



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 8918 OF 2024
IN WP/7057/2024

NOBEL CARRYING CORPORATION THROUGH ITS PARTNER SULTAN
MOHIUDDIN ABDUL FAIZ

VERSUS

1. THE STATE OF MAHARASHTRA
2. THE COLLECTOR, PARBHANI
3. M/S KHURANA ROADLINES

Ms. P. S. Talekar h/f Talekar and Associates for the applicant
Mr. A. R. Kale, AGP for respondent Nos.1 and 2/State

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

DATE : 21.08.2024

PER COURT :

By way of this civil application the original petitioner is seeking modification of the portion of the order whereby we had disposed of his petition finally.

2. We have heard the learned Advocate for the petitioner as also the learned AGP.

3. The petition was pertaining to a tender process. The petitioner who was awarded a contract for the earlier tenure was

soliciting a writ of mandamus directing the State to undertake a fresh tender process. It was also challenging the decision of the respondent/State to allow the work for the time being to be performed by the contractor of a adjoining district at an exorbitant rate even when he was ready to undertake the work at a lesser rate thereby saving the public money. By the final order, we had directed the State Government to undertake a fresh tender process for supply of goods and essential commodities within Parbhani district. Since it was bound to take some time, we had thought it fit to issue certain directions as a stop gap arrangement. The relevant paragraph nos. 31 to 33 read as under:-

“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.”

4. The learned Advocate for the petitioner submits that there is an error or confusion in view of the fact that in paragraph no. 31, it was the respondent no.2 in the petition i.e. the Collector, Parbhani who was directed to explore willingness from the other contractors to work as a stop gap arrangement and to award the work to such of the willing contractor who is ready to undertake the work at the lowest rate. Whereas in paragraph no. 33, the direction was to the State-respondent no.1 to call for the willingness of the contractors who are already engaged in the district adjoining Parbhani district. It is submitted that in the very paragraph no. 33 the petitioner was expected to submit his offer to the respondent no.2- Collector but the first line directed the State respondent no.1 to call for the willingness. She submits that it is an obvious mistake or error in referring to and directing the respondent no.1-State to make the stop gap arrangement. She submits that the respondent no.2- Collector, Parbhani would be the right person and that was in contemplation of the Court when observations were made in paragraph no.31.

5. Per contra, the learned AGP would submit that there is no need of any modification. The directions are appropriate. The respondent no.2-Collector had the power only under clause no. 11.1 to extend the work contract for a period of two months after the earlier contract period was over. Whereas clause 19.2 expressly stipulated that for the subsequent period the matter would lie before the State Government which alone would grant extension. Even the petitioner himself had initially obtained extension from the Collector for two months but for the subsequent period, from the State Government. He would, therefore, submit that the power vests with the State Government and not the Collector.

6. There cannot be a dispute about the fact that by virtue of clause no. 11.1 of the government resolution dated 15.01.2021, it is only for the period of two months after the tenure of the earlier contract was over that the power was granted to the Collector to grant extension. Clause no.19.2 of the same government resolution empowers the State Government under clause to make necessary arrangement once the period of two months as contemplated under clause 11.1 was over. Therefore, the above mentioned directions of this Court expecting the respondent no.1-State to take final decision even in respect of stop gap arrangement

cannot be said to be an error and is not required to be modified.

7. The civil application is rejected.

(SHAILESH P BRAHME, J.)

(MANGESH S. PATIL, J.)

SSP