

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

WRIT PETITION NO.16/2023

M/s. Nanak Construction,
Partnership Firm through its Partner
PAO holder, Roshan Pajabrao Patil,
aged 38 Yrs., Occ. Business, R/o 57,
Near Ganesh Mandir, Dhantoli, Katol,
Dist. Nagpur.

... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary,
Water Supply and Sanitation
Department, Mantralaya,
Mumbai 32.
2. Zilla Parishad Nagpur, through
its Chief Executive Officer, Civil
Lines, Nagpur.
3. Executive Engineer,
Rural Water Supply Department,
Zilla Parishad, Nagpur.

... Respondents

Mr. Abhay Sambre, Advocate for the Petitioner.

Mr. S.M. Ghodeswar, Assistant Government Pleader for
Respondent No.1.

Mr. P.K. Sathianathan, Advocate for respondent Nos.2 and 3.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 20.1.2023

ORAL JUDGMENT (Per A.S. Chandurkar, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The challenge raised in the present writ petition is to the communication dated 30.12.2022 issued by the Water Supply and Sanitation Department of the State Government. By the said communication addressed to the Chief Executive Officer, Zilla Parishad, Nagpur it has been informed that the proposal for blacklisting the petitioner is under consideration. Based on this communication one of the bids of the petitioner has been held non-responsive and the petitioner is not being permitted to participate in the other bids pursuant to the tender notice floated by respondent No.2. The Zilla Parishad had issued tender notice inviting bids for about 10 works. The petitioner responded to the

said invitation and submitted its bid. As regards the work No.2022_NAGPU_857690_2 the petitioner's bid was not opened on the ground that the instructions from the State Government in the matter of blacklisting the petitioner were awaited. The financial bids of the other works were yet to be opened when this writ petition was filed praying that the petitioner be permitted to participate in the tender process since there is no order of blacklisting passed.

3. Mr. Abhay Sambre, the learned counsel for the petitioner has invited our attention to relevant clauses of the tender document. As per Clause 15 if a Contractor is blacklisted / barred from participating in a tender or his registration is suspended, he is liable to be disqualified. A bidder is required to submit a self declaration that he is not blacklisted by any Government Department / Government Local Body or Government Undertaking. Since there is no order of blacklisting as on date it is submitted that the petitioner has submitted such undertaking. Merely on the basis that it is proposed to be

blacklisted, the petitioner cannot be prevented from participating in the tender process. In support of his contention the learned counsel has placed reliance on the decision in the case of Caretel Infotech Ltd. V/s. Hindustan Petroleum Corporation Limited & Ors. reported in **2019 (14) SCC 81**. It is submitted that the petitioner be permitted to accordingly participate in the tender process.

4. Mr. P.K. Sathianathan, the learned counsel for respondent Nos.2 and 3 opposed writ petition. He submitted that in view of communication received by the Zilla Parishad on 30.12.2022 as the process of blacklisting the petitioner was under way the petitioner was not qualified to participate in the tender process. There were about three crimes registered against the petitioner and considering the seriousness of the same action of the Zilla Parishad was justified in debarring the petitioner. Attention was invited to the Government Resolution dated 7.12.2021 and especially clauses 2.2., 2.9 and 2.15 thereof to sustain the action. Placing reliance on the decision in the case of

N.G. Projects Limited V/s. Vinod Kumar Jain and others reported in (2022) 6 SCC 127 it is submitted that this Court should be slow in interfering in matters of such nature. The learned counsel, therefore, submits that no relief can be granted to the petitioner.

5. On hearing the learned counsel for the parties and perusing the documents on record it is undisputed that as on date there is no order of blacklisting passed against the petitioner. The process to blacklist the petitioner is stated to be under consideration of the concerned authority. It is in that backdrop the reliance is placed on the Government Resolution dated 7.12.2021. While there can be no quarrel with the proposition that in an appropriate case the action of blacklisting may be justified, it is to be kept in mind unless there is an order of blacklisting, a bidder is entitled to participate in the tender process unhindered. The declaration which a bidder has to submit is an undertaking that an order of blacklisting / bar from participating in the tender process has not been passed against him. This presupposes that an order of blacklisting is in

existence. The same is not the case in hand. Even according to the Zilla Parishad the proposal for blacklisting the petitioner is pending with the State Government. Thus in absence of any order of blacklisting being suffered by the petitioner it cannot be prevented from participating in the tender process on that ground. In para 24 of the decision in Caretel Infotech Ltd. (*supra*) it has been observed as under:-

“24. We may also look at this aspect from another perspective. Blacklisting has very serious consequences. A show cause notice may result in blacklisting or may not result in blacklisting. The mere show cause notice being issued, to visit such a severe consequence on a bidder, may be difficult to sustain.”

6. The decision in N.G. Projects Limited (*supra*) refers to the parameters for interfering while exercising jurisdiction under Article 226 of the Constitution of India in tender matters. The aforesaid decision has been subsequently explained in the case of Jai Bholenath Construction V/s. The Chief Executive Officer, Zilla Parishad, Nanded and others (Civil Appeal No.4140/2022 decided on 18.5.2022) by holding that where

there has been arbitrary exercise of power in rejecting a bid, interference could be justified.

7. We, therefore, find that in the present case as there is no order blacklisting the petitioner, the Zilla Parishad was not justified in restraining the petitioner from participating in the tender process on that count.

8. For aforesaid reasons, it is held that petitioner is entitled to participate in the tender process pursuant to the bids submitted by it. The Zilla Parishad shall consider the petitioner's bid in accordance with the tender notice and its bids shall not be rejected only in view of the communication dated 30.12.2022. Needless to state that if in future the petitioner is blacklisted the respondents are free to consider that aspect in accordance with law.

9. Writ petition is allowed in the above terms. Rule accordingly. No costs.

10. An authenticated copy of judgment be given to the learned counsel for the parties.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR J.)

Tambaskar.