

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

WRIT PETITION NO.5858/2019

M/s.Krushna Kumar Gokulchand through its partner Mr.Anil Kumar G.Sharma
Vs.

State of Maharashtra, through its Secretary Department of Food, Civil Supplies &
Consumer Protection, Mantralaya, Mumbai and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.S.Kaptan, Senior Advocate with Shri Rohit Joshi, Advocate for petitioner
Shri S. P. Dharmadhikari, Senior Advocate with Mrs. Sangeeta Jachak, Assistant
Government Pleader for respondent nos. 1 to 4.
Shri S.M.Vaishnav, Advocate for respondent no.5.

CORAM :- A.S.CHANDURKAR AND G.A.SANAP, JJ.
DATED :- AUGUST 13, 2021.

In this writ petition filed under Article 226 of the Constitution of India on 13.08.2019, the petitioner which is a partnership firm through its partner which is in the business of transportation has prayed for allotment of transportation work to it pursuant to the tender notice dated 02.02.2016. It is the case of the petitioner that it had submitted its bid pursuant to the said tender notice but since that bid was submitted without Earnest Money Deposit (EMD) the same was not considered by the Authorities. The petitioner had filed Writ Petition No.2202/2016 seeking the relief of mandamus for consideration of its bid without EMD as under the earlier tender process, the amount of EMD was lying with the respondents. In the meantime, the petitioner's bid was rejected on 06.04.2016 and subsequently the work was allotted to the respondent no.5 herein. The petitioner raised an issue as to the eligibility of the respondent no.5 for being allotted the said work. On 23.08.2016 Writ Petition Nos. 2202/2016 and 4663/2016 were decided by this Court after recording a finding that the contention of the petitioner that the present respondent no.5 was not eligible for being allotted the work was without substance. It was however found that the petitioner was

entitled to participate in the financial bid and hence the Authorities were directed to open the financial bid of the petitioner.

2. The bid of the respondent no.5 being found the lowest, the work was allotted to it and agreement dated 21.09.2016 allotting the work of transportation of foodgrains for a period of three years from 23.09.2016 to 22.09.2019 was allotted to it. It is the case of the petitioner firm that the respondent no.5 succeeded in getting the work allotted to it despite the fact that it was not eligible on various counts. It therefore made various representations and ultimately on 04.06.2019 the respondent no.1 proceeded to cancel the contract that was awarded to the respondent no.5. The respondent no.5 in turn sought to challenge this action by filing Writ Petition No. 4109/2019 but the said writ petition was dismissed on 14.06.2019.

In the aforesaid backdrop the petitioner on 03.07.2019 issued a communication to the concerned respondents expressing readiness to execute the work under the said tender notice being the only eligible bidder left after cancellation of the contract awarded to the respondent no.5. During the pendency of the present proceedings, a fresh tender notice was issued. Some of the terms in that tender notice were challenged by various interested persons and prospective bidders. On 28.06.2021 Writ Petition No.750/2021 with connected writ petitions were decided at the Principal Seat and the said writ petitions were dismissed. This order was also upheld by the Hon'ble Supreme Court. By amending the writ petition, the petitioner has sought a declaration that it being the only eligible bidder under the tender notice dated 02.02.2016, it be declared that the petitioner was wrongly deprived of executing the work under the said tender notice in the light of the fact that the respondent no.5 was never eligible for being considered under the said tender notice.

3. Shri C.S.Kaptan, learned Senior Advocate for the petitioner

submitted that it was an admitted position on record that the respondent no.5 since inception was not eligible to submit its bid pursuant to the tender notice dated 02.02.2016 and despite that the work under the said tender was allotted to it being the lowest bidder. However that contract came to be subsequently cancelled by the respondent no.1 on 04.06.2019. This fortified the stand of the petitioner which was taken since beginning that the respondent no.5 was not eligible to submit its bid. Since the respondent no.5 has now been found ineligible and was not permitted to complete the contract by virtue of cancellation the same, the petitioner being the only other eligible bidder in the fray it is entitled for a declaration to that effect. Referring to the adjudication of the objections raised by the petitioner and the notes prepared by the Office of the Collector, Buldhana in that regard, it was submitted that the petitioner was entitled for grant of such declaration. Referring to the Government Resolution dated 15.01.2021 and especially Clause 5 thereof which stipulates eligibility conditions it was sought to be urged that such declaration, if granted, would enure to its benefit in the context of Clauses 5.1 and 5.2 thereof. No prejudice would be caused to any party if such declaration was granted. It was thus prayed that the amended prayer in the writ petition deserves to be granted.

4 Shri S.P. Dharmadhikari, learned Senior Advocate for the respondent nos. 1 to 4 opposed the aforesaid submissions. He submitted that in the initial round of litigation in Writ Petition Nos.2202/2016 and 4663/2015 decided on 23.08.2016 this Court in paragraph 15 of the said judgment had recorded a finding that the present petitioner had failed to substantiate its contention that the respondent no.5 herein was not eligible for being allotted the work pursuant to tender notice dated 02.02.2016. It could thus be said that at that stage this Court did not find favour with the objection raised by the petitioner as to the eligibility of the respondent no.5. In the subsequent exercise conducted by the Authorities pursuant to the

objection raised by the petitioner, various shortcomings were noticed in the tender documents submitted by the respondent no.5. It is on that basis that on 04.06.2019 the contract allotted to the respondent no.5 came to be cancelled. That decision of the Authorities was upheld by this Court in Writ Petition No.4109/2019. By virtue of such adjudication, it was clear that it was only the petitioner that remained in the fray being the only eligible bidder left. The declaration sought by the petitioner in this writ petition therefore was implicit in that adjudication. He submitted that mere eligibility for making a bid pursuant to the tender notice dated 02.02.2016 was not sufficient and each bidder was required to independently satisfy the tender conditions now prescribed. He thus submitted that it was not necessary to grant the declaration as sought in view of the fact that no consequential relief could now be granted to the petitioner. It was urged that the writ petition was thus liable to be dismissed.

5. We have heard the learned counsel for the parties at length and we have given due consideration to the respective submissions. The factual aspect with regard to earlier tender notice dated 02.02.2016, the proceedings before this Court at the instance of the petitioner and subsequent cancellation of the contract that was awarded to the respondent no.5 is not in dispute. It is also undisputed that the challenge to the various tender conditions stipulated by Government Resolution dated 15.01.2021 and especially Clause 5 thereof stands adjudicated by the judgment in Writ Petition No.750/2021 and other connected writ petitions at the Principal Seat. We find that the declaration sought by the petitioner that it was the only eligible bidder under the tender notice dated 02.02.2016 without any further consequential relief would serve no purpose. That tender was for the period from 23.09.2016 to 22.09.2019. It is a matter of record that though initially the petitioner had sought to challenge eligibility of the respondent no.5 to submit its bid in response to the tender notice dated 02.02.2016 that challenge was not accepted by

this Court on 23.08.2016. It is only in the subsequent enquiry conducted by the Authorities that some substance was found in the complaint made by the petitioner. It is on that premise that the contract awarded to the respondent no.5 came to be cancelled. However with the passage of time fresh tender process has now been initiated. Pursuant to the fresh tender process, the tender notice has also been issued. It would be for the petitioner to satisfy the Authorities that it is eligible to stake a claim for submitting its bid pursuant to the fresh tender notice by indicating its eligibility. We find that the declaration as sought by the petitioner of being the only eligible bidder under tender notice dated 02.02.2016 without any consequential relief would be of no assistance to the petitioner in these facts. We also find substance in the contention raised on behalf of the respondent no.1 to 4 that such declaration is implicit in the fact that the contract awarded to the respondent no.5 came to be cancelled.

6. In that view of the matter, we are not inclined to grant the relief as prayed for by the petitioner. The writ petition is thus dismissed leaving the parties to bear their costs.

JUDGE

JUDGE

Andurkar.