

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

CIVIL APPLICATION NO. 514 OF 2022
WITH WRIT PETITION NO. 3195 OF 2021

Champion Ceramics Private Limited -- Petitioner/s

Vs.

Bharat Heavy Electricals Limited & Ors. -- Respondent/s

Mr. C.B. Dharmadhikari, Advocate for the Applicant/ Petitioner.
Mr. A.S. Jaiswal, Senior Advocate assisted by Mr. S.G. Deshpande,
Advocate for Respondent Nos. 1 to 3.
Mr. A.S. Shukla, Advocate for Respondent No.6.

CORAM : NITIN JAMDAR &
ANIL L. PANSARE, JJ.

DATE : 10 MARCH 2022

P.C. :

Heard learned Counsel for the parties.

2. By this Civil Application, the Petitioner has sought to amend the Writ Petition to add the parties and subsequent events. The Civil Application is opposed by the Respondents by filing reply.

3. The Petitioner had filed this petition to challenge the pre-qualification criteria in e-tender No. 2101091 dated 4 August 2021, which was invited by the Respondent – Bharat Heavy Electricals Limited, and to permit the Petitioner to participate in

the tender. By the interim order dated 31 August 2021, while issuing notice, the Petitioner was allowed to participate in the bid, and if the Petitioner was found to be eligible, award to be issued to the Petitioner subject to approval. Thereafter, on 25 October 2021, further order was passed and it was directed that if any work order is issued, it will be subject to the result of the petition.

4. The Petitioner participated in the tender, however, was not granted the tender. The tender is now been issued to three parties. The Petitioner, with this Civil Application, has sought to join them and also the National Thermal Power Corporation as party Respondents.

5. Learned Counsel for the Respondents, while opposing the Civil Application, contended that the petition was filed praying to permit the Petitioner to participate in the tender, which was done and the petition is worked out and what is sought to be introduced by an amendment is a new cause of action. It was further contended that the pendency of the Writ Petition is causing substantial impact on the work, which is of sensitive nature being insulation for chimneys of Thermal Power Plants, and in view of the interim observations, it is difficult to proceed further with the actual work.

6. Having considered these facts, we are of the view that allowing the Civil Application for amendment is not a proper

course of action. What is put forth by the Petitioner is a new cause of action. The rejection of the Petitioner's bid and award to the others is a cause of action which is different than the stage at which the petition was filed when the Petitioner was not allowed to participate in the tender. We also have to take note of the concern expressed by the Respondent in the larger public interest and the financial implications of the pendency of the petition. It is open to the Petitioner to institute substantive proceedings if so advised.

7. The Writ Petition also will not survive. The Civil Application and the Writ Petition are disposed of with above observations.

[ANIL L. PANSARE, J.]

[NITIN JAMDAR, J.]