

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

WRIT PETITION NO. 14470 OF 2021

M/s Balaji Enterprises through its
Proprietor Mrs. Vaishali
Lawrence Swamy .. Petitioner

Versus

The Union of India and others .. Respondents

Ms. P. S. Talekar, Advocate i/by Talekar and Associates,
Advocate for the Petitioner.

Shri A. G. Talhar, A.S.G. for Respondent Nos. 1 and 2.

Shri A. R. Kawade, Advocate for the Respondent No. 3.

**CORAM : C. V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 20TH JULY, 2022.

PER COURT :

. By this petition under Article 226 of the Constitution of India, the petitioner is seeking direction to the second respondent to disqualify the third respondent from participating in the e-tender dated 16th October, 2021 on the ground of concealment of criminal antecedents of the respondent No. 3 while applying for the said tender.

2. The second respondent/Cantonment Board had called for tenders for collection of vehicle entry tax in the cantonment area for the year 2021-2022 in relation to seven different collection

posts/booths. It appears that, the petitioner and the third respondent had applied for obtaining said contract. The terms of the tender *inter alia* require the tenders to furnish a recent record/character certificate and the details about any criminal cases pending. The third respondent has furnished a certificate dated 27th May, 2021 (at page No. 353 of the compilation) setting out in all thirteen offences, out of which it was contended that except one, other criminal cases were closed, some of which were closed under Section 258 of the Code of Criminal Procedure. Subsequently, the petitioner raised an objection upon which further certificate was called from the office of the Commissioner of Police, Aurangabad. The office of the Commissioner of Police, Aurangabad sent certificate dated 08th December, 2021 setting out in all fifteen offences. A perusal of the second certificate dated 08th December, 2021 shows that an offence vide C. R. No. 592/2021 U/Sec. 188, 269, 341 of the I. P. Code r/w Section 135, 110 of the Bombay Police Act, which was registered against the respondent No. 3 and others was not disclosed in the earlier certificate dated 27th May, 2021. This, according to the petitioner is the suppression of material fact, particularly in view of the fact that the Cantonment area being a high security area, criminal antecedents were material part of the tender conditions.

3. We have heard the learned counsel for parties. Perused record.

4. Miss Talekar, the learned counsel for the petitioner

strenuously urged that, as per tender conditions the aspirants were required to furnish recent certificate about their criminal antecedents and, therefore, it was not open for the respondent No. 3 to furnish a certificate of May 2021 and the second respondent also was not justified in accepting the same and granting work order to the respondent No. 3 on 15th December, 2021. The learned counsel further submitted that, under terms of the said tender a person is required to disclose true and correct facts on affidavit and such a affidavit was filed by the respondent No. 3, which was false to his own knowledge. She therefore, submitted that work order needs to be cancelled and the respondent No. 3 deserves to be disqualified from participating in the E-tender.

5. The learned Additional Solicitor General for the respondent No. 2 has submitted that, there was no suppression of material fact. The learned A. S. G. pointed out the condition No. 38 of the tender conditions, by which the tenderer was under obligation to inform the board as to whether any bidder is black listed/debarred/having criminal antecedents in related field. It is submitted that the offence which was disclosed in the second certificate is not in 'related field' and in any event is not such an offence which would disqualify or dis-entitle the respondent No. 3 from participating in the e-tender.

6. The learned counsel for the respondent No. 3 has also advanced submissions on similar lines claiming that there was

no suppression of any material fact as to the criminal antecedents and non disclosure of the offence was out of inadvertence.

7. We have considered the circumstances and the submissions made by the learned counsel for the parties.

8. The tender condition Nos. 33 and 38, which are relevant for the purpose may be reproduced thus :

"33. The tenderers will have to enclose IT returns acknowledgment, PAN Card, Experience certificate, the character certificate issued by the Collector/Commissioner of Police/Superintendent of Police of the concerned district where the applicant ordinary resides and if the firm is partnership firm in that case registered partnership deed be attached along with the tender form. The Chief Executive Officer will be at liberty to verify the documents submitted by the tenderer at any stage of contract and if any documents are found fraudulent then tender will be summarily cancelled.

38. Before opening of the financial bid, the tenderer may inform to the Board as to whether any bidder is **BLACKLISTED/DEBARRED/CRIMINAL RECORDS** in related fields, in writing with documentary proof. No such complaints against the successful bidder will be entertained during the contract period."

9. It can thus be seen that, under clause 38, the tenderer was under obligation to inform about any previous black listing or fact of tenderer being debarred or about criminal records in the

related field.

10. In the present case, a perusal of the second certificate shows that out of the fifteen offences, twelve offences have already been closed and the offence at C.R. No. 315/2020 U/Sec. 188 of the Bombay Police Act of Police Station Kranti Chowk and C.R. No. 315/2020 U/Sec. 188 of the I. P. Code r/w Section 135 of the Bombay Police Act of Police Station Kranti Chowk were shown to be pending. The alleged non disclosure is only about offence bearing C.R. No. 592/2021 U/Sec. 188, 269, 341 of the I. P. Code r/w Sec. 135 and 110 of the Bombay Police Act registered with Police Station Kranti Chowk.

11. With the assistance of the learned counsel for parties, we have gone through the FIR in C.R. No. 592/2021. It appears that, on 21/22nd August, 2021 there was a procession arranged on the visit of the Hon'ble State Minister and during the course of such procession at various locations, the participants had cracked fire crackers and garlanded the Minister. This according to the prosecution was in breach of the restrictions placed on account of Covid-19 pandemic. It is neither necessary, nor appropriate for us to dwell on the justification of registration of any such offence in this case. However, we are of the view that this offence cannot be said to be an offence in 'related field' as required by clause 38 of the tender conditions. We are also unable to accept that there was any material suppression on the aspect of the registration of the said offence as there is nothing

on record to show that at the time when the tender was processed and the work order was issued, the third respondent was made aware of the registration of this offence or had furnished bail in the matter. Looked from any angle, we are unable to accept that the said ground is sufficient to hold that the respondent No. 3 was disqualified and/or for cancellation of the work order. We are informed that the tender has been granted for one year, which is due to expire on 21st December, 2022. That is an additional reason for us not to interfere in the impugned order in the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

12. In the result, the petition is without any merit and is accordingly dismissed, with no order as to costs.

SANDIPKUMAR C. MORE J.

C. V. BHADANG, J.

bsb/July 22