



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

WRIT PETITION NO.2465 OF 2024

M/s. Ambarwadikar and Company,
Through its Partner Mr. Suryakant
V. Ambarwadikar, Age-48 years, Occu:Business,
Office at: "Ambarwadikar Complex,
Surya Lawns Complex, Gut No.103,
Near Datta Mandir, Beed By-Pass Road,
Deolai, Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
Water Resources Department,
Having office at: Mantralaya,
Mumbai-400032,
- 2) Executive Engineer, Minor Irrigation
Division No.1, Having Office at: Sinchan
Bhavan, Jalna Road, Aurangabad,
- 3) Godavari Marathwada Irrigation
Development Corporation,
Through its Executive Director,
Office at: Sinchan Bhavan, Jalna Road,
Aurangabad,
- 4) Executive Engineer,
Godavari Marathwada Irrigation
Development Corporation,
Office at: Sinchan Bhavan, Jalna Road,
Aurangabad,
- 5) Chief Engineer,
Water Resources Department,
Office at: Sinchan Bhavan, Jalna Road,
Aurangabad,

- 6) Superintendent Engineer,
Minor Irrigation Division No.1,
Office at: Sinchan Bhavan, Jalna Road,
Aurangabad,
- 7) Assistant Executive Engineer,
Shivna Takali Canal Sub-Division No.2,
Office at: Sinchan Bhavan, Jalna Road,
Aurangabad,
- 8) Assistant Chief Engineer,
Aurangabad Irrigation Department,
Office at: Sinchan Bhavan, Jalna Road,
Aurangabad,
- 9) Superintendent Engineer,
Aurangabad Irrigation Division,
Office at: Sinchan Bhavan, Jalna Road,
Aurangabad.

...RESPONDENTS

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Mr. Rameshwar F. Totala Advocate h/f. Mr. V.S. Kabra Advocate for Petitioner.

Mr. S.K. Shirse, A.G.P. for Respondent Nos. 1 and 2.

Mr. Amit Yadkikar Advocate a/w. Mr. Akshay Kulkarni Advocate for Respondent Nos.3 and 4.

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**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 5th MARCH, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. The petitioner, by invoking constitutional powers under Article 226 of the Constitution of India and taking help of Article 14 of the Constitution of India, has prayed that the records and proceedings of E-tender notice No. 19 for year 2023-2024

(Online) and E-tender notice No. 20 for year 2023-2024 (Online) be called for. The petitioner also prays for issuing writ to declare those two notices as null and void.

2. Heard learned Advocate Mr. Totala holding for learned Advocate Mr. Kabra for the petitioner, learned AGP Mr. Shirse for respondent Nos. 1 and 2 and learned Advocate Mr. Yadkikar along with learned Advocate Mr. Akshay Kulkarni for respondent Nos. 3 and 4, on the first date of admission.

3. The petitioner has contended that it is a partnership firm to whom contract of construction of earthwork lining and structure of Canal No. 1 and distribution of Bramhagavan Lift Irrigation Scheme Part-II, Taluka-Paithan, District-Chhatrapati Sambhaji Nagar for estimated cost of Rs. 4494.86 Lakh was allotted vide letter dated 25th October 2010. The petitioner says that due to illegal termination with *malafide* intention and for imposition of penalty, the petitioner approached the Commercial Court by filing Commercial Suit No. 1 of 2023 and the said Suit is still pending. The petitioner has also prayed for interim relief. Taking into consideration the prima facie case, the interim relief was granted in favour of the petitioner which was continued till 8th February 2024. In spite of interim order, the respondents have

violated the order passed by this Court and published an advertisement in daily newspaper *Divya Marathi* on 22nd November 2023 inviting e-tender for the same work. The petitioner had taken objection to the same and stated that such calling of e-tender would amount to contempt of the order passed by this Court. A notice was also served on respondent No. 2 with a request to cancel the action. Thereafter respondent No. 2 published one more advertisement in Daily *Sakal* Newspaper on 26th November 2023 inviting e-tender for the work which was also allotted to the petitioner. This is again in violation of the orders passed by this Court and therefore, the contempt petition was filed wherein notices have been issued. Commercial Appel No. 1 of 2023 filed by the petitioner before this Court came to be dismissed on 8th February 2024. The petitioner submits that from intervention application filed in his Appeal and on inquiry, the petitioner came to know that the said on-line tenders published, were without any sanction by the Higher Authorities. Executive Engineer had issued letter to that effect on 2nd January 2024. After getting the knowledge about the said illegal act, the petitioner has immediately filed an application with the respondents with a request to cancel the e-tender

notice. When there is no response, present Writ Petition has been filed.

4. Learned Advocate for the petitioner has taken us through the documents including the order passed by the Commercial Court and the orders and Judgment passed by this Court in Commercial Appeal No. 1 of 2023 and also impugned e-tenders published. He points out the letter dated issued by the Executive Engineer stating that permission from the Higher Authorities has not been taken. Therefore, learned Advocate submits that it is necessary to stay the entire proceedings of e-tenders and the matter deserves to be admitted.

5. Learned AGP for respondent Nos. 1 and 2 and learned Advocate Mr. Yadkikar instructed by Advocate for respondent Nos. 3 and 4 objects. They submit that the Commercial Suit filed by the petitioner is pending before the concerned Court. Though the interim relief was prayed, it was then rejected. The petitioner preferred Commercial Appeal, which ultimately came to be dismissed. Even the petitioner approached the Hon'ble Supreme Court but there is no relief in favour of the petitioner. Under the said circumstance, this is another attempt by the

petitioner to get the same relief which has been rejected by this Court.

6. At the outset, we are taking note of the fact that the petitioner has already approached, by way of Commercial Suit No. 1 of 2023, before the competent Court and the said Suit is still pending. When the interim reliefs were rejected, the petitioner approached this Court by filing Commercial Appeal No. 1 of 2023 and this Court dismissed the Commercial Appeal No. 1 of 2023 on 8th February 2024. The Hon'ble Supreme Court, in Petition for Special Leave to Appeal (C) No. 5018 of 2024, declined to exercise its jurisdiction under Article 136 of the Constitution of India, by order dated 26th February 2024. The order of the Hon'ble Supreme Court further says that, it is clarified that the observations in the impugned order of the High Court shall not come in the way of the trial of the suit. Thus, the situation stands is that it is stated that during the pendency of the Appeal, impugned e-tenders were floated, which can still be the subject matter before the trial Court in the Commercial Suit. We reiterate that originally the reliefs claimed by the petitioner were different and thereafter the Commercial Suit came to be amended wherein compensation has been prayed. Now, even in this Petition, the petitioner is not clarifying, as to whether the

petitioner is treating the action taken by respondent Nos. 1 and 2 for termination of contract as breach of the terms of the contract or not. When the Suit is already pending where the subsequent events can also be agitated, those cannot be entertained by way of a Writ Petition. Whether the act of issuing tenders during the pendency of the proceedings would amount to contempt or not, is the subject matter in the Contempt Petition and therefore, that point cannot be considered here.

7. On inquiry, learned Advocate for the petitioner makes a statement that the petitioner has not taken part in those e-tenders process, which are made subject matter in the Writ Petition, now. Under the said circumstance, the petitioner cannot have *locus standi* to pray for calling the records and proceedings of those e-tenders and to declare it as null and void, by exercising the powers of this Court under Article 226 of the Constitution of India and therefore, the Writ Petition deserves to be dismissed at the threshold.

8. The Writ Petition stands dismissed, at the threshold.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE