

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11808 OF 2018**

Anand Eknath Kakad
Versus
Union of India & Anr.

...Petitioner

...Respondents

Mr. Anil Mardikar, Sr. Advocate a/w Mr. Kunal Nallamwar I/b Mr. Amey Deshpande for the Petitioner

Mr. Chirag Mody a/w Mr. Sunil Gangan I/b RMG Law Associates for the Respondent No. 2

**CORAM : B. P. DHARMADHIKARI &
REVATI MOHITE DERE, JJ.
WEDNESDAY, 20th FEBRUARY 2019**

P.C. :

1 Heard Mr. Anil Mardikar, learned senior Advocate for petitioner and Mr. Chirag Mody for respondent No. 2.

2 Contention of petitioner is, ignoring specific defence that there was no short delivery of products and seals were all intact, the high-handed action has been taken and the agency allotted to the petitioner has been terminated. Our attention has been invited to

show-cause notice and also other documents to urge that clause 56 of agreement under which action has been initiated, is not applicable at all.

3 Counsel appearing for respondent No. 2 relies upon the report received from OEM (Original Equipments Manufacturer) to submit that findings therein clearly show tampering with motherboard.

4 Submission is, there could not have been any such unauthorised alteration. The fact that electronic census were compromised by soldering and the jumper wire was also sealed, is also pressed into service.

5 The proceedings on the basis of which action has been taken are conducted on 28th June 2017. In earlier panchnama conducted on 6th June 2017 and then on 25th June 2017, there is no finding that any of the dispensing units delivered short product. The test report also indicates the same. Petitioner then had pointed out that all seals were intact and therefore material hidden beneath those seals

is not accessible and was not being controlled by him. Even in reply to show cause notice, petitioner has raised this defence specifically.

6 The impugned order dated 9th October 2018 runs into almost 19 pages. Most of it reproduces only submissions of rival parties and only mentions contents of documents. There is no effort to appreciate it and show its impact on decision making process.

7 It appears that petitioner had demanded certain documents and that prayer finds mention in the impugned order. It has not been considered later on. Submission of petitioner that seals were intact and no short delivery was found, is again lost sight of. The only conclusion is in last 3rd para, where it is recorded that incident of tampering was widely published in media and has tarnished the good name and image of Corporation in the mind of general public.

8 If soldering or jumper wire beneath the seal existed, *prima facie*, it appears that petitioner could not have been held responsible for the same. If all these gadgets were sealed, incidents of

short delivery could have been noticed but there is no such finding anywhere.

9 We, therefore, find substance in contention of learned senior advocate that impugned order does not indicate any application of mind. It only reproduces submissions of department, defence of petitioner and then lastly points out the adverse effect on the image of Corporation as mentioned (supra).

10 We, therefore, quash and set-aside said order dated 9th October 2018.

11 We direct respondents to provide opportunity of hearing to petitioner. The documents demanded by petitioner shall be supplied to him within two weeks from today and thereafter, petitioner shall be given opportunity of hearing within further period of two weeks. Fresh order in accordance with law shall then be passed within next six weeks.

12 The petitioner insists for restoration of the allotment order and agency by quashing the order of cancellation. However, taking overall view of the matter, we are not inclined to grant that request at this stage.

13 With these directions, we partially allow writ petition.
No costs.

REVATI MOHITE DERE, J.

B. P. DHARMADHIKARI, J.