

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

WRIT PETITION NO. 3021 OF 2021

Abdul Rasheed Transport Contractor
Through its Partner
Shaikh Ubaid Shaikh Hameed .. Petitioner

Versus

The Chief Managing Director,
Rashtriya Chemicals and Fertilizers
Ltd. and others .. Respondents

Shri Aditya N. Sikchi, Advocate for the Petitioner.
Shri Ashish T. Jadhavar along with Vyas and Bhalwal Advocates
and Solicitors for the Respondent No. 3.
The Respondent Nos. 1 and 2 are served.

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.
DATE : 17TH AUGUST, 2021.**

FINAL ORDER :

. Mr. Sikchi, the learned counsel for the petitioner submits that, the petitioner at no material point of time entered into contract with the present respondents for work of handling and transport contract at Jalna rake point for eighteen months as per tender notice published on 04.11.2019. The petitioner is a partnership firm of eight partners. It had never filled in the tender pursuant to the tender notice for the Parbhani rake point to be executed from 14.02.2018 to 13.05.2019. As the petitioner partnership firm had never participated in the tender process for Parbhani rake point, the petitioner cannot be made liable for non

submission of transportation bills and payment of G.S.T. The respondents probably are confusing with the trade name of another firm owned by Abdul Majid Abdul Rasheed, who is running a proprietary firm in the name of M/s Abdul Rasheed Transport Contractor at Parbhani. The petitioner partnership firm is registered at Nanded.

2. Mr. Jadhavar, the learned counsel for the respondent No. 3 submits that, petitioner's tender form for Jalna centre was rejected, as the petitioner was placed on holiday list. The petitioner firm committed default in payment of transportation bills and non payment of G.S.T. The learned counsel submits that, the period of placing the petitioner on holiday list is also over in the month of May 2021. As the petitioner was a defaulter, the action is rightly taken. Though the petitioner was placed on holiday list, the petitioner was permitted to participate in the public sector and Government tenders.

3. We have considered the submissions canvassed by the learned counsel for respective parties.

4. In the present case, during the course of hearing, the petitioner has placed on record documents of one another proprietary firm named and styled as Abdul Rasheed Transport Contractor of whose proprietor is shown as Abdul Majeed Abdul Rasheed. The present petitioner is a partnership firm namely M/s Abdul Rasheed Transport Contractor of eight partners and one of the partners of the present partnership firm is also Abdul

Majeed Abdul Rasheed, who is running same business in the same name as that of the partnership, but as a proprietary concern. We fail to understand, how the partnership firm can allow one of its partners to carry out same business in the same trade name of the partnership firm. The petitioner partnership firm has area of operation throughout Maharashtra as per the partnership deed. One of the partner is independently running business in the same trade name as the petitioner partnership with the consent of the petitioner and/or under connivance of all the partners of the partnership firm.

5. Carrying out similar business by one of the partners in the same trade name, certainly, would create a confusion with the others. The proprietary firm commits a default and the person who has committed default as a proprietor is operating as a partner of the firm with the same trade name. The same smacks of dubious transactions. It is for the petitioner to put the record straight and instruct its partners of not carrying on independent business with same trade name of the petitioner partnership firm. One of the partner of the partnership firm carrying on same independent business as proprietary with same trade name of the partnership does not augur well in the partnership firm.

6. Affidavit is filed stating that, there was default of firm M/s Abdul Rasheed Transport Contractor for its business at Parbhani with the respondents. It could not be shown that partnership firm had entered into the contract for the work at Parbhani. In the light of that, it does not appear that the petitioner

partnership firm to have been placed on holiday list. As such the order placing the petitioner on holiday list though may have been passed bonafidely because of the confusion with the trade name, the same could not have been passed against the petitioner. The same is set aside.

7. The petitioner at the same time is required to take appropriate steps, because if one of the partners of the partnership firm carries similar independent business and is a defaulter then, the third party would be justified in not reposing confidence on such partnership firm for entering into contract.

8. The writ petition is disposed of.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

bsb/Aug. 21