



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

**WRIT PETITION NO. 8109 OF 2024**

M/s. Chintamani Electricals,  
Through its Proprietor,  
Shri. Mahesh Balasaheb Zinzurde,  
Age 37 years, Occ. Proprietor/Business,  
R/o. Ahmednagar, Tq. & Dist.  
Ahmednagar.

... **Petitioner**

**VERSUS**

The Superintending Engineer,  
Superintending Engineer, Circle,  
Maharashtra State, Electricity  
Distribution Company Ltd.,  
Ahmednagar.

... **Respondent**

...

Advocate for Petitioner : Mr. D.S. Bagul  
Advocate for Respondent : Mr. A.M. Gaikwad

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

**RESERVED ON : 20.08.2024  
PRONOUNCED ON : 23.08.2024**

**ORDER : ( MANGESH S. PATIL, J.)**

Heard. Rule. It is made returnable forthwith. The learned advocate Mr. Gaikwad waives service for the sole respondent. At the joint request of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner has participated in the tender process being undertaken by the respondent, who is the Executive Engineer, Circle, Maharashtra State, Electricity Distribution Company Ltd., Ahmednagar (MSEDCL) for providing outsourced persons at various offices under urban cum rural division, Ahmednagar, which is for a period of 12 months and published on 28.03.2024.

3. He is aggrieved by the decision/communication of the respondent, dated 12.06.2024, thereby disqualifying him in the technical evaluation and the subsequent communication dated 11.07.2024, assigning the reasons for disqualification on his query, that the decision was taken in view of various administrative circulars and breach of labour laws and on the ground that proposal for blacklisting him was initiated.

4. The learned advocate Mr. Bagul would take us through the papers and submit that initially no grounds regarding disqualification were assigned when the first impugned communication was issued. It is only after his query that by the second impugned communication, he was informed about the grounds as mentioned above. He would submit that the MSEDCL has issued circulars from time to time regarding the policy and procedure to be adopted for debarring an agency from dealing with MSEDCL on 02.05.2016, and even thereafter on 11.06.2018. He would submit that even if the respondent had some reasons to undertake the process for debarring the petitioner, the procedure laid down in the circulars ought to have been followed. Even there has been a mechanism expressly stating that in case of the 'Purchase Order Issuing Authority (LOA)', the Regional Office as a competent authority for initiating a penal action. The whole process has been undertaken by the respondent, who is merely a Superintending Engineer. He would submit that even though the petitioner was issued with a show cause notice and a committee consisting of two officers was constituted for enquiring into the allegations regarding the alleged failure of the petitioner to make timely deposits in the employees provident fund accounts, and ESIC the ultimate decision would vest with the Regional Office and till that time the respondent could not have technically disqualified the petitioner on the premise that the process was underway.

5. Mr. Bagul would further submit that even according to the debarring policy, the petitioner only could have been penalized and could not have been debarred from participating in the tender process. The committee had

merely concluded about delayed deposit of the moneys by the petitioner in the EPF and ESCI account. He would, therefore, submit that even if the process was initiated for proceeding against the petitioner in accordance with the policies of the MSEDCL, it was erroneous on the part of the respondent to disqualify the petitioner. The decision is perverse and arbitrary and is not sustainable in the light of either the tender notice or the circulars of MSEDCL.

6. Per contra, learned advocate Mr. Gaikwad for the respondent would initially try to demonstrate as to how petitioner's performance under the earlier contract was suffering from some deficiencies, precisely his failure to make timely deposit of the government dues. He would submit that there were allegations about non payment of salaries to the workers on time. A show cause notice was issued to the petitioner as per the circulars and the matter was considered by the committee, which recorded the reasons and the action was proposed for blacklisting the petitioner in accordance with the administrative circulars. The petitioner cannot be heard for initiating such action, and there is no fault in disqualifying him in the technical evaluation.

7. Additionally, Mr. Gaikwad would advert our attention to clause no. 14 of the tender notice, which prescribes the stipulation as regards corrupt or fraudulent practise even in execution of the earlier contract as a ground for attracting disqualification. He would submit that there are no allegations of *mala fides*. It is a matter of tender process. This court has limitations in exercising powers under Article 226 of the Constitution of India. The decision to disqualify the petitioner is based on the circumstances indicated in the affidavit in reply and communicated to the petitioner. The respondent, as an employer, has a leeway in accepting or refusing a proposal at the technical evaluation. A plausible view was taken based on petitioner's performance under the earlier similar contract and the petition be dismissed.

8. We have considered the rival submissions and perused the papers. As can be gathered, though initially, by the first impugned communication, the petitioner was merely informed about his disqualification, by the subsequent communication he was assigned the reasons mentioning that he had committed breach of the labour laws and by referring to the communication dated 16.02.2024 (Page 152) the process was already underway for blacklisting him. It is thus apparent that the impugned communication dated 11.07.2024 merely refers to two grounds for disqualifying the petitioner at the technical evaluation:

- (1) Breach of labour laws; and
- (2) Process for blacklisting was being undertaken.

We are referring to this precisely for the reason that in the process of arguments Mr. Gaikwad even would bank upon condition no. 14 of the tender notice under the heading “*Corrupt or Fraudulent Practices*” and particularly clause ‘B’ thereof, which reads as under:

“B. MSEDCL will declare a firm ineligible, either indefinitely or for a specific period of time, for award of MSEDCL contract if at any time if it is found that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, MSEDCL Assignment.”

9. When the impugned communication dated 11.07.2024, does not expressly refer to the respondent having resorted to clause 14-B, the submission of Mr. Gaikwad to defend the impugned action by referring to it is clearly something which was not resorted to by the respondent for disqualifying the petitioner. For this reason alone, the stand of the respondent in his affidavit in reply to justify the impugned action by referring to clause 14-B is clearly a new ground being resorted to by him and would be *ex facie* inconsistent with the decision in the matter of **Mohinder Singh Gill and anr. Vs. The Chief Election Commissioner, New Delhi and others; 1978 (1) SCC 405**. When the impugned communication does not assign and refer to the ground contemplated under clause 14-B, the

respondent cannot justify the action by referring to it in the affidavit in reply for the first time.

10. Even if, as submitted by Mr. Gaikwad, the word “in executing” appears in this clause, there would be another impediment. A plain reading of this clause would demonstrate that a firm can be held ineligible if it has resorted to corruption or fraud in execution of the earlier contract. Precisely for this reason, on our query, as to whether not depositing timely the contribution in EPF and ESIC would constitute either a corrupt or fraudulent practice, Mr. Gaikwad could not give any explanation. Even the affidavit in reply is conspicuously silent as to how such delayed remission of these contributions would constitute a corrupt or fraudulent practice. Therefore, apart from the fact that reference to clause 14-B is an improvisation, even otherwise, the allegations would not demonstrate that the alleged lapse on the part of the petitioner would constitute a corrupt or fraudulent practice so as to attract disqualification.

11. This being the only stand taken by the respondent in the affidavit in reply, the decision to disqualify the petitioner by the impugned communications will certainly be arbitrary and unbecoming of the employer from a public sector, undertaking a tender process.

12. As far as the process of blacklisting or debarring or banning the petitioner is concerned, suffice for the purpose to observe that the MSEDCL has administrative circulars referred to herein above *inter alia* prescribing the procedure to be undertaken for reaching the conclusion. As is being demonstrated, though a committee was constituted by the Chief Engineer of Nashik Division, Nashik of MSEDCL by order dated 19.10.2023 (Exh. R3), comprising of none other than the respondent himself and the General Manager of Nashik Division, the ultimate conclusion drawn by the committee in its report (page 263) was merely to the effect that the petitioner had failed to make timely deposits in the Employees Provident

Fund and Employees State Insurance Corporation accounts. There are apparently no findings regarding absolute failure to deposit the contribution.

13. As is being submitted by Mr. Bagul by adverting attention to the two circulars of the MSEDCL, even if the petitioner was issued with a show cause notice and the inquiry was undertaken by the two member committee, the respondent was not the competent authority to penalise the petitioner for the alleged misdeeds. It would be the regional office, which has been notified as the competent authority for penalizing the petitioner. In all probability, for this very reason, by a communication dated 16.02.2024 (Exh. R6), the respondent merely informed the petitioner about having submitted requisite proposal for blacklisting him.

14. In fact, the petitioner has been expressly denying to have been ever served with the communication (Exh. R6). On our query, Mr. Gaikwad could not demonstrate by referring to any tangible material that this order/communication was actually served to the petitioner. Be that as it may, the fact remains that as per the administrative circulars of MSEDCL, the respondent was not the competent authority to inflict penalty contemplated in the circulars including suspension, debarment etc. If such is the state of affairs, the very conduct of the respondent in disqualifying the petitioner on the the ground that the proposal for blacklisting him and penalizing him was being undertaken would demonstrate arbitrariness in the decision making process in disqualifying the petitioner at the technical evaluation.

15. We are conscious of the fact that this Court has limitations in undertaking judicial review in contractual matters. However, the aforementioned state of affairs being clearly indicative of the arbitrariness in the matter of disqualifying the petitioner at the technical bid, the circumstances being presented before us would justify our act of

undertaking the judicial review.

16. In the light of above, the impugned communications, communicating the petitioner his disqualification in the technical evaluation, being grossly illegal, those are liable to be set aside.

17. On our query, Mr. Gaikwad informs us that financial bids have been opened, but the work order is still to be issued in view of pendency of this petition. It would, therefore, be appropriate to direct the respondent to open the financial bid of the petitioner and then to complete the tender process in accordance with law and the tender notice.

18. The writ petition is allowed. The impugned communications dated 12.06.2024 and 11.07.2024 are quashed and set aside. The respondent shall open the financial bid of the petitioner and thereafter undertake the further steps for completing the tender process.

19. Rule is made absolute in above terms.

( SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-