



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7057 OF 2024

Nobel Carrying Corporation,
A Registered Partnership Firm
Through its Partner namely,
Sultan Mohiuddin Abdul Faiz,
Age 56 years, Occ. Business,
R/o. House No. 1124, National
Highway No. 9, Omerga, Tq. Omerga,
Dist. Dharashiv.

... Petitioner

VERSUS

- 1) The State of Maharashtra
Through the Principal Secretary,
Food, Civil Supplies and
Consumer Protection Department,
Mantralaya, Mumbai-32.
- 2) The Collector, Parbhani.
- 3) M/s. Khurana Roadlines,
Through its representative,
having its office at Jawahar
Road, Hingoli, Tq. & Dist.Hingoli.

... Respondents

...
Advocate for Petitioner : Ms. P.S. Talekar, i/b Talekar and Associates
Addl. G.P for Respondent nos. 1 & 2 : Mr. A.R. Kale
Advocate for Respondent no. 3 : Mr. S.S. Rath

WRIT PETITION NO. 7423 OF 2024

Shalimar Transport and Carting Construction
Through its Sole Proprietor,
Shaikh Hameed Shaikh Rahim,
Through General Power of Attorney,
Shaikh Junaid Shaikh Hameed,
Age 42 years, Occ. Business,
R/o. Rahemat Nagar, Parbhani.

... Petitioner

VERSUS

- 1) The State of Maharashtra,

Through the Principal Secretary,
Food, Civil Supplies and
Consumer Protection Department,
Mantralaya, Mumbai-32.

2) The Collector, Parbhani.

3) M/s. Khurana Roadlines,
through its representative,
having its office at
Jawahar Road, Hingoli,
Tq. & Dist. Hingoli.

... Respondents

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Advocate for Petitioner : Mr. N.E. Deshmukh
Addl.G.P. for Respondent nos. 1 & 2 : Mr. A.R. Kale

CORAM : **MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : **08.08.2024**

PRONOUNCED ON : **14.08.2024**

JUDGMENT : (MANGESH S. PATIL,J.)

These are the writ petitions under Article 226 of the Constitution of India, though preferred by two different petitioners, who are engaged in the business of transportation, they are coming with identical prayers *inter alia* impugning the same communication of respondent no. 1 dated 05.07.2024, addressed to respondent no. 2-Collector Parbhani. Hence both the petitions are heard together and are being disposed of by this common judgment and order to avoid repetition of facts.

2. Rule in both the matters. It is made returnable forthwith.

3. The learned A.G.P. waives service for respondent nos. 1 and 2 i.e. Principal Secretary Food, Civil Supplies and Consumer Protection Department of the State of Maharashtra and Collector, Parbhani, respectively. Learned advocate Mr. Rathi waives service for respondent no. 3 in Writ Petition No. 7057/2024, who is none other than the same entity that is respondent no. 3 in Writ Petition No. 7423/2024 who is also engaged in

the business of transportation of goods.

4. The petitioners and the respondent no. 3 are carrying on business of transportation of goods. The petitioner in Writ Petition No. 7057/2024 was awarded a contract for transportation of food grains and essential commodities in Parbhani district. Its contractual period ended in the year 2021, but it was granted extensions from time to time.

5. A fresh tender was floated for the same work for the period of three years by publishing a notice on 26.10.2021. Since the contract was being awarded to an entity, which was already blacklisted, petitioner Nobel Carrying Corporation preferred a writ petition and the further tender process was stalled. The matter was transferred to the Principal Seat. The petitioner-Nobel Carrying Corporation was again granted an extension during the period of stay.

6. On 22.05.2024, the respondent no. 1 by a communication to respondent no. 2-Collector informed not to grant any extension to the petitioner –Nobel Carrying Corporation. It also directed to request the contractor from neighbouring Hingoli district to undertake the work of transportation.

7. Petitioner-Nobel Carrying Corporation preferred Writ Petition No. 5143/2024 challenging that communication dated 22.05.2024. By the order dated 28.05.2024, the vacation bench directed not to take any further decision on the basis of this communication dated 22.05.2024 and unless the petitioner-Nobel Carrying Corporation was extended an opportunity of being heard and directed further that it shall be allowed to continue the work under contract.

8. Accordingly, the petitioner-Nobel Carrying Corporation approached respondent no. 2 with a representation. He forwarded it to respondent no. 1. In turn, respondent no. 1 directed respondent no. 2 to consider and

decide the petitioner-Nobel Carrying Corporation's representations dated 24.05.2024 and 28.05.2024. Respondent no. 2 extended an opportunity of being heard and submitted a detailed report on 10.06.2024 (Exh. 'O'). He expressly and candidly informed respondent no. 1 *inter alia* that the petitioner-Nobel Carrying Corporation was granted an extension since it was already undertaking the work of transportation at a lesser rate. Awarding contract without inviting competitive bids and without undertaking any process was inconsistent with clause 19.4 of the government resolution dated 15.01.2021. He also informed that considering the rate being quoted by respondent no. 3 of Rs. 128.80 per quintal it would cause a loss to the public exchequer of around Rs. 93 lakh per month.

9. In spite of such communication, by the impugned direction dated 05.07.2024, respondent no. 1 informed that the petitioner-Nobel Carrying Corporation had quoted an exorbitant rate in the tender floated as per the government resolution dated 15.01.2021. Since it was not eligible to secure the contract, it stalled the process by filing a writ petition and under interim order could continue to get the extensions from time to time and further observing that till further orders or till a new contract was entered into, which ever was earlier the Hon'ble Minister had directed Parbhani district to be annexed to the adjoining district Hingoli for transportation and if someone from Hingoli district was willing to undertake the work he shall be awarded the contract for the time being. This is the communication, which is under challenge in both these writ petitions.

10. The petitioner-Nobel Carrying Corporation additionally is seeking a declaration that clause no. 19.2 of the government resolution dated 15.01.2021 is violative of Article 14 of the Constitution of India and in the alternative to read it down so as to ensure that the interim arrangement is not for an indefinite period and soliciting a mandamus directing respondent no. 1 to initiate a fresh tender process.

11. The petitioner-Shalimar Transport and Carting Construction from Writ Petition No. 7423/2024 alleges that since it was also working in Hingoli district and was willing to undertake the work even in Parbhani district, he made a representation dated 08.07.2024 to respondent no. 2-Collector expressly referring to clauses 17.2 and 17.3 of the government resolution dated 20.04.2017 and clause no. 19.2 of the government resolution dated 15.01.2021 and its willingness to undertake the work, but the representation was not considered and that the petitioner would additionally seek a direction to the respondent no. 1 to take appropriate decision on its representation and also sought direction to respondent no. 1 to undertake a fresh tender process.

12. The learned advocate Ms. Talekar for petitioner-Nobel Carrying Corporation would repeat the above stand in the petition and would submit that everything was going on smoothly till the communication dated 22.05.2024, whereby it was decided to terminate the extension granted to the petitioner abruptly. The stand of respondent no. 1 in the impugned communication attributing the petitioner of creating hurdle in completing the tender process floated in the year 2021 is fallacious. The contract was about to be awarded to an entity, who was L-1, but was already blacklisted and was not eligible to participate, and only on this count that petition was filed and the interim order was granted not to issue a work order. Subsequently, on a request by respondent no. 1, the petition was transferred to the Principal Seat and was never circulated by respondent no. 1. Consequently, by virtue of clause 19.2 of the government resolution dated 15.01.2021, the petitioner-Nobel Carrying Corporation was granted extension to undertake the work of transportation at the same rate, which continued from time to time till the latest turmoil. Therefore, the petitioner could not have been blamed for the inability of respondent no. 1 to complete the tender process that was initiated, the tenure of which was three years.

13. Ms. Talekar would submit that by this time even that period is over,

and as has been mentioned in the affidavit in reply filed on behalf of respondent nos. 1 and 2, since they are ready to undertake a fresh tender process, the petitioner would not have any objection rather is precisely what it is praying for.

14. Ms. Talekar would further submit that in light of the supervening events and the stand being taken by respondent nos. 1 and 2 in their affidavit in reply, even the petitioner does not press the prayers seeking declaration about clause no. 19.2 of the government resolution dated 15.01.2021 being violative of Article 14 of the Constitution of India.

15. Ms. Talekar would submit that respondent no.2, who is the Collector, had given a candid opinion vide communication dated 10.06.2024 and had objectively demonstrated as to how the arrangement of terminating the petitioner's extension and awarding the work to respondent no. 3 would cause a loss to the public exchequer to the tune of around Rs. 93 lakh per month. The actions of respondent nos. 1 and 2 potentially causing such a huge loss to the public exchequer in itself should be sufficient for this Court to allow both the petitions and direct the respondent no. 1 to forthwith undertake a fresh tender process. No plausible and reasonable explanation is coming forth in the affidavit in reply filed by the respondent nos. 1 and 2 as to the estimate of loss opined by respondent no. 2-Collector and nothing has been mentioned as to why it should be overlooked.

16. Lastly, Ms. Talekar would submit that the petitioner has been undertaking the work of transportation at a lesser rate without there being any dispute about its competence or performance in doing the same work for number of years to the satisfaction of the respondent nos. 1 and 2. There was no reason for changing the *status quo* albeit it was always open for them to undertake a fresh tender process. She would, therefore, submit that even if it would take some time to undertake the fresh tender process and consequently petitioner-Nobel Carrying Corporation, by virtue of Clause

no. 19.2 continues to undertake the work for some time, that would save public money.

17. Mr. Deshmukh, learned advocate for the petitioner in Writ Petition No. 7423/2024, would adopt submissions of Ms. Talekar and would submit that the very conduct of respondent nos. 1 and 2 in a straightaway, allowing respondent no. 3 to undertake the work at an exorbitant rate without calling for competitive bids, when the transporters like the petitioners are willing to undertake the work, is clearly a highhanded and arbitrary action in view of clauses no. 17.2 and 17.3 of the government resolution dated 20.4.2017. Its representation has also not been considered.

18. Per contra, the learned Addl. Government Pleader, referring to the affidavit in reply, would submit that the petitioner-Nobel Carrying Corporation is not coming to the court with clean hands. After completion of the contract period, under which it was working till the year 2021, it was able to get extensions from time to time. It was mischievous in objecting to the fresh tender process and succeeded in obtaining an interim relief, completely stalling that process. The period for which it was undertaken being over, the respondent no. 1 has no reservation and is rather ready to undertake a fresh tender process. He would advert our attention to paragraph no. 19 of the affidavit in reply in this context.

19. However, the learned Addl.G.P. would submit that it is the prerogative of respondent no. 1 as an employer to undertake a tender process. No fault can be found with his conduct in terminating the extension granted to the petitioner-Nobel Carrying Corporation. However, since the petitioner-Nobel Carrying Corporation was interested in continuing with the work it has been able to discharge the work for number of years without there being any formal process of law of floating of tender. He would, therefore, submit that the powers under Article 226 of the Constitution of India shall not be exercised in aid of such an unscrupulous litigant.

20. The learned Addl.G.P would advert our attention to Clause no. 19 of the government resolution dated 15.01.2021 and Clause no. 17 of the government resolution dated 20.04.2017 and would submit that pursuant to such stipulation, after expiry of the earlier tender process a fresh tender process could not be concluded and, the respondent no. 3 being a transporter from neighbouring Hingoli District and was willing to undertake the work, as a stop-gap arrangement the work was directed to be awarded to it. No *mala fides* are being attributed to respondent no. 1 in either of these petitions.

21. The learned advocate Mr. Rathi for respondent no. 3 would adopt the arguments of the learned Addl.G.P and would add that respondent no. 3, being a contractor from adjoining Hingoli district was offered the work and since it was ready, the impugned communication directs respondent no. 2-Collector to get the work done from respondent no. 3. The work at which he has been allowed to work is at the same rate as is prevalent in Hingoli district. There is no merit in both these petitions.

22. We have considered the rival submissions and perused the papers.

23. As can be gathered, there is not much of a dispute about the facts. Therefore, one need not repeat those. Admittedly, the tenure of the contract, which was awarded for a period of three years to the petitioner-Nobel Carrying Corporation had ended in the year 2021 and since thereafter it was allowed to continue the work. Obviously, till a fresh tender process was undertaken since it was a matter of transportation of essential supplies within the district, the work could not have been stopped and the petitioner-Nobel Carrying Corporation was granted extension. Though a fresh tender was attempted to be undertaken, the petitioner by filing a writ petition had obtained stay.

24. True it is that the petitioner Nobel Carrying Corporation was unable to secure the contract under the fresh tender process and, may be under the

pretext of challenging the tender process whereby the contract was to be allotted to an entity, it was doing so merely on the ground that, that entity was already blacklisted and still was to get the contract. One cannot find fault with the petitioner-Nobel Carrying Corporation for taking advantage of the situation. It could use the circumstance to his advantage and succeeded in stalling the process. However, the stand of respondent nos. 1 and 2 and the submission of the learned Addl.G.P attributing petitioner Nobel Carrying Corporation as mischievous, to our mind, is rather harsh. If respondent nos. 1 and 2 were unable to undertake the tender process with precaution and had allowed a blacklisted entity to participate, may be on the basis of the petitioner's allegations they could have undertaken a fresh scrutiny or could have circulated the matter for an early decision, more so when at their request it was transferred to the Principal Seat. Consequently, it was not the petitioner Nobel Carrying Corporation, who alone was responsible, but even respondent no. 1 was responsible for not getting the writ petition decided earlier or to get the interim relief vacated. It would not, therefore, lie in the mouth of respondent no. 1 to attribute petitioner-Nobel Carrying Corporation for the mess.

25. Be that as it may, there cannot be a dispute about the fact that the petitioner- Nobel Carrying Corporation is ingenuously and circuitously seeking to get an extension till the time a fresh tender process is undertaken. As it is, the earlier tender process, which could not be completed, was to be for a period of three years, and by the passage of time, even its tenure by now would be getting over. In such peculiar state of affairs, in our considered view, when respondent no. 1 has expressly stated in the affidavit in reply its intention to undertake a fresh tender process, we find no hesitation in issuing such a direction, albeit the L-1 bidder from the tender process, which could not be taken to the end, is not before us, more so when even he does not seem to have taken any step for either getting the stay vacated or to get the writ petition which was transferred to the

Principal Seat decided.

26. Incidentally, the affidavit in reply filed by respondent nos. 1 and 2 does not seek to explain away the candid report of respondent no. 2-Collector dated 10.06.2024. He had precisely pointed out as to how awarding contract at a higher rate, may be by way of a stop gap arrangement, would drain the public exchequer by around Rs. 93 lakh per month. Even clause no. 19.2 in the government resolution dated 15.01.2021 being relied upon by the respondents requires such stop gap arrangement to be undertaken from the transporter of the adjoining district. However, only if it was willing to work at the rate at which the goods were being transported in the district for which this arrangement is being made.

27. Learned advocate Mr. Rathi for respondent no. 3 would submit that the rate contemplated in this clause is the rate at which the contractor in the adjoining district has been undertaking the work and not at the rate of the district for which the work is to be performed. To our mind, this is complete misreading of the clause, which is in Marathi. We have no manner in doubt that this exercise to be undertaken in case of emergency or urgency contemplated in clause no. 19 of the government resolution dated 15.01.2021 expressly permits the work of transportation in a particular district to be allotted to the contractor of a neighbouring district if he is willing to work at the rate where the work is to be performed, and not at the rate at which he is undertaking the work in the neighbouring district. This was what the Collector has informed vide his communication dated 10.06.2024 and that is why it was being pointed out that such a stop gap arrangement would cost the public exchequer dearly. In spite of this, the decision was taken to award the contract for the time being to respondent no. 3 at the rate of Rs. 128.80 per quintal when the petitioner Nobel Carrying Corporation has been doing it at quite a lesser rate.

28. The learned A.G.P. could not give any satisfactory reply to our query

as to why under Clause 19.2 a contractor from adjoining Hingoli district alone was preferred, when Parbhani district has its boundaries even with few other districts like Beed, Nanded and Jalna. We are merely pointing out this circumstance to demonstrate that though there is enabling provision under clause 17.2 of the government resolution dated 20.04.2021 or clause 19.2 of government resolution dated 15.01.2021 for making a stop gap arrangement by awarding a contract for the time being to the contractors from the adjoining district, it was imperative, even if the respondent no. 1 was not intending to continue with the petitioner-Nobel Carrying Corporation for whatever reason, to have taken some process by offering the work to the contractors from the neighbouring district, expressly calling upon their willingness to work at the rate at which the petitioner-Nobel Carrying Corporation was doing it in Parbhani district. The affidavit in reply is conspicuously silent and does not demonstrate as to how respondent no. 3 was shortlisted and picked up for awarding the contract, as mentioned herein above, at a rate more than the rate on which petitioner-Nobel Carrying Corporation has been doing the work. This circumstance is also demonstrative of the arbitrariness in taking the decision to allow the work to be undertaken by respondent no. 3.

29. The impugned communication expressly refers to such directions being given on the instructions of the Hon'ble Minister. This is where the cat seems to have come out of the bag. Not only in the impugned communication but even in the affidavit in reply respondent nos. 1 and 2 have expressly stated that the impugned decision has been prompted by the directions of the Hon'ble Minister. We are indicating this to demonstrate that the decision under challenge is tainted with arbitrariness and has been taken under the influence of a minister.

30. In these circumstances, we have no hesitation in quashing and setting aside the impugned communication and directing respondent no. 1 to undertake a fresh tender process.

31. However, considering the unprecedented situation and as it is a matter of supply of essential commodities within the district, which work cannot be stopped it would be appropriate that the respondent no. 2 is directed to explore immediately from the petitioner-Nobel Carrying Corporation and also the contractors of the districts adjoining Parbhani their willingness to undertake the work as a stop gap arrangement, till the new tender process is taken to the logical end and to award the work to such of the willing contractor who is ready to undertake the work at the lowest rate. He shall call for such proposals in a sealed cover and need not resort to any detail process.

32. Both the writ petitions are allowed. The impugned communication dated 05.07.2024 is quashed and set aside. Respondent no. 1 shall immediately undertake a fresh tender process and conclude it as expeditiously as possible.

33. As a stop gap arrangement, respondent no. 1 shall call for the willingness of the contractors who are already engaged in the districts adjoining Parbhani district, their willingness to undertake the work for the time being and the rate at which they are ready to work and award such work to it. The petitioner-Nobel Carrying Corporation may also submit its offer to respondent no. 2 and even its offer shall be considered.

34. Rule is made absolute in above terms.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-