

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1984/2020

PETITIONERS :

1. Divi Works & Suppliers, Hindu Undivided Family, through its manager, Vikeshkumar Trambaklal Sonchhatra, Aged about 42 years, Occu : Contractor, At Hotel Rainbow Building, Shri Talkies Road, Near Shreeji Lawns, Deshbandhu Ward, Gondia – 441601.
2. Vikeshkumar Trambaklal Sonchhatra, Aged about 42 years, Occ : Contractor, At Hotel Rainbow Building, Shri Talkies Road, Near Shreeji Lawns, Deshbandhu Ward, Gondia – 441601.

...VERSUS...

RESPONDENTS :

1. State of Maharashtra, through its Secretary, Urban Development, Department, Mantralaya, Mumbai – 32.
2. Municipal Council, Gondia, through its Chief Officer.
3. President, Municipal Council, Gondia.
4. Collector, Gondia.

Mr. R.L. Khapre, Senior Advocate with Mr. A.S. Shukla, Advocate
for petitioners
Mr. A.M. Deshpande, Addl. G.P for respondent nos.1 and 4
Mr. G.G. Bade, Advocate for respondent no.2

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATE : 05/01/2021

ORAL JUDGMENT (PER : AVINASH G. GHAROTE, J.)

1. Leave to amend prayer clause (1) and (2) by correcting the months in respect of the date of Annexure – 13 is granted. Amendment be carried out forthwith.

2. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

3. The petition challenges the communication dated 7/7/2020, whereby the work order dated 7/2/2020, issued in favour of the petitioner no.1 has been cancelled and so also the previous communication *inter se* between the respondent nos.2 and 3 dated 18/5/2020, on the basis of which the letter of cancellation dated 7/7/2020 has been issued.

4. It is an admitted position on record that in an e-tender floated by the respondent no.1 for supply of benches and desks for Z.P schools run by the respondent no.2, offer of the petitioner no.1 being the lowest, was accepted and an agreement came to be executed between the petitioner no.1 and the respondent no.2 on

20/1/2020. Thereafter, a work order was also issued in favour of the petitioner no.1 on 7/2/2020. Under the terms of the work order, the supply was to be made within a period of six months.

5. The petitioner thereafter, procured the material under the contract and expected to deliver the same by 6/8/2020, on which date the period of six months expired. The petitioner, however, orally received an information that on 7/7/2020 the President of the respondent no.2, had directed that the supply order be cancelled. The petitioner, by his communication, dated 9/7/2020, brought to the notice of the respondent no.2 that the period for supply was eight months from 7/2/2020, which was yet to expire, and neither was he given any prior notice nor any opportunity of being heard before the cancellation. A request, therefore, was made to recall the decision. By a communication dated 14/7/2020, the petitioner informed the respondent no.2 that the entire quantity of the work order was ready for delivery and therefore the date and place for delivery of the same be communicated. In the meantime, the petitioner had received the impugned communication dated 7/7/2020, cancelling the order, which referred to a communication

by the President of the respondent no.2 dated 18/5/2020, to the effect that since due to lockdown there was no income to the respondent no.2, no purchases should be made and no proposals for the same should also be forwarded. Since there was no response to the communication dated 14/7/2020, the petitioners have approached this Court by the present petition.

6. Mr. Khapre, learned Senior Counsel for the petitioners contends that the imposition of the lockdown, could not be a reason for cancellation of the order, already placed with the petitioner no.1, for which the entire material was already procured and ready for delivery. He submits that the action of cancellation is not only violative of the principles of natural justice, as no opportunity prior to its cancellation was granted, but the action was illegal also for the reason that the law did not permit a unilateral cancellation for the reasons given.

7. Mr. Bade, learned Counsel for the respondent no.2 does not dispute that the period for supply of the material as per the work order dated 7/2/2020 was six months, which would expire on

6/8/2020. It is further not disputed that there are no interim stages for supply of the material by the petitioner. That being the position, the respondent no.2, could not have terminated the contract, before its expiry for the reason given. The communication dated 18/5/2020, is issued by the respondent no.3, however, it does not indicate that it has been issued in pursuance to any resolution passed by the general body of the respondent no.2, which in fact had resolved by Resolution No.29, dated 12/12/2018 to make the procurement allotted to the petitioner no.1, by way of calling of bids in pursuance to an e-tender, being floated in that regard. Thus, the respondent no.3, could not have, in his capacity as a President of the Municipal Council, overturned the decision of the general body of the Municipal Council and the acceptance of the offer of the petitioner, which was made in the meeting of the Standing Committee dated 23/12/2019 vide Resolution No.10. The communication dated 18/5/2020, in light of the above, therefore would not be applicable to the petitioner no.1.

8. Considering the above position, the action on the part of the respondent nos.2 and 3 in cancelling the work order dated

7/2/2020, by the communication dated 7/7/2020 cannot be sustained. The letter dated 7/7/2020 therefore is hereby quashed and set aside. The petitioner no.1 is entitled to make the supply in pursuance of the work order dated 7/2/2020, to the respondent no.2, consequent to which it will be entitled to the payments as per the terms of the work order.

Rule is made absolute in the aforesaid terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE, J.)

Wadkar

Shailendra
Wadkar

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by Shailendra
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