

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7127 OF 2021
WITH
WRIT PETITION NO.11985 OF 2021

MAHARUDRA SYSTEMS AHMEDNAGAR THROUGH IT'S PROPRIETOR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.S.P.Salgar h/f Mr.N.V.Gaware, Advocate for the petitioner.
Mrs.M.A.Deshpande, AGP for respondent No.1.
Mr.A.S.Bajaj, Advocate for respondent Nos. 2 and 3.
Mr.P.V.Barde, Advocate for respondent No.4.

(CORAM : RAVINDRA V. GHUGE AND
S.G. DIGE, JJ.)

DATE : APRIL 11, 2022

PER COURT :

1. By this petition, the petitioner has put forth prayer clause B,C,D,E,EE,EEE, which read as under :-

"B. Hold and declare that, the entire tender process undertaken by respondent No.3 in pursuance to the tender bearing No.SE/ANRC/HR-UCR/202-21/T-48 dated 01.03.2021, for providing outsourced persons at various offices under Rural Division, Ahmednagar i.e. respondent No.3 is illegal, arbitrary and violative of Article 14 and 21 of the Constitution of India and hence liable to be quashed and set aside and for that purpose issue necessary orders.

C. Hold and declare that, the action of the respondent No.3 of debarring / disqualifying the petitioner in pursuance to the tender bearing No.SE/ANRC/HR-UCR/2020-21/T-48 dated 01.03.2021 for providing outsourced persons at various offices under Rural Division, Ahmednagar is illegal, arbitrary and violative of Article 14 and 21 of the Constitution of India and hence liable to be quashed and set aside and for that purpose issue necessary orders.

D. Issue a writ of mandamus or any other appropriate writ, orders, direction in the nature of writ of mandamus, directing the respondent Nos.2 and 3 to accept the bid of petitioner and process the same in pursuance to the tender bearing No.SE/ANRC/HR-UCR/2020-21/T-48 dated 01.03.2021 for providing outsourced persons at various offices under Rural Division, Ahmednagar and for that purpose issue necessary orders.

E. Hold and declare that, the action of respondent Nos. 2 and 3 of accepting the tender of respondent Nos. 4 and 5 in pursuance to the tender bearing No.SE/ANRC/HR-UCR/2020-21/T-48 dated 01.03.2021 for providing outsourced persons at various offices under Rural Division, Ahmednagar is illegal, arbitrary and violative of Article 14 and 21 of the Constitution of India and hence liable to be quashed and set aside and for that purpose issue necessary orders.

EE. Hold and declare that, the work orders dated 30.04.2021 issued by the respondent No.3 in favour of the respondent Nos. 4 and 5 in pursuance to the tender bearing No.SE/ANRC/HR-UCR/2020-21/T-48 dated 01.03.2021 are illegal arbitrary and violative of Article 14 and 21 of the Constitution of India hence liable to be quashed and set aside and for that purpose issue necessary orders.

EEE. Pending hearing and final disposal of this writ petition grant stay to the operation, execution and/or implementation of work order dated 30.04.2021 issued by the respondent No.3 in favour of the respondent No.4 and 5 and no further bills be issued in favour of the respondent Nos. 4 and 5 and for that purpose issue necessary orders."

2. The grievance of the petitioner is as under :-

[a] Tenders were floated on 01.03.2021, for the urban area.

[b] On 15.03.2021, the petitioner had submitted a bid, online.

[c] On 03.05.2021, the petitioner received an e-mail from the office of respondent No.3 stating that the petitioner has been invited to attend the tender opening process as one of the participating vendor. However, when the petitioner tried to log in on the same day, access was denied.

[d] On the same date, the petitioner enquired with respondent Nos. 2 and 3 and was orally informed that the petitioner has been debarred.

[e] The petitioner then moved an application dated 03.05.2021 seeking reasons for being debarred, in writing.

[f] There has been no reply from the other side.

[g] The policy of the respondent MSEDCL for debarring of agency from business is in place and under clause 9, Grounds for Debarring,

several contingencies for debarring a bidder are prescribed.

[h] Clause 12 prescribes the procedure for debarring. The period of the tender was only 6 months and the same is now over.

[i] The petitioner is aggrieved by the act of respondent Nos. 2 and 3 in debarring the petitioner from participating in the said tender proceedings.

3. Having considered the submissions of the learned Advocates for the petitioner and the learned Advocates on behalf of the respondents, we find that the Law laid down by the Hon'ble Supreme Court in Civil Appeal No.1846/2022 , **M/s N.G.Projects Ltd., Vs. M/s Vinod Kumar Jain, Civil Appeal No.1846/2022** decided on 21/03/2022, becomes squarely applicable. It has been held by the Hon'ble Apex Court in paragraph No.1 that any project and more so, an infrastructural project, should not be stayed or interfered with by the High Court. The High Court would be well advised to hold it's hands from interfering with the said project. Such provision should be kept in view even by the writ court while exercising it's jurisdiction under Article 226 of the Constitution of India.

4. In M/s N.G.Projects Limited (supra), the Hon'ble Apex Court has further held in paragraph Nos. 22, 23 and 26 as under :-

"22. The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e., not satisfying the tender conditions. The writ petitioner was one of them. It is not the case of the writ petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was malafide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona-fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.

23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues.

26. A word of caution ought to be mentioned herein that any contract of public service should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the

services meant for larger public good. The grant of interim injunction by the learned Single Bench of the High Court has helped no-one except a contractor who lost a contract bid and has only caused loss to the State with no corresponding gain to anyone."

5. It was thus concluded that the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept a bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in mind. The approach of the Court should be, not to find fault with a magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender, but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract.

6. In view of the above, this petition is dismissed since we do not have to go into the disputed questions, as well as in the light of the

specific observations of the Hon'ble Apex Court.

7. Needless to state, the petitioner would be at liberty to seek damages, if so advised.

8. Writ Petition No.11985/2021 is identical to the WP No.7127/2021. The same is not on board. At the request of the petitioner, the papers are called for and the matter is taken on board.

9. In WP No.11985/2021, the same petitioner had applied for the Rural area. For the reasons set out hereinabove, this petition is also dismissed. Liberty to seek damages.

(S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)