



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

Writ Petition No. 10141 OF 2024

M/s Kailas Zavar Transport and
Handling Contractor, Parbhani
Through its Authorized Signatory,
Akash s/o Kailas Zavar,
Age : 32 years, Occ. Business,
R/o : Opp. Mahesh Traders,
Near over bridge,
New Mondha, Parbhani,
Taluka & Dist. Parbhani.

...Petitioner

Versus

1. The State of Maharashtra,
Trough its Principal Secretary,
Food, Civil Supplies and Consumer
Protection Department,
Mantralaya, Mumbai-32.
2. The Collector,
Parbhani.
Taluka & District Parbhani.

...Respondents

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Mr. Swapnil S. Rathi, Advocate for the Petitioner.

Mr. S.P. Joshi, AGP for Respondents/State.

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

DATE : 18 SEPTEMBER 2024

FINAL ORDER [Per: Shailesh P. Brahme, J.] :

. Heard Mr. Swapnil S. Rathi learned Counsel for the
petitioner and the learned AGP for respondents.

2. The petitioner is an aspiring tenderer who allegedly has been denied permission to participate in a process initiated as a stop gap arrangement till award of contract. The work pertains to handling and transporting goods under Public Distribution Scheme in Parbhani District.

3. Nobel Carrying Corporation was awarded contract for Parbhani District which ended in 2021. It was granted extension from time to time. A fresh tender was floated for further period of three years vide notice dated 26.10.2021. The tender process was challenged by Nobel Carrying Corporation and by way of interim order, the process was stalled.

4. Nobel Carrying Corporation which continued to execute the work, preferred Writ Petition No.5143/2024, challenging communication dated 22.05.2024. By interim orders, it was directed to approach Collector, seeking permission to continue with the work. The Collector submitted report after hearing it and thereafter the respondent no.1/State refused to continue Nobel Carrying Corporation to carry out the work. Being aggrieved, Nobel Carrying Corporation had preferred Writ Petition No.7075/2024. Shalimar Transport Carting Construction was executing work in Hingoli District and was aspiring to undertake the work in Parbhani District. Its representation was not considered and hence Writ Petition No.7423/2024 was filed.

5. After hearing both the parties, by a reasoned order, we disposed of both the petitions on 14.08.2024 in following terms :

“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.”

6. After our order, Civil Application No.8918/2024 was preferred by Nobel Carrying Corporation seeking modification. By a speaking order, application was rejected on 21.08.2024. Against that, Petition(s) for Special Leave to Appeal (c) No(s). 19932/2024 was preferred before the Supreme Court. By order dated 02.09.2024, the petition was disposed of without causing any interference, except extension of period of fifteen days, for implementing earlier directions from paragraph nos.31 and 33 of our order dated 14.08.2024.

7. The grievance of the petitioner is that though it is even interested in carrying out work as a stop gap arrangement,

respondent no.2/Collector refused it from participating in the process of selection. Learned Counsel for the petitioner has referred to clause no.17 of Government Resolution dated 20.04.2017. He also referred to clause no.19 of Government Resolution dated 15.01.2021 to buttress the submission that the respondent no.2/Collector arbitrarily refused it from participating in the process. It is contended that the impugned action is violative of clause no.19.2. It is further submitted that the respondent no.2 is permitting similarly situated contractor to participate in the process, which is discriminatory.

8. We have passed reasoned judgment and order dated 14.08.2024 in Writ Petition No.7057/2024 and Writ Petition No.7523/2024, directing the respondent no.1 to undertake fresh tender process. As a stop gap arrangement, respondent no.1 was directed to call for the willingness of the contractors who are already engaged in the districts adjoining Parbhani District. The selection was to be made for the interregnum period till newly selected contractor in fresh tender process steps in. Basically this is a stop gap arrangement and not a regular tender process. The parameters and the eligibility to participate in the tender process stipulated by the Government Resolution dated 20.04.2017 and 15.01.2021 cannot be made applicable.

9. The purport of the stop gap arrangement is to avoid any inconvenience during the period till the selection of new contractor. Our directions were sought to be modified by Civil

Application No.8918/2024. It was rejected on 21.08.2024 which order was confirmed by the Supreme Court on 02.09.2024, except extending the time. The respondents are bound to follow the stipulation stated in paragraph no.33 of our order dated 14.08.2024.

10. The petitioner was not a party to earlier litigation. It is not executing any contract in Parbhani District or adjoining districts at the relevant period. The petitioner cannot claim any right to participate in the process which is a stop gap arrangement. It is not permissible for the respondents to allow any contractor to participate in that process. We find that the grievance is misplaced.

11. It is contended that there is discrimination as similarly situated contractor has been permitted to participate in the process. We are unable to entertain this plea for want of better particulars and for non-joinder of necessary parties. It is up to the respondents to select appropriate entity to entrust work as a stop gap arrangement in accordance with our directions. The petitioner cannot claim parity in illegality by citing that a contractor has been permitted to participate. We find no merit in the petition.

12. The writ petition is dismissed.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE