

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10284 OF 2022

M/S SURAJ ENTERPRISES THROUGH ITS PROPRIETOR S. VIJNDER
SINGH J. BUNGAI
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY
AND OTHERS

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Advocate for Petitioner : Mr. Devdatt P. Palodkar
AGP for Respondent Nos.1 and 2 : Mr. S.B. Yawalkar
Advocate for respondent Nos.3 to 5 : Mr. M.D. Narwadkar

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**CORAM : MANGESH S. PATIL AND
Y. G. KHOBRAGADE, JJ.**

DATE : 14.12.2022

PER COURT :

The petitioner is aggrieved by the order passed by the respondent No.5 thereby debarring him for one year in applying for any tender floated by the respondent No.3 - Municipal Corporation by the impugned order and relying upon the Government Resolution dated 29.01.2019.

2. We have heard the learned advocate Mr. Palodkar and learned advocate Mr. Narwadkar who appears for respondent Nos.3 to 5 as also the learned AGP .

3. Going by the papers, the petitioners seems to have applied for pursuant to a notice inviting the offer. It transpired that he was L1 having quoted less than 99% of the estimated cost. He was called upon to deposit

additional performance security as is indicated in the advertisement and on his failure to do so the impugned order has been passed.

4. We have gone through the Government Resolution dated 29.01.2019 it specifically lays down in Clause 7 that with a view to avoid cartel formation and to avoid the mischief, the persons offering to work for less than the estimated cost are required to deposit additional performance security and in such cases the concerned department is expected to black list the candidate for a period of one year depriving him of any opportunity to apply again.

5. Apart from the fact that the impugned order does not indicate in spite of being a drastic order about principles of natural justice having been followed by extending an opportunity of being heard to the petitioner.

6. Pertinently the whole purpose and object in prescribing for debarring a candidate for a period of one year on his failure to deposit additional performance security within the stipulated time is not an automatic consequence which should follow. The wording is clear. It is only if the conduct is demonstrative of or hinting at a suspicion regarding cartel formation that the officers have been directed to undertake this exercise of debarring the candidate for a period of one year. Impugned order and not even the affidavit-in-reply expressly indicate any such opinion having been formed by the respondent No.5. In the absence of such opinion in our considered view this Clause 7 of Government Resolution dated 29.01.2019 cannot be readily invoked.

7. It is in view of such peculiar state of affairs, we allow the writ petition partly, quashed and set aside the impugned order and direct the respondent No.5 to pass a fresh order after hearing the petitioner expeditiously.

(Y. G. KHOBRADE, J.)

(MANGESH S. PATIL, J.)