

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

WRIT PETITION NO. 6444 OF 2020

1. M/s Mascot Construction Co.
A partnership firm through its managing
Partner Mr. Khaja Aminuddin
Age 63 years, having his office at
H. No. 1-27-45, New Road,
Manzoorpura, Aurangabad ... **Petitioner**

VERSUS

1. Maharashtra Industrial Development
Corporation, Through The Chief Engineer,
MIDC, Udyog Shakti Building,
Railway Station Road, Aurangabad
2. The Chief Executive Officer of
Maharashtra Industrial Development
Corporation **Head Office** at "Udyog Sarath",
Marol Indl. Area, Mahakali Caves Road,
Andheri (East)
Mumbai - 400 093
Principal Office at 4, 4(A), 12th Floor,
World Trade Centre, Complex - 1,
Cuffe Parade, Mumbai - 400 005 ... **Respondents**

...

Mr. Amit A. Yadkikar, Advocate for Petitioner
Mr. S. S. Dande, Advocate for Respondents No. 1
and 2.

...

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

**CLOSED FOR JUDGMENT ON: 16.10.2020
JUDGMENT PRONOUNCED ON: 23.10.2020**

JUDGMENT (*Per S. V. Gangapurwala, J.*):

1. The petitioner seeks directions against the respondent to consider the tender bid submitted by the petitioner in respect of e-tender notice no. 7/1 for DG – WALUJ INDUSTRIAL AREA...Strengthening and asphaltting of internal roads in A,B,C,D and K,M,L Block in Waluj Industrial Area -- 2nd Call.

2. The bid of the petitioner is not considered.

3. We have heard Mr. Yadkikar, learned Counsel for the petitioner and Mr. Dande, learned Counsel for the respondents.

4. The ground for not considering the tender bid of the petitioner is that the petitioner is banned for one year from participating in the tender of MIDC under order / Circular dated 27.08.2020.

5. For the tender in question, earlier tender was floated by the respondent bearing tender notice no. 19/1 DG – WALUJ INDUSTRIAL AREA...Waluj Industrial Area...Strengthening and asphaltting of internal roads in A,B,C,D,and K,M,L Block in Waluj

Industrial Area. The petitioner was the lowest bidder. The petitioner failed to deposit the performance security deposit. Because of the non-feasance on the part of the petitioner the respondent is required to float fresh tender. The work was delayed because of the default on the part of the petitioner in depositing the additional performance security. On the date the bids were invited for the present tender the petitioner was disqualified having been banned from participating. The tender process is also concluded. The final bids are also opened and lowest bidder also appears to have been earmarked. The entire tender process has already concluded. We have set aside the order passed by the respondent dated 27.08.2020 banning the petitioner from participating in the tender of MIDC in Writ Petition No. 6096 of 2020 by a separate order today.

6. In view of that, in normal course, we would have allowed the prayer of the petitioner in the instant writ petition.

7. The following facts and circumstances do not persuade us to allow the prayer of the petitioner.

8. On the date instant tender was floated the petitioner was banned. The whole tender process is now concluded i.e. the technical and financial bids are opened, the lowest bidder has also been earmarked. The work has prolonged because of the default of the petitioner in the earlier tender process for the same work. It is because of the default of the petitioner the instant tender process has to be undertaken. In equity, we are not inclined to exercise our writ jurisdiction in favour of the petitioner.

9. In light of that, writ petition stands disposed of. No costs.

[SHRIKANT D. KULKARNI, J.]

[S. V. GANGAPURWALA, J.]

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