

Pdp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1299 OF 2014

M/s. Hospitech

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

Mr. Sanjay Kher i/by Mr. Amit Ashok Gharte for petitioner.

Mrs. Uma Palsuledesai, AGP for respondent/State.

Mrs. Shilpa Gajare Dhumal for respondent no.3/MCGM.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: MARCH 8, 2023

P.C.:

- 1.** The petitioner assails the order dated 16th September, 2013 debarring the petitioner from participating in the tender process for three years and recommending for black-listing for the petitioner to the Government.
- 2.** We have heard the learned counsel for the petitioner, the learned AGP and the learned counsel for the Municipal Corporation.
- 3.** Amongst other submissions, one of the submissions of the petitioner appears to be that the petitioner has been black-listed and/or debarred from participating in the further tender process without considering the case put-forth by the petitioner in the reply to the show cause notice. Whereas the case of the State Government is that the petitioner had supplied the sub-standard machinery so also failed to supply the necessary accessories. The

report of the committee was also considered and thereafter the petitioner was black-listed.

4. The show cause notice was issued to the petitioner on or about 31st May, 2013. The show cause notice is issued on the premise that the petitioner had supplied the new machine along with accessories on or about 6th January, 2012. The said supply of machine and the accessories is not in terms of the order placed. In the show cause notice it was further mentioned that considering the entirety of the matter, the petitioner's conduct appears to be suspicious. The petitioner filed a reply to the show cause notice on or about 2nd June, 2013. In the show cause notice, it was stated that the equipment in question was imported in April, 2011 after receipt of the purchase order. The same was delivered to the Regional Referral Hospital, Nashik in June, 2011. Upon opening the boxes in the presence of the user doctors it was observed that there were some scratches on the machine due to damage in transit. The petitioner imported new machine in August, 2011 and supplied the same to the Regional Referral Hospital, Nashik. The installation-cum-demonstration report was prepared on 19th September, 2011. It was further stated in the reply that the upgradation of cerebral state monitoring and mainstream multigas monitoring was also made available and after supplying everything, the payment was received.

5. On perusal of the impugned order, it does not appear that the reply to the show cause notice was considered. The only observation in the impugned order is that the reply given by the petitioner is not satisfactory. Save and except that, the impugned order does not deal with the stand taken by the petitioner. Black-listing an entity gives rise to civil consequences. The reply given by the petitioner ought to have been dealt with and considered while issuing the order, black-listing the petitioner.

6. The impugned order was stayed by this Court under its order dated 23rd December, 2013 and the said order is in force since then. The petitioner was allowed to participate in the further tender process and the tender work also given to the petitioner.

7. In light of the above facts, the impugned order to the extent of black-listing the petitioner is quashed and set aside.

8. In the interregnum, the Municipal Corporation had held the petitioner's tender to be non-responsive on the ground that the petitioner was black-listed under the impugned order. The Municipal Corporation had not black-listed the petitioner. That was the consequence arising out of the impugned order, black-listing the petitioner. As the impugned order to the extent black-listing the petitioner is quashed and set aside, no further orders are necessary with regard to Municipal Corporation's action.

9. As far as other claim of the petitioner with regard to the Bank Guarantee or otherwise is concerned, the same would involve disputed questions of fact. The petitioner may take appropriate steps in that regard. The forum, where the petitioner may approach, may consider the time spent before this Court in prosecuting the present writ petition. In that event, all contentions are kept open.

10. The writ petition stands disposed of accordingly. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

Digitally
signed by
SALUNKE
JV
Date:
2023.03.09
18:58:32
+0530