



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

**APPEAL FROM ORDER NO. 25 OF 2024
WITH
CIVIL APPLICATION NO. 6803 OF 2024**

Sanjay S/o Sheshrao Sathe,
Age : 53 Years, Occ. Business,
R/o. Bhoi Galli, Shahada,
Tq. Shahada, Dist. Nandurbar.

.. Appellant
(Orig. Appellant)

VERSUS

Maharashtra State Road Transport
Corporation, Central Office,
Maharashtra Bhavan, Dr. Anandrao
Nayar Road, Mumbai,
Through its Regional Controller,
Maharashtra State Road Transport
Corporation, Regional Office,
Dhule Tq. & Dist. Dhule.

.. Respondent
(Orig. Defendant)

.....

Advocate for the appellant : Mr. Ajinkya A. Joshi
holding for Mr. S.V. Natu
Advocate for the Respondent : Mr. B.S. Deshmukh

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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 7th AUGUST 2024**

ORDER :

1. Heard finally at the admission stage.
2. The appellant, who is the original plaintiff in Regular Civil Suit No. 34 of 2024, has challenged the order dated 10.05.2024 passed by the learned First Appellate Court i.e. District Judge-I Shahda whereby his application below Exh.5 in Misc. Civil Application No. 4 of 2024 for staying the re-

tender notice No. 1 of 2024 in respect of *Rasvanti Gruh* at Shahada on the premises of respondent/M.S.R.T.C, has been rejected.

3. The learned counsel for the appellant submits that the appellant is successful bidder for the aforesaid tender of *Rasvanti Gruh* at Shahada on the premises of respondent/M.S.R.T.C and he is ready to carry out the said tender by giving satisfactory rent. He pointed out that though the appellant was highest bidder and his name was recommended by the Interview Committee, but the respondent/Corporation cancelled the earlier tender process and issued re-tender notice No. 1 of 2024 for starting the tender process afresh. Though, the learned counsel for the appellant did not dispute the discretion of respondent/M.S.R.T.C to cancel the tender process or delete the tender process regarding any area under the terms and conditions of the tender at Sr. No. 23, but, according to him, the respondent/M.S.R.T.C. was under an obligation to give personal hearing to the appellant before re-starting the process. For that purpose he heavily relied upon the judgment of Hon'ble Apex Court reported in **(2021) 19 SC 706 in the case of State of Uttar Pradesh Vs. Sudhir Kumar**. On going through the said judgment, it appears that cancellation of tender conducted on ex-parte appraisal of facts

causing prejudice to the tenderer cannot be said to be valid and therefore, opportunity of hearing needs to be given to the appellant.

4. On the contrary, the learned counsel for the respondent/ M.S.R.T.C. strongly opposed the submissions made on behalf of the appellant. He submits that both the Courts below have refused to stay the re-tender notice No. 1 of 2024 merely because the present appellant with *mala fide* intention made collusion with second number bidder to gain wrongful concession in the rate of tender. He pointed out that both the learned Courts below have unanimously held that the appellant suppressed material facts from the Court as well as M.S.R.T.C. and therefore, the decision of M.S.R.T.C. for re-starting the process of tender was upheld. He further submits that the appellant has also taken part in re-process of tender and therefore, no injunction can be granted, as prayed, in favour of the appellant.

5. Admittedly, on going through the impugned order of learned First Appellate Court, it is evident that the learned First Appellate Court observed that the present appellant had suppressed material facts from the Court as well as from the M.S.R.T.C. and therefore, he was not entitled for discretionary

relief of injunction as claimed. Further, the learned trial Court has also elaborately discussed that in what condition, the Chief Manager of M.S.R.T.C. Mumbai was constrained to take decision of re-issuance of tender relating to *Shahda Rasvanti Gruh*.

6. Admittedly, the present appellant was declared highest bidder, but on going through the documents discussed by the learned trial Court in the judgment, it appears that the first three bidders for the aforesaid tender was *Aai Renuka Bahuuddeshiya Sanstha*, Shahada. Nitian Bhagwan Hadap and the present applicant. They have quoted respective rates of Rs. 31000/-. Rs. 27,000/- and Rs. 21,110/-. The rate of the present appellant was definitely lower than the first two tenders. However, the highest bidder *Aai Renuka Bahuuddesh Sanstha*, Shahada is the institution run by the present appellant only. Moreover, the guarantors of the aforesaid first and third tenderer's are also the same. Thus, it appears that the first and third tenderer's are in fact one and the same person. It appears that the first and second tenderer on the day of interview withdrew their request, leaving the third tenderer being the highest bidder. Even if it is presumed that the second tenderer had withdrawn his tender independently, but there was no reason for the appellant to withdraw the

tender at Sr. No. 1, since he himself was the president of first tenderer. Thus, his withdrawal indicates that he wanted reduction in the tender amount from Rs. 31,000/- to Rs. 21,110/-. This can be considered as *mala-fide* intention of the appellant. It is cardinal principal of law that who seeks equity must do the same. However, in the instant case, the appellant has acted with *mala fide* intention and therefore, the decision of Chairman of respondent/M.S.R.T.C. of re-starting the process of tender again under re-tender notice No. 1 of 2024 definitely appears proper. In such circumstances, the right of personal hearing under the principal of natural justice cannot be extended to the appellant. Even otherwise also the appellant has again participated in the tender process which has been re-started therefore, no interference is required in the impugned judgment and order and resultantly the present Appeal from Order stands dismissed at admission stage along with the pending civil application No. 6803 of 2024 and accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

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