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

PUBLIC INTEREST LITIGATION NO.64 OF 2021

SHALIGRAM G. MISHRA

.. PETITIONER

VS.

OIL AND NATURAL GAS CORPORATION
AND ORS.

.. RESPONDENTS

Mr. Shaligram Mishra, petitioner in person.

Mr. Naushad Engineer a/w. Mr. Anagh Pradhan and Mr.
Anand Iyer i/b. Divya Shah Associates for respondent nos.1,
3 to 9.

Mr. Ashutogsh R. Gole for respondent no.10.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: DECEMBER 13, 2021

P.C. :

1. This Public Interest Litigation (hereafter "PIL", for short) is at the instance of a retired employee of Oil & Natural Gas Commission Ltd. (ONGC), respondent no.1. His challenge is directed against the tendering procedures adopted by the respondent no. 1 and more particularly to Tender No. P460C20013. According to the pleaded case of the petitioner, in course of the process following the said tender, a bidder, namely M/s. Armed Security Guards and Labour Services (hereafter "ASGLS", for short), was illegally excluded and the contract awarded to M/s. Polydrill Engg. Pvt. Ltd., respondent no.2. Accordingly, it is prayed that the

decision taken by the respondent no. 2 (sic, respondent no.1) may be called for and quashed and set aside, the respondents "3 to 4" may be directed to review the tendering procedures and to qualify ASGLS or to re-invite the tender after due modifications, as well as for directions on the respondent no.1 to formulate standard and model SOP(s) for determination of Bid Evaluation Criteria.

2. We noticed from an order dated September 13, 2021 passed by a co-ordinate Bench on this PIL that the petitioner was required deposit an amount of Rs.1,00,000/- (Rupees one lakh only) as security. Having read the contents of this PIL, we had formed a *prima facie* view that it was without substance; thus, at the inception, we gave an option to the petitioner to withdraw the PIL without much argument and in such case, we would direct return of Rs.1,00,000/- (Rupees one lakh only) deposited by him as security. The petitioner, appearing in person, having expressed that he wished to have a decision on the merits of the PIL, we proceeded to hear him.

3. Objection to the maintainability of this PIL is raised at the outset by Mr. Engineer, learned advocate appearing for the respondent nos. 1, and 3 to 9 (officials of the respondent no.1). According to him, the petitioner while in service of the respondent no.1 was proceeded against in 18 (eighteen) disciplinary proceedings and punishments of varying nature were imposed. This PIL is, thus, plainly intended to harass the respondent no.1. It is further

brought to our notice by him that ASGLS upon being disqualified to participate in the tender process had challenged such disqualification by instituting Writ Petition (L) No. 10863 of 2021 before this Court; and that a co-ordinate Bench, by a reasoned judgment and order dated May 20, 2021, spurned the challenge and dismissed such petition holding that the criteria set forth in the notice inviting tender for each bidder to fulfill for enabling participation in the process could not be re-written by the Court. ASGLS having failed to meet the laid down criteria, was rightly disqualified. It is also submitted by Mr. Engineer that such judgment and order, to the best of knowledge and belief of the respondent no.1, has not been carried further in appeal and, therefore, must be deemed to have attained finality.

4. The contention of Mr. Engineer based on such judgment and order is that this PIL has not been instituted *bona fide*. ASGLS having failed to obtain any relief from the Court, which dismissed Writ Petition (L) No. 10863 of 2021 on May 20, 2021, this PIL has been instituted on July 9, 2021 claiming more or less the same relief that was prayed for by ASGLS and declined by the co-ordinate Bench while dismissing the said writ petition; and the possibility of the petitioner being set up by ASGLS cannot be ruled out.

5. Having heard Mr. Engineer on the objection, we called upon the petitioner to argue. The allegation levelled by the petitioner is that the officers of the respondent no.1 are

corrupt and that the terms and conditions of tenders are tailor made to suit a chosen few bidders who only can participate and not the others. In such way, public money is being siphoned off by such officers. Such siphoning off needs to be arrested and the petitioner being left with no remedy took recourse to this PIL and seeks the intervention of this Court to set things right.

6. We have heard the petitioner as well as Mr. Engineer. There can be no doubt that at least on this PIL, it is not necessary for us to examine the petitioner's allegation of corrupt public officials engaging in siphoning off public money.

7. Having regard to the facts noticed above in regard to the institution of an independent writ petition by a disqualified bidder, i.e., ASGLS, and dismissal of the same by the judgment and order dated May 20, 2021, the petitioner cannot urge that the issue relating to Bid Evaluation Criteria, which is no longer *res integra*, has to be reopened by us on the basis of his allegations. We agree with the co-ordinate Bench that it is not for the writ Court to re-write the terms of the notice inviting tenders and, therefore, any relief claimed by the petitioner with reference to such tender has to be regarded as a closed matter. Significantly, we are not exercising the jurisdiction to sit in appeal over the previous decision and to take a contrary view. The issue relating to award of contract in favour of the respondent no.2 and exclusion of ASGLS having attained

finality, this PIL is thoroughly misconceived and deserves to be rejected. It is ordered accordingly.

8. The security amount of Rs.1,00,000/- (Rupees one lakh only) deposited by the petitioner stands forfeited. Registry shall take steps to transmit the said amount in favour of **Children Aid Soc Donation, Bank Account No.02370100005612, UCO Bank, Matunga Mumbai Branch (IFSC Code: UCBA0000237).**

(M.S. KARNIK, J.)

(CHIEF JUSTICE)