

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11159 OF 2018

Shri Gomtesh Medicals through
its proprietor Mr. Shantikumar
Bhausahab Khawate

... Petitioner

V/s.

State of Maharashtra & Ors.

... Respondents

Mr. Pramod Kathane for the Petitioner
Ms. P.N. Diwan, AGP for the Respondent Nos. 1 to 3.

**CORAM : AKIL KURESHI, &
S.J.KATHAWALLA, JJ.**

DATE : 01st AUGUST, 2019

P.C.:

1. The Petitioner has challenged an order dated 27.11.2017 passed by the Hon'ble Minister, Revenue Department, Government of Maharashtra, by which an amount of Rs.15,00,000/- deposited by the Petitioner towards EMD for participation in E-Tender/E-Auction for allotment of block of the river belt for excavating of sand for particular period on the ground that though the such tender was awarded to him, he failed to clear remaining 75% of the committed amount. By the said order, he has also been blacklisted for participating in future for similar tender in the whole State.

2. Learned Counsel for the Petitioner submitted that initially the Petitioner had applied for participation in the E-Auction for which the date fixed for bids was 08.11.2016. On such date, other than the Petitioner, there was no other bidders and therefore, the tender process was cancelled. In the second attempt, the same position obtained and therefore, the Collector re-advertised the tender process and fixed the date of auction as 28.11.2016. On such date, according to the Petitioner's own account, he has participated. The Collector awarded the contract to him. He failed to deposit the remaining 75% amount and therefore, was visited with the above noted two adverse consequences.

3. Learned Counsel for the Petitioner stated under instructions that insofar as the return of EMD is concerned, he does not press the prayer. However, he submitted that the action of blacklisting that Petitioner, that too, for an indefinite period is extremely harsh. The Petitioner was under bonafied belief that after the first auction process which took place on 08.11.2016, he had not participated any further and therefore, there was no obligations on his part to fulfill the tender terms by depositing remaining 75% of the value of the tender. Even otherwise, the action of blacklisting cannot be for an

indefinite period.

4. On the other hand, learned AGP submitted that the Petitioner himself had declared in writing that he had participated in the tender process, bidding for which took place on 28.11.2016. The Collector had therefore, correctly awarded the contract, he being a sole/lowest bidder. As per the tender terms, he was therefore, required to deposit remaining 75% amount within the prescribed time which he failed to do.

5. In view of the fact that the Petitioner has given up challenge to refund of EMD amount of Rs.15,00,000/-, the sole question surviving is with respect of his blacklisting. The material on record would suggest that the Petitioner had responded to the first tender notice and deposited EMD amount of Rs.15,00,000/-. Pursuant to said tender notice, auction was scheduled on 08.11.2016 when on account of only one bidder i.e. the Petitioner, being available, the tender process was cancelled. It appears that even in second and third attempt, similar position prevailed. According to the Petitioner, after the first attempt, he was no longer interested in pursuing the tender. Whatever be the legitimacy of his defence, it cannot be denied that

his default even if one established, was not so serious as to justify blacklisting for indefinite period.

6. It is well settled that though, there are inherent powers of the Government to blacklist the contractor for misdeed or misfeasance, such blacklisting cannot be for indefinite period and that the period of blacklisting must be commensurate with the misfeasance of the contractor.

7. The Petitioner has been blacklisted for nearly two years by now. In our opinion, such period is more than sufficient by way of deterrence. The period of blacklisting is curtailed till date. In other words, the operation of the impugned order insofar as, it relates to the Petitioner's blacklisting, shall come to an end today. The rest of the order is maintained.

8. Writ Petition is disposed of accordingly.

(S. J. KATHAWALLA, J.)

(AKIL KURESHI, J.)