

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5800 OF 2020

Shaikh Azhar S/o Fakirpasha Shaikh

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr H.V. Tungar, Advocate for Petitioner

Mr P.S. Patil, Addl. G.P. for Respondent Nos. 1 and 3

Mr S.T. Yasin, Advocate for Respondent No. 2

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 28th OCTOBER, 2020

PER COURT :

1. Mr Tungar, the learned Counsel for the petitioner submits that the petitioner is an educated unemployed/Engineer. The learned Counsel referring to the Government Resolution dated 24.04.2015 submits that it is mandatory to reserve 33 % work out of the total works for unemployed educated Engineer. The petitioner for more than 10 years, is an educated unemployed person – Class-IV. He has registered himself with the Public Works Department of the Government of Maharashtra and certificate has been issued to him of “Unemployed Engineer Registration Certificate”. The same is valid up to the year 2027. On or about 13.07.2020, the respondent No. 2 issued E-Tender for various works of construction of cement concrete road, construction of drainage, etc. In all, 21 number of works have been proposed in the E-Tender. Out of 21 works, 14 numbers of

works are below Rs. 15,00,000/- The learned Counsel submits that in the said E-Tender, reservation is not provided for the work to be allotted to the educated unemployed Engineer. The E-Tender is issued combining different work in the single tender. For unemployed educated engineer, the EPF is not applicable but still the same is made mandatory in the E-Tender notice. The objection has been raised by the Association of Contractors on 25.07.2020 that E-Tender published, is contrary to the policy of the State Government. The petitioner has also filed representation that 33% reservation is not provided to the educated unemployed Engineers as per the Government Resolution dated 24.04.2015.

2. The petitioner has filed regular civil suit before the Civil Court challenging E-Tender. The plaint was returned back on the ground that the Court has no jurisdiction. The learned Counsel submits that E-Tender notice dated 13.7.2020 being contrary to the Government policy and the Government Resolution dated 24.04.2015, deserves to be quashed and set aside.

3. The learned Counsel further submits that under the Government Resolution dated 24.04.2015, if the policy is not adhered to, then even, criminal action is also contemplated against the officers. The learned Counsel submits that at the relevant time, when the tender was floated, the petitioner was never in employment. He was appointed on contract basis for a short period and he was relieved from the service on or about 13.02.2019. The learned Counsel further submits that the

contention of the petitioner is that in subsequent tender, the petitioner did not participate in the tender process is because the present writ petition was pending. The subsequent tender was issued for a small amount and the respondents are trying to wriggle out of the illegality committed by them.

4. We have heard the learned Additional Government Pleader.

5. The policy of the State Government provides for reserving 33 % of the work with the Public Works Department to educated unemployed Engineer. The Respondent/Municipal Council in its affidavit has not disputed about the Government policy reserving 33% work for unemployed educated Engineer. It appears from the affidavit that the Municipal Council wants to suggest that 33% work is to be reserved in one financial year and not in one tender. The affidavit has been filed thereby assuring the Court that the Municipal Council will ensure that 33% of the works are reserved for educated unemployed Engineer in financial year 2020-2021. The said statement is made in para 10 of the affidavit.

6. It appears that subsequently, the tender has been issued by the Respondent/Municipal Council reserving the work for educated unemployed Engineer. The petitioner did not participate in the said tender process. If the petitioner was so much concerned about the work not allotted to educated unemployed Engineer, the petitioner ought to have participated in the said tender process. It appears that the petitioner on his own volition did not participate in the said tender process. On one hand, when the tender is floated reserving the work for educated

unemployed Engineer, the petitioner does not participate in the tender process and on the other hand, makes grievance in respect of the tender that there is no work reserved for the educated unemployed Engineer. Such conduct of the petitioner would disentitle the petitioner from equitable relief of this Court. It also appears that after the petitioner was issued with the certificate of educated unemployed Engineer, registration certificate from Public Works Department, he had joined employment on contract basis with Municipal Council, Renapur, Dist. Latur. As per the rejoinder filed by him, he was relieved on 13.02.2019. The said factum ought to have been disclosed in the writ petition by the present petitioner.

7. Be that as it may, considering the statement made in the affidavit by respondent-Municipal Council that it would reserve 33% of the work to the educated unemployed Engineer for the financial year 2020-2021, and the conduct of the petitioner in not participating in the tender process subsequently when the same was meant for unemployed educated Engineer. We do not consider it appropriate to pass further orders.

8. The respondent/Municipal Council shall abide by its affidavit, more particularly, statement made in para 10 of the affidavit that 33% of the work for the financial year 2020-2021 would be reserved for educated unemployed Engineer.

9. The writ petition is accordingly disposed of. No costs.

[SHRIKANT D. KULKARNI, J.]

[S.V. GANGAPURWALA, J.]