

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

WRIT PETITION NO. 1729 OF 2022
WITH WRIT PETITION NO. 1730 OF 2022

Kavindra s/o Patruji Rohankar

-- Petitioner/s

Vs.

The State of Maharashtra & Ors.

-- Respondent/s

Mr. Rohit Joshi, Advocate for the Petitioner.

Mr. A.A. Madiwale, A.G.P. for Respondent Nos. 1 to 3/ State.

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

DATE : 4 MAY 2022

P. C. :

Heard learned Counsel for the parties.

2. These petitions have arisen out of a tender process, where generally a Writ Court would not interfere, however, the admitted facts of the present cases being peculiar, we were constrained to take cognizance. Why the Court had to intervene in the matters is stated in the orders passed in these petitions earlier.

3. On 31 March 2022, the following order came to be passed in Writ Petition No. 1729/2022 :

“Heard learned Counsel for the parties.

2. *The grievance of the Petitioner in this case is that one of the conditions for tender is certification by the Range Forest Officer on geo-tagging and the certificate could not be submitted by the Petitioner because of the conduct of the Range Forest Officer concerned in avoiding the Petitioner. The Petitioner has stated various facts on oath annexing photographs of attempts made by the Petitioner to contact the Range Forest Officer.*

3. *Prima-facie, if this assertion is correct, then it would be a serious case of malice in fact on the part of the Range Forest Officer to see that the Petitioner is removed from competition.*

4. *Learned Assistant Government Pleader, on instructions from Mr. M.N. Chavhan, Assistant Conservator of Forests, Wadsa, states that the Petitioner would be permitted to participate with the on-going tender process and his bid will be evaluated as per law apart from the stipulation in question. Learned Assistant Government Pleader seeks time also to place on record the steps taken by the department as regards the concerned Range Forest Officer.*

5. *For the limited purpose of placing on record the action taken by the Respondent – Department against the concerned Range Forest Officer, hearing of the petition is deferred to 5 April 2022.*

6. *In the meanwhile, the Petitioner be permitted to participate in the bid, and the same be evaluated on its own merits except the concerned stipulation regarding geo-tagging.*

7. *List this matter on 5 April 2022 under the caption “For Directions”.*

Later on

8. *Later on at 2:30 pm, learned Assistant Government Pleader mentioned the matter and stated*

that as per his instructions received now, the financial bid is also opened and one tenderer is found to be successful tenderer. Learned Assistant Government Pleader has placed on record a show cause notice issued to the concerned Range Forest Officer. Learned Assistant Government Pleader states that rights would be created in favour of the successful tenderer.

9. *Since, we find the Petitioner has made out a strong prima-facie case of malafides, on the basis of uncontroverted averments made in the petition and the notice issued to the Range Forest Officer by the Department from which it prima-facie appears that the Petitioner was deliberately removed from auction process, there shall be a stay to the further proceedings of the auction till the next date.*

10. *The learned Assistant Government Pleader will give the name of the successful tenderer to the learned Counsel for the Petitioner so that he can be joined as party Respondent.*

11. *Leave to amend for that purpose is granted. Learned Assistant Government Pleader states that the successful tenderer will be informed of the pendency of the petition.”*

4. *Thereafter on 5 April 2022, the following order was passed :*

“On 31 March 2022, following order was passed :-

“Heard learned Counsel for the parties.

2. *The grievance of the Petitioner in this case is that one of the conditions for tender is certification by the Range Forest Officer on geo-tagging and the certificate could not be submitted by the Petitioner*

because of the conduct of the Range Forest Officer concerned in avoiding the Petitioner. The Petitioner has stated various facts on oath annexing photographs of attempts made by the Petitioner to contact the Range Forest Officer.

3. *Prima-facie, if this assertion is correct, then it would be a serious case of malice in fact on the part of the Range Forest Officer to see that the Petitioner is removed from competition.*

4. *Learned Assistant Government Pleader, on instructions from Mr. M.N. Chavhan, Assistant Conservator of Forests, Wadsa, states that the Petitioner would be permitted to participate with the on- going tender process and his bid will be evaluated as per law apart from the stipulation in question. Learned Assistant Government Pleader seeks time also to place on record the steps taken by the department as regards the concerned Range Forest Officer.*

5. *For the limited purpose of placing on record the action taken by the Respondent – Department against the concerned Range Forest Officer, hearing of the petition is deferred to 5 April 2022.*

6. *In the meanwhile, the Petitioner be permitted to participate in the bid, and the same be evaluated on its own merits except the concerned stipulation regarding geo-tagging.*

7. *List this matter on 5 April 2022 under the caption “For Directions”.*

Later on

8. *Later on at 2:30 pm, learned Assistant Government Pleader mentioned the matter and stated that as per his instructions received now, the financial bid is also opened and one tenderer is found to be successful tenderer. Learned Assistant Government Pleader has placed on record a show cause notice issued*

to the concerned Range Forest Officer. Learned Assistant Government Pleader states that rights would be created in favour of the successful tenderer.

9. *Since, we find the Petitioner has made out a strong prima-facie case of malafides, on the basis of uncontroverted averments made in the petition and the notice issued to the Range Forest Officer by the Department from which it prima-facie appears that the Petitioner was deliberately removed from auction process, there shall be a stay to the further proceedings of the auction till the next date.*

10. *The learned Assistant Government Pleader will give the name of the successful tenderer to the learned Counsel for the Petitioner so that he can be joined as party Respondent.*

11. *Leave to amend for that purpose is granted. Learned Assistant Government Pleader states that the successful tenderer will be informed of the pendency of the petition.”*

2. *Today when the matter is called out, learned Counsel for the Petitioner states that an Application is filed by the Petitioner saying that he does not wish to proceed further with the matter and wants to withdraw the Writ Petition. The learned Counsel for the Petitioner states that he is also not very clear as to why the Petitioner intends to withdraw the Writ Petition, but since the Petitioner insists making a request, he is canvassing the same.*

3. *We asked the learned Counsel for the Petitioner to ascertain from the Petitioner whether the statement made by the Petitioner on oath are correct, to which the Petitioner has answered in affirmative.*

4. *The reason why we had granted interim order was not only because right of the Petitioner was prejudiced but because we prima facie found that the*

conduct of the Range Forest Officer was questionable and attempt was to remove the Petitioner from competition. This ground, therefore, will not be personal to the Petitioner alone but would have larger implications and also a matter of administrative discipline.

5. *We had noted that a show cause notice issued by the superior to the Range Forest Officer where the Range Forest Officer will have an opportunity to put forth his say. Therefore, unless the Head of the Forest Department states before us, after that the assertions of the Petitioner were correct or otherwise, we are not inclined to dispose of the Writ Petition.*

6. *The Principal Chief Conservator of Forest would look into the issue and file an affidavit either through himself or an affidavit approved by him as regards the stand to be taken. Depending on the same, we will determine the further course of action.*

7. *Copy of the order and copy of Petition be forwarded to the Principal Chief Conservator of Forest along with show cause notice issued to the Range Forest Officer for necessary action.*

8. *Stand over to 4 May 2022.”*

5. The Principal Chief Conservator of Forest has authorized the Conservator of Forest to file an affidavit of the Principal Chief Conservator of Forest (head of Forest Force). The Principal Chief Conservator of Forest has stated that the issue has been examined and has given particulars of what the Principal Chief Conservator of Forest found as improper.

6. In paragraph 15 of the affidavit, it is stated as follows :

“15. Hence, I found some incorrect, improper and biased procedure that was followed in the Tender process at various levels including the Tender Scrutiny Committee and, therefore, the process can be turned as vitiated. Under the circumstances I propose that the entire tender floated for the concerned work needs to be quashed and should be started afresh to rule out such an eventuality in future by appropriate amendment in this condition and to provide a fair opportunity to the petitioner as the tender stands opened and the process stands completed at this point in time and the petitioner cannot be included in the tender process.”

Therefore, it is the stand of the Forest Department that the tender process in question will have to be cancelled. It is not necessary to seek leave of this Court for taking this course of action, as it is always open to the employer to cancel the tender process, if it comes to the conclusion that the same was vitiated and there were elements of malafides.

7. As regards the administrative part of the matter, in paragraph 17 of the affidavit, it is stated as under :

“17. Further, in view of the inept handling of the tender process, the appropriate action needs to be initiated against the officers concerned as per the rules. I am separately directing the Conservator of Forests (Territorial) Gadchiroli who is in-charge of this Circle to examine

(i) Whether Range Forest Officer purposefully avoided giving the certification and to find out as to whether the conduct of the RFO was questionable.

(ii) *Enquire whether the conduct of the Tender Scrutiny Committee was biased or with malafied intentions,*

Therefore, necessary order for enquiry in the matter will be issued by this office immediately and necessary action on the officers found guilty shall be taken as per rules.”

8. Again, this is open to the Principal Chief Conservator of Forest, under the administrative capacity, to take necessary action as may be warranted in law.

9. As far as the Petitioner's cause is concerned, the Petitioner on the last occasion had shown his willingness to withdraw the Writ Petitions, which we had noted but had continued the matters for the larger issue. We had kept the petitions pending as our anxiety was to ensure that there is a purity in the tender process, which the Principal Chief Conservator of Forest has examined and has found that corrective measures are necessary.

10. In light of this stand taken by the Principal Chief Conservator of Forest, we do not intend to take these proceedings further and dispose of the Writ Petitions in light of the above two statements.

[ANIL L. PANSARE, J.]

[NITIN JAMDAR, J.]