

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

WRIT PETITION NO. 11294 OF 2019

M/s Parsewar and Company through
Its Partner Shubham Pravin Parsewar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri R. N. Dhorde, Senior Advocate i/by Shri Vikram S. Kadam,
Advocate for the Petitioner.

Shri P. S. Patil, Addl.G.P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 16TH OCTOBER, 2019.

FINAL ORDER :

. We have heard Mr. R. N. Dhorde, learned senior advocate for the petitioner and Mr. Patil, the learned Additional Government Pleader for respondents.

2. The petitioner was issued with the work order for transportation of food grains. On or about 21.02.2018 agreement was executed for three years. It appears that, FIR was lodged against the petitioner bearing Cr. No. 109/2018 and subsequently charge sheet is submitted. The petitioner was transporting goods inspite of filing of F.I.R. On or about 07.09.2019 the respondent No. 2 terminated the agreement dated 21.02.2018. The petitioner assails the same.

3. Amongst various grounds raised by the learned senior advocate Mr. R. N. Dhorde for the petitioner, one of the ground was that, the Collector passed order on the basis of letter issued by the Secretary. Same was not independent view. Enquiry was conducted by the respondent No. 2 and submitted report denying alleged black marketing of the food grains on behalf of the petitioner. In view of that, no further action could have been taken by the respondent No. 2. The order passed by the respondent No. 2 is under dictation. Same is illegal. The impugned order is also passed without following principles of natural justice. The learned senior advocate took us through various clauses of Government Resolution dated 20th April, 2017, so also terms and conditions of the transport agreement.

4. The learned Additional Government Pleader for respondents submits that, the petitioner has indulged in acts of malfeasance. Illegal activities are carried out by the petitioner for which FIR is lodged and charge sheet is filed by the Central Investigation Department (CID). Even otherwise the petitioner has remedy before the Divisional Commissioner.

5. We have considered the submissions canvassed by the learned senior counsel for the petitioner and the learned Additional Government pleader for respondents.

6. Various factual aspects are required to be considered in the

matter. The authority who has passed the order has to independently assess the facts, circumstances and situation as existing and thereby arrive at a conscious conclusion. It is a matter of record that, F. I. R. has been lodged against the petitioner bearing Cr. No. 109/2018 as is contended by the respondents. The charge sheet is also filed against the petitioner in the said case. The conclusion will have to be drawn by the authorities considering facts and circumstances in the case and stand of the petitioner also.

7. In the light of the above and in the light of the Clause No. 18.1 of the Government Resolution dated 20th April, 2017 relied by both the parties, we direct the petitioner to file an appeal/application before the Divisional Commissioner as provided under Clause 18.1 of the G. R. dated 20.04.2017.

8. The said period of 30 days is already over. We allow the petitioner to file application/appeal before the Divisional Commissioner against the impugned action/order of the respondent within a period of ten (10) days from today. If appeal is filed within a period of ten (10) days from today, the Divisional Commissioner shall consider the same to be filed within the prescribed period of limitation. The Divisional Commissioner shall decide application/appeal filed by the petitioner as provided under Clause 18.1 of the G. R. dated 20.04.2017 on its own merits and considering stand of the petitioner, expeditiously and preferably within a period of six (06) weeks from the date of filing of the

application/appeal by the petitioner. Till the decision is taken by the Divisional Commissioner, interim order passed by this Court shall continue. The Divisional Commissioner shall consider the same without being influenced by the communication given by the State Government or any such authority.

9. With these observations and directions, the writ petition is disposed of. No costs.

[ANIL S. KILOR, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct. 19