

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

WRIT PETITION NO. 8172 OF 2022

Alpha Enterprises, Nanded
through its Proprietor
Vishal Rameshrao Suryawanshi .. Petitioner

Versus

Maharashtra State Electricity
Distribution Company Ltd. through
its Superintending Engineer .. Respondent

Shri Mahesh S. Deshmukh, Advocate for the Petitioner.
Shri A. S. Bajaj, Advocate for the Respondent/Sole.

**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.
DATE : 21ST APRIL, 2023.**

FINAL ORDER :

. Heard Mr. Deshmukh, learned counsel for the petitioner and Mr. Anil S. Bajaj, learned counsel appearing for the respondent.

2. The challenge in the petition is to the order dated 24th August, 2022 issued by the respondent thereby cancelling work order dated June 17, 2022 and the consequential relief of declaration that the petitioner is entitled to continue with the work order dated June 17, 2022, which is for supply of 67 skilled labourers for a period from 01st June, 2022 to 31st May, 2023. The petitioner has also sought declaration that the impugned

notice dated July 18, 2022 being illegal, erroneous and beyond the scope of tender document.

3. The facts necessary for deciding present petition are as under :

The petitioner claims to be a multi services provider, who is in the business of providing various services as per the requirement of the consumers including respondent/State subsidiary company, a state within the meaning of Article 12 of the Constitution of India. Since the respondent was in need of the skilled, semi-skilled and unskilled manpower floated tender. The petitioner a successful tenderer vide work order dated June 03, 2021 was permitted supply of manpower for a period from 01st June, 2021 to 31st May, 2022. It is the case of the petitioner that, it has successfully completed the contract and the respondent has released the bank guarantee which was furnished by it for the execution of aforesaid work order.

4. The respondent floated another tender after successful completion of aforesaid period and the petitioner being successful bidder was issued with work order dated June 17, 2022 for supply of 67 skilled labourers for a period from 01st June, 2022 to 31st May, 2023.

5. The petitioner was served with a show cause notice dated 24th June, 2022 as against a complaint received on June 03, 2022 in relation to the work order dated June 17, 2022 referred to above. One Mr. Shaikh Vasim Shaikh Akram, who was a

contract employee provided by the petitioner upon verification of his bank statement it was noticed that for a period from April 2021 to April 2022, no amount of wages was deposited in the account maintained with Bhavani Urban Multi State Co-operative Society. It is alleged that, such act on the part of the petitioner is in violation of tender condition, particularly clause 15 of the tender document dated 03.06.2022. The petitioner was served with show cause notice.

6. The petitioner questioned the said show cause notice dated July, 18, 2022 on the ground that the authority lacks power to issue said show cause notice based on tender condition for which work was already successfully executed. This Court after hearing the petitioner has caused notice in the matter.

7. It appears that the petitioner submitted his reply to the aforesaid show cause notice dated July, 18, 2022 thereby explaining its stand.

8. The respondent vide order impugned dated August 24, 2022 has terminated the contract of the petitioner which was for a period from 01st June, 2022 to 31st May, 2023.

9. The contentions of Mr. Deshmukh, learned counsel appearing for the petitioner are perusal of the show cause notice dated 18th July, 2022 would reflect following factual position.

(a) For a period from 01st June, 2021 to 31st May, 2022 as

against work order dated June 03, 2021, the petitioner has successfully completed execution of tender work. As such its bank guarantee was released.

(b) A complaint dated 03rd June, 2022 preferred by one Mr. Shaikh Vasim Shaikh Akram was never claimed to have been moved by said person, which fact was not taken into account.

(c) The explanation tendered on 28th June, 2022 was at all not taken into consideration while passing the impugned order.

(d) Without taking into consideration the explanation of the petitioner, it appears that the impugned order dated 24th August, 2022 came to be passed.

9. According to Mr. Deshmukh, before passing the impugned order neither an opportunity of hearing was given, nor the reasons are germane to the cause set out. He would submit that the order impugned is cryptic one and lacks reasoning so as to connect the application of mind to the decision reached at. Mr. Deshmukh would invite attention of this Court to the further developments herein. The petitioner was served with a show cause notice dated 27th January, 2023 thereby calling upon it why it should not be black listed. According to the petitioner to the show cause notice dated 27th January, 2023, the petitioner has tendered explanation on 13th February, 2023 which is similar to one tendered to the show cause notice dated 18th July, 2022. He would urge that very same explanation tendered by the

petitioner was accepted for absolving it of charge of putting it black list, whereas for passing impugned order for cancellation of contract very same explanation is not considered.

10. While resisting aforesaid prayer, Mr. Bajaj, learned counsel would invite attention of this Court to Clause 15 of the tender document of the contract period of prior to 01st June, 2022. He would urge that the petitioner firm is engaged in fraudulent and corrupt practice in execution of the contract awarded to it. He would categorically rely on complaint lodged by Mr. Shaikh Vasim Shaikh Akram on 03rd June, 2022 so as to claim that the respondent is armed with power not only for cancellation of order, but also pass ancillary orders as is necessary. According to Mr. Bajaj, the proceedings for cancellation of contract and black listing are to be considered on different pedestal. As such he would urge that order impugned cancelling contract is justified. Mr. Bajaj would urge that the contract period is already coming to an end on 31st May, 2023. After termination of contract on August 24, 2022, the work for temporary period is already assigned to different contractor and in case if this Court causes interference, same will give rise to further complications.

11. We have appreciated aforesaid submissions.

12. Admitted facts which are not in dispute are, as against work order dated June 03, 2021, the petitioner supplied manpower for a period of 01st June, 2021 to 31st May, 2022. As against work order dated 17th June, 2022 for a period from 01st

June, 2022 to 31st May, 2022, the petitioner has started execution of work by supplying 67 skilled labourers as agreed between the parties.

13. The complaint preferred by Mr. Shaikh Vasim Shaikh Akram is dated 03rd June, 2022. In the said complaint, it is claimed that said worker has not received the amount of wages in his account as provided in the tender conditions for a period from April 2021 to April 2022. Said Shaikh Vasim Shaikh Akram vide communication dated June 27, 2022 addressed to the respondent claiming that he has no grievance against the petitioner. The petitioner in its explanation has also taken stand that said worker was set up by competitor contractors. The respondent thereafter issued a communication to the petitioner thereby calling upon the petitioner to provide bank statements.

14. Finally the respondent has passed an order on 24th August, 2022 thereby terminating the contract of the petitioner. While passing the order impugned the reason furnished by the respondent is, the petitioner has failed to demonstrate the payment of amount in the account of Mr. Shaikh Vasim Shaikh Akram.

15. The fact remains that before passing the order impugned dated 24th August, 2022, least that was expected of the respondent to grant opportunity of personal hearing to the petitioner, which the respondent has not taken recourse to. As such on this count alone the order impugned is not sustainable.

16. Apart from above, the order impugned dated 24th August, 2022 has not considered the explanation tendered by the petitioner including that of statement/letter given by complainant employee on 27th June, 2022, wherein he has claimed that he has no grievance against the petitioner. Similarly the respondent has not considered the fact that said complaint was preferred by an employee as is claimed is very same employee, who has issued statement/communication dated June 27, 2022 at the behest of the competitors. As such order impugned also lacks reasoning, which is considered as a live link between the decision taken and the issue considered. Under Article 14 of the Constitution, the petitioner has every right not only to have opportunity of personal hearing, but is also entitled to know reasons in support of adverse decision taken. Admittedly, the impugned order has adversely affects over the business right of the petitioner.

17. Apart from above, if we consider show cause notice issued to the petitioner on 27th January, 2023, wherein it was called upon to submit its explanation as to why it should not be black listed, very same explanation tendered by the petitioner appears to be taken into account and has recorded satisfaction that the explanation tendered by the petitioner is satisfied. As such on the very same set of facts when the petitioner tendered explanation to the show cause notice in relation to termination of contract the explanation is not found satisfactory. We find very same explanation in the matter of black listing of the petitioner

was found satisfactory and show cause notice accordingly was discharged. This very approach on the part of the respondent speaks of not only arbitrariness, but also complete abuse. In that view of the matter, we are of the view that the impugned order dated 24th August, 2022 thereby cancelling the contract awarded to the petitioner vide work order dated 07th June, 2022 for a period from 01.06.2022 to 31.05.2023 is not sustainable and is liable to be quashed and set aside. As such the impugned order is quashed and set aside.

18. However, considering fact that contract period is only for a period till 31st May, 2023 and the respondent has already hired services of another contractor, who is not party to the present petition, we deem it appropriate not to grant the relief of restoration of work to the petitioner for a short period of four weeks.

19. As such the petition stands partly allowed in above terms.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE , J.]

bsb/May 23