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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4279 OF 2024

Rudra Systems

.. Petitioner

Versus

Nashik Municipal Corporation & Anr.

.. Respondents

Mr. M. V. Thorat a/w Mr. Abhaysingh Shinde for petitioner.
Mr. M. L. Patil for respondents.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 28th MARCH, 2024

P.C.:

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, we have considered the matter for final disposal.

2. By instituting the proceedings of this petition under Article 226 of the Constitution of India, the petitioner – Partnership Firm has made the following prayers: -

"(a) call for the relevant records and proceeding from the office of the Respondent Authorities after going into the legality of the same, hold and declare that the Petitioner is fit and entitled to be issued Letter of Acceptance and work order in view of tender dated 13th February, 2024 as the lowest bidder.

(b) hold and declare that Petition cannot be debarred from participating in any tender process only because of he is debarred by MSEDCL.

- (c) *direct the Respondents to forthwith issue letter of acceptance and work order in favour of the Petitioner for being the lowest bidder in view of tender dated 13th February, 2024.*
- (d) *quash and set aside the impugned order/letter dated 14th March, 2024 issued by Respondent No.1 against the petitioner with further directions to issue letter of acceptance and work order in favour of the Petitioner for being the lowest bidder in view of tender dated 13th February, 2024.*
- (e) *pending the hearing and final disposal of this writ petition the Respondents be directed to forthwith issue letter of acceptance and work order in favour of the Petitioner for being the lowest bidder in view of tender dated 13th February, 2024.*
- (f) *pending the hearing and final disposal of this Writ petition the Letter of Acceptance dated 15th March 2024 issued in the name of the Second Lowest Bidder may be stayed and/or execution, implementation of the Letter of Acceptance dated 15th March, 2024 may be stayed till the pendency of the present Writ Petition.*
- (g) *pending the hearing and final disposal of this writ petition, issuance of work order in favour of other bidders by the Respondents be stayed.*
- (h) *pending the hearing and final disposal of this writ petition, the effect, implementation and execution of impugned order/letter dated 14th March, 2024 issued by the Respondent be stayed.*
- (h) *Interim and ad-interim reliefs in terms of prayer clause (d), (e), (f) and (g) above.*
- (i) *pass any other just and equitable order as this Hon'ble Court may deem fit and proper.*
- (j) *cost of the Petition."*

3. The petitioner participated in the tender process pursuant to the Tender Notice No.02/2023, dated 13th February, 2024, issued by the respondent – Nashik Municipal

Corporation to select a contractor for collecting data of different nature.

4. The submission of the learned counsel for the petitioner is that despite having been declared as L1 for the petitioner quoted the lowest rates, the respondent-Corporation is not issuing the letter of acceptance for which there cannot be any plausible and acceptable reasons. In view of this, the submission on of the learned counsel for the petitioner is that the respondent-Corporation be directed not to treat the petitioner ineligible on account of its debarment by Maharashtra State Electricity Distribution Company Limited (hereinafter referred to as "MSEDCL"). He further prays that accordingly the respondent-Corporation be directed to issue work order.

5. From the facts pleaded in the writ petition, it appears that despite having been declared to be L1, the letter of acceptance to the petitioner is not being issued for the reason that prior to its participation in the subject tender process, it was debarred by another public sector undertaking, namely, MSEDCL. It is the submission of the learned counsel for the petitioner that in the tender notice no such condition was mentioned that in case the participating tenderer has been debarred by any other entity, it shall be ineligible and hence holding the petitioner ineligible, despite declaring it to be L1, is absolutely unreasonable and arbitrary.

6. Learned counsel for the petitioner, however, draws our attention to Annexure-3 appended to the tender document which is a proforma whereby the participating tenderer was required to furnish certain information. In Clause 10 of the

said proforma, the participating tenderer was required to furnish information regarding blacklisting and disputes, if any. It has been stated by the learned counsel for the petitioner that it is true that the petitioner-firm was debarred by MSEDCL, however, the matter relating to debarment is pending before the Appellate Authority. In any case the submission is that the said proforma cannot be read as a mandatory condition that in case the participating tenderer has been blacklisted or debarred, it will be ineligible for its participation in the subject tender.

7. Mr. Patil, learned counsel representing the respondent-Corporation, however, has opposed the writ petition and submitted that in terms of the information required under the proforma contained in Annexure-3 to the tender document, if any tenderer was blacklisted or debarred by any other entity, such tenderer would be clearly ineligible. It has, thus, been argued that the writ petition is highly misconceived and ought to be dismissed at threshold.

8. Having considered the rival submissions made by the learned counsel for the parties, we are unable to agree with the submissions made by the learned counsel for the petitioner. Annexure-3, which is the proforma requiring the certain information to be submitted by the participating tenderer clearly forms part of the tender document and as such any information sought thereby will have a bearing on the tender process. In case the proforma requires the participating tenderer to furnish information about status of blacklisting/debarment or any other dispute, said information cannot be said to have been sought for no purpose. The

purpose, in our considered opinion, was to ascertain if any participating tenderer was debarred or blacklisted, consequence of which would be that such a tenderer would be ineligible.

9. We have, thus, no hesitation to hold that the information sought through proforma as contained in Annexure-3 to the tender document will form an essential tender condition. Even otherwise, if an entity, intending to participate in a public tender floated by the tendering authority which is an instrumentality of the State, such as the respondent-Corporation, is tainted on account of its blacklisting or debarment, in our opinion, such a tenderer cannot be treated to be eligible to participate in tender process.

10. Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Delhi High Court in the case of ***Atlanta Limited v. Union of India, reported in 2018 SCC OnLine Del 8269***. Drawing our attention to the observations made in para 18 of the said judgment, it has been argued by the learned counsel for the petitioner that the debarment or blacklisting by one department cannot preclude participation of a contractor or tenderer in the tenders floated by another department.

11. The submission made by the learned counsel for the petitioner on the basis of the aforesaid judgment in the case of ***Atlanta Limited*** (Supra) is highly misconceived. The observations made in paragraph 18 of the said judgment are to be read and understood in the facts of that case. It was a case where in relation to earlier work, the contract of the

tenderer was “deemed to be terminated” on account of non-fulfillment of certain criteria. However, in the present case, debarment of the petitioner–firm is by a conscious decision of MSEDCL. Thus, the judgment cited by the learned counsel for the petitioner, being distinguishable on facts, does not have any bearing so far as the facts of the instant case are concerned.

12. For the reasons aforesaid, we are not inclined to entertain this writ petition, which is hereby dismissed. Rule stands discharged.

13. However, there will be no order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
PANDIT
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