respondent no. 2 expressing his readiness to run vehicle entry tax contract on temporary basis.

8. Miss Talekar, learned Advocate for respondent no. 4 submits that the petitioner purposefully quotes unviable rates and thereafter engulfs the parties in litigation. The petitioner having been blacklisted for almost two years is ineligible. His technical bid is rightly rejected.

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

10. The petitioner is disqualified and his technical bid is rejected on the ground that the petitioner was blacklisted in the year - 2015 that was subsequently revoked in the year - 2017. Both the Resolutions, one of blacklisting the petitioner and another Resolution to revoke the decision of blacklisting of the petitioner firm are placed on record.

11. The terminology 'revoke' as per the Oxford English Dictionary means "*end the validity or operation of*". As per Law Lexicon the word 'revoke' means "*to recall or take back or to repeal, to rescind, to cancel*". Revocation means, revocation of an order which is otherwise valid and operative. It includes cancellation of all orders invalid as well as valid. The revocation of blacklisting would operate from the date the blacklisting was revoked.

12. Clause no. XX, of the tender condition reads thus -

*"The tenderer should not be blacklisted anywhere in India in preceding five years."*

The said clause is suggesting that if a tenderer is blacklisted anywhere in India in preceding five years, he would be ineligible to participate in the tender process. The period of blacklisting is not relevant. It is not disputed that the petitioner was blacklisted under Resolution no. 11 dated 17.12.2015 and the said Resolution was in force till 16.08.2017 i.e. the date the Resolution of blacklisting the petitioner firm was revoked. For more than 1 ½ year, the petitioner was blacklisted by respondent no. 2.

13. The purpose of incorporating the condition that a person should not be blacklisted anywhere in India in preceding five years is to get the genuine tenderers who at no point of time in preceding five years are held guilty of indulging in any malpractice or any act unbecoming

of a contractor.

14. The authority inviting the tender certainly will have to be given leverage to exercise the discretion based on subjective satisfaction upon objective assessment as to the genuineness and worthiness of a tenderer. The fact remains that the petitioner was blacklisted and the said decision of blacklisting him was in force for 1 ½ years. Only because subsequently the said decision has been revoked, it cannot be said that the decision of respondent no. 2 not accepting the technical bid on the ground that the petitioner was blacklisted earlier is illegal.

15. In the light of above, we are not inclined to grant any relief to the petitioner.

16. Writ Petition is dismissed. No costs.

**[MANGESH S. PATIL, J.]**

**[S. V. GANGAPURWALA, J.]**

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