

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO.2300/2021

Wardha Zilla Contractor Kalyan Samiti,
through its President, Kishor Manikchandra
Mitakri, Occ. Contractor, R/o Krushna Nagar,
Bachelor Road, Wardha, Dist. Wardha.

..Petitioner.

..Vs..

1. State of Maharashtra,
through its Secretary, Department of
Public Works, Mantralaya, Mumbai - 32.
2. Chief Executive Officer, Zilla Parishad,
Wardha, Dist. Wardha.
3. Executive Engineer, Works Department,
Zilla Parishad, Wardha.

..Respondents.

Mr. Tejas A. Kene, Advocate for the petitioner.
Mr. A. A. Madiwale, A.G.P for respondent No.1.
Mr. Naresh M. Kolhe, Advocate for respondent Nos.2 and 3.

CORAM :- SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.
DATED :- 9.9.2021.

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

Heard Mr. Tejas A. Kene, Advocate for the petitioner, Mr. A. A. Madiwale, A.G.P for respondent No.1 and Mr. Naresh M. Kolhe, Advocate for respondent Nos.2 and 3. **Rule.** Rule is made returnable forthwith. Heard finally by consent.

2. The only dispute involved in this petition is that whether the petitioner which is an association of petty civil contractors engaged in

the business of construction of roads and tarring of roads right in saying that the condition No.3 of the tender document prescribing the limit of 60 kilometers for situation of hot-mix plant from the place of the work is inconsistent with the Government Resolution dated 24th August, 2018 or not.

3. Learned counsel for the petitioner submits that the condition No.3 is inconsistent with the Government Resolution dated 24th August, 2018 while the learned counsel for respondent Nos.2 and 3 submits that it is not only in line with the Government Resolution dated 24th August, 2018 but also in pursuance of the Government Resolution dated 21st January, 2008. It is the submission of learned counsel for respondent Nos.2 and 3 that tarring of road by using bitumen requires availability of mixture of bitumen and gravel or metal having certain degree of temperature and that is why this mixture is produced by using hot-mix plant. He further submits that as per Government Resolution dated 24th August, 2018, for petty contractors condition of having their own hot-mix plant should not be made mandatory and in the present case, it is not made mandatory. He further submits that the Government Resolution dated 24th August, 2008 prescribes that whenever a facility of availing of service of hot-mix plant belonging to some other contractor and which is situated away from the place of the work is allowed to be used by the

petty contractor, it should be ensured by the employer of the contractor that the temperature of the hot-mix produced by using hot-mix plant is not lowered down during the transit period. This Government Resolution, he further submits, gives discretion to the employer of the contractor to stipulate the distance within which the hot-mix plant may be situated so that the hot-mix material which is to be used for laying bitumen surface is not compromised on quality in terms of its temperature. Therefore, according to him, there is no substance in the petition.

4. On going through the Government Resolution dated 24th August, 2018 and also the Government Resolution dated 21st January, 2008, we find that there is great substance in the submissions of learned counsel for respondent Nos.2 and 3 and there is no substance in the submissions of learned counsel for the petitioner.

5. The Government Resolution dated 24th August, 2018 lays down that in case of petty contractors who are to be awarded work valued at less than ₹ 50,000,00/- the condition of these contractors having own hot-mix plant should not be insisted upon and that means these contractors could be permitted to use hot-mix plant which are situated at some distance from the place of work and which may be belonging to some other persons. But, given the nature of material which is

required to be employed for laying of bitumen surface over the roads, there can be no compromise with temperature of the hot-mixture which is to be laid over the road. Maintenance of certain degree of such hot-mixture would be possible only when the hot-mixture produced at a different place is brought to the place of work within such time as would not result in great loss of temperature. This is the reason why the Government Resolution dated 21st January, 2008 insists upon situation of hot-mix plant not beyond certain distance, which limit is to be fixed, depending upon the facts and circumstances of the each case, by the employer of the contractor. Using this discretion conferred upon respondent Nos.2 and 3 by the Government Resolution dated 21st January, 2008 the impugned condition has been prescribed in the tender notice and having regard to the rationale of the condition, we find that the condition is not arbitrary, not unreasonable and not restrictive of the fundamental right of the members of the petitioner association to carry on their occupation. The petition being devoid of merit, stands **dismissed**. Rule is discharged. No costs.

JUDGE

JUDGE