

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

WRIT PETITION NO. 5652 OF 2019

Commodore B.K.Ahluwalia	}	Petitioner
versus		
Union of India and Ors.	}	Respondents

**WITH
WRIT PETITION NO. 6890 OF 2019**

Commodore B.K.Ahluwalia	}	Petitioner
versus		
State of Maharashtra and Ors.	}	Respondents

Mr.Y.C.Naidu for the petitioner.

Mr.P.P.Kakade-Government Pleader with
Mr.B.V.Samant-AGP for State.

Mr.A.R.S.Baxi for respondent nos. 2 to 7.

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.**

DATED :- JUNE 20, 2019

P.C. :-

1. The petitioner before us claims that respondent nos. 2 to 7 are the Maharashtra State Electricity Distribution Company Limited (MSEDCL) and its officials. It is claimed that the 8th respondent to these writ petitions is one of the bidders whose bid appears to have been accepted. The six tenders were issued in the month of March, 2019 inviting bids and offers for providing technical and non-technical outsourced employees for the period

from 1st April, 2019 to 30th September, 2019 at six locations. The argument is that the whole tender process was carried out illegally. The petitioner is a very senior and well decorated retired naval officer running a company, namely, Shagun Guards Security Agency. The petitioner claims that he had participated in the earlier tenders in the past and qualified. The petitioner was awarded the contract. The petitioner has rendered satisfactory services to the MSEDCL. Then, it is claimed that there was an unsuccessful attempt made to challenge the process and in paragraphs 15 to 17, the details of that challenge are set out.

2. Then, it is stated that insofar as the current bids and tender is concerned, there are certain defects and styled as technical defects in the portal. The petitioner says that having been registered as a Micro, Small and Medium Enterprise with the Directorate established to promote them, the petitioner has been making inquiries as to why the bid of the petitioner cannot be considered. The petitioner was making enquiries and now has learnt that the 8th respondent submitted bid in response to all the six tenders though not qualified. The 8th respondent does not have Electrical Contractor Licence and Supervisor Licence. The petitions proceed on the footing that having been successful, the 8th respondent would obtain the work order. The Electrical

Contractor Licence and the Supervisor Licence is thus compulsory.

3. During the course of arguments, when the petitioner was asked as to why these writ petitions have been filed and to preempt the whole process, the only argument is that now the field is not level playing. Now, the petitioner and the contractors like him, who have complied with all the conditions, would be pushed out and it is the 8th respondent whose bid would be accepted though the same is not technically qualified. At the same time, it is stated that the Superintending Engineer has orally requested the petitioner to continue to provide services in terms of the earlier work order in favour of the petitioner. The petitioner has not left the site though the term is over. That is simply because the petitioner feels that this is a public utility and services to a public utility, if disrupted, would inconvenience the general public. It is in these circumstances that the writ petition is filed.

4. We do not think that we should entertain these petitions at this stage. Firstly, whether such conditions as are highlighted before us are indeed mandatory and cannot be complied with substantially is an issue which need not be gone into and at the instance of the present petitioner, at this stage. The petitions

proceed on the footing that no work order will be issued to the petitioner and the work order will be issued only in favour of respondent no.8. We have no reason to assume this and at this stage. If the petitioner gets completely thrown out of the process and the 8th respondent is held to be qualified to be awarded the contract, then, the petitioner can raise appropriate grievances and with regard to violation of the contractual rights. It is well settled that in every contract executed even by public utility companies or Government, it is not necessary that public law remedies should be allowed to be pursued. Everything depends upon the facts and circumstances of each case. The writ petitions are filed only to perpetuate the stay of the petitioner and we do not think that the petitioner is obliged to continue if the term prescribed in favour of the petitioner under the earlier work order has come to an end. In any event, the petitioner has to adjust his contractual rights and it is entirely for the petitioner to decide whether to continue to deploy his men and also invest his moneys in the performance of the contractual work after the period has come to an end. We do not think that by such continuation, the petitioner derives rights straight away. The petitioner will have to establish all the allegations and prove them by leading evidence, particularly that he was orally informed to continue the work and has suffered a loss at the hands of this

public company and officials. Further, the petitioner can also question the whole process after it is complete.

5. We do not think that at this stage we should entertain these petitions. They are dismissed. There would be no order as to costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)