IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3910 OF 2022

Terramare India Pvt. Ltd.
though its Authorized Manager
Shri Mohammad Nashit Musaffar Shekh
Age : 32 years, Occ: Manager,
Office at : 1-23-74/1, Airport Road,
Sangvi Bk, Nanded - 431601 **... PETITIONER**

VERSUS

1. The State of Maharashtra
through, the Secretary,
Water Resources Department,
Mantralaya Mumbai -32

2. The Assistant Superintendent Engineer,
Water Resources Division, Aurangabad

3. Executive Engineer,
Nanded Irrigation Division,
North Nanded, **... RESPONDENT**

...

Mr. P.R. Katneshwarkar, advocate for petitioner
Mr. S.B. Yawalkar – AGP for the respondent Nos.1 and 2 /State
Mr. B.R. Survase advocate for the respondent No.3

...

CORAM : MANGESH S. PATIL AND S.G. CHAPALGAONKAR, JJ.

DATE : 28.02.2023

ORDER :

By invoking the powers of this Court under Article 226 of the Constitution of India, the petitioner is challenging communication dated 11.03.2022 of the respondent No.3 which is an Executive Engineer of the

Irrigation Division, Nanded whereby the tender process for which he had successfully bid and not only had deposited an amount of Rs.22,68,000/- for purchasing the scrap has been cancelled and the money is refunded to him.

2. We have heard both the sides. The learned advocate Mr. Katneshwarkar for the petitioner would take us through the papers to demonstrate that the petitioner was successful in biding at the tender process floated by the respondent No.3 for disposal of scrap. Even a decision to deliver the scrap was taken but by the impugned communication the process has been aborted for unsustainable reasons.

3. He would point out that the process has been cancelled on the ground that contrary to the Government decision it was not being held electronically and that the upset price was not fixed. He would submit that both these grounds are unsustainable. Nobody has raised any objection to the process rather it was undertaken with the approval of the superior officers of the respondent No.3. Though the process was not conducted online, there was publication of a notice inviting bids. Several individuals had participated without demur. He would also submit that there was no requirement of setting up an upset price before undertaking the process. The decision to cancel the process is therefore arbitrary and calls upon intervention.

4. Learned AGP and the learned advocate Mr. Survase for the respondent No.3 justify the action of cancelling the tender process. They submit that it was imperative to undertake E-tendering process as per the

Government Resolution Date 03.12.2014 and contrary to the Government Circular dated 18.06.1991 no upset price was fixed before floating the tender. Though the process had reached an advanced stage the error was realized and is now sought to be rectified. No *mala fides* are being attributed. Since it is a tender matter, it is trite that the scope for this Court to cause intervention is limited. There are no sufficient and justifiable reasons to enable this Court to invoke the powers under Article 226.

5. There is no dispute regarding the facts. The tender was floated which apparently turns out to be for more than Rs.22 Lakhs. The Government Resolution dated 03.12.2014 mandates undertaking of E-tender process where the work exceeds Rs.1,00,000/-. Admittedly, no upset price was fixed and if these are the reasons for which the process has been cancelled, it cannot be said that *per se* the decision suffers from arbitrariness or has been taken for some extraneous reasons.

6. There is absolutely no allegation about the impugned decision to cancel the process is prompted by some *mala fides*. Since it is a matter of a tender process, it is trite that the respondents being the best judge of their need and requirement, this Court cannot substitute its decision under Article 226. The decision having been taken for obviating some irregularities which according to the respondents can be done, we are afraid this Court cannot sit in appeal and impose any decision.

7. Suffice for the purpose to refer to the decision in the matter of **M/s. NG Projects Ltd Vs. M/s. Vinod Kumar Jain and Ors.; (2022) 6 SCC 127**

wherein the principles have been culled down as regards the scope of judicial review in tender matters. Following the principles we see no sufficient and cogent reasons to exercise the powers under Article 226.

8. The writ petition is dismissed.

9. At this juncture the learned advocate for the petitioner submits that the interim relief has been in operation till this date and the arrangement may be continued for a reasonable period to enable the petitioner to approach the apex court.

10. The interim relief to continue for a period of two weeks or till the petitioner approaches the Supreme Court which ever is earlier.

(S.G. CHAPALGAONKAR, J.) **(MANGESH S. PATIL, J.)**

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