

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 867 OF 2024**

Hemant Ashar, the Partner of
Shreeji Network Solutions ... Petitioner
Vs.
Nashik Municipal Smart City Development
Corporation Ltd. & Ors. ... Respondents

Mr. Ashutosh Kulkarni i/b. Mr. Susmit Phatale a/w Mr. Somanath
Kale i/by Susmit Phatale for the Petitioner.

Mr. M. L. Patil for Respondent Nos.1 and 2.

Dr. Milind Sathe a/w Mr. Jaideep Singh Khattar, Ms. Priyanka
Desai with Ms. Rucha Prabhu i/by The Fort Circle for Respondent
No.3.

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

DATE : 30th JANUARY 2024

P.C. :

1. Mr. Kulkarni, learned counsel appearing on behalf of
the Petitioner, points out that one of the criteria for pre-
qualification for the tender floated by Respondent No. 1 and 2
for implementation and maintenance of Integrated Surveillance

& City Operations Platforms (ISCOP) for Emergency Operation Center (EOC) in Nashik was that prospective bidders were to have an annual turnover in excess of Rs. 35 crores per annum. He then invited our attention to a letter/certificate dated 21st July 2022 issued by one "Ramdas Ugale & Associates" annexed as Exhibit-H to the Petition which certified that the turnover of Respondent No. 3 was in excess of Rs. 35 crores for each of the preceding five years. Mr. Kulkarni submitted that it was basis this certificate that Respondent No.3 had prequalified for the said tender.

2. Mr. Kulkarni, then invited our attention a death certificate issued by Navi Mumbai Municipal Corporation from which he pointed out that Mr. Ramdas Ugale had passed away on 18th April 2015. He submitted that this fact was known to Respondent No. 3 since Respondent No. 3 had made specific reference of the passing away of Mr. Ugale in the letter dated 18th May 2015 by which Respondent No. 3 had appointed a new chartered accountant in place of Mr. Ugale. Basis this he submitted that Respondent No.3's qualification was based on a

forged and fabricated certificate. He thus submitted that there should be an ad interim stay on Respondent No. 3 undertaking any further work pursuant to the work order which had been issued in favour of Respondent No. 3.

3. *Per contra*, Dr. Sathe, learned Senior Counsel appearing on behalf of Respondent No.3, at the outset did not dispute that Respondent No.3 had submitted the letter/certificate dated 21st July 2022 but however submitted that the same was not the basis on which Respondent No. 3 was declared to be qualified since the said letter/certificate was withdrawn shortly after the same was submitted. He submitted that Respondent No.3 was duly qualified since as per tender condition PQ2 the consolidated turnover of Respondent No.3 and one of its subsidiary companies namely Secutech Automation Pte Ltd. was in excess of Rs. 35 crores for the preceding 5 years. Dr. Sathe also raised certain preliminary objections to the maintainability of the present Petition at the instance of the Petitioner who, he submitted, had not taken part in the tender process. He additionally submitted that 80% of the work had

since been completed and therefore no question of grant of any stay at this juncture arose.

4. Mr. Patil, learned counsel appearing on behalf of Respondent Nos. 1 and 2, supported the submissions of Dr. Sathe. He denied any impropriety on the part of Respondent No. 3 and also sought time to put in a detailed Affidavit in Reply. He submitted that Respondent No. 1 and 2 would be in a position to demonstrate how there was nothing amiss in either the tender process or the issuance of the work order in favour of Respondent No. 3.

5. After having heard the learned counsel at some length, two things are undisputed viz. (i) Respondent No.3 has admitted to submitting the letter/certificate dated 21st July, 2022 pursuant to the tender notice; and (ii) that Respondent No. 3 was aware of the demise of Mr. Ramdas Bhikaji Ugale in the year 2015 itself. Thus, keeping aside as to whether or not Respondent No. 3 stood qualified/pre-qualified on the basis of the said letter/certificate, the fact remains that Respondent No.

3 had pursuant to the tender notice submitted a forged/fabricated certificate in the course of the tender process. In our view, this fact alone would be sufficient to grant interim relief in the matter since as such conduct sullies the entire tender process. A prospective bidder is required to act in good faith just as much as the tendering authority is required to do so. In our *prima facie* opinion, Respondent No. 3 has not done so and it is imperative that limited interim reliefs be granted in the present case since if we ultimately uphold the Petitioner's contentions, Respondent No. 3 would be the beneficiary of a fraud practiced by Respondent No. 3 in order to obtain the work order. We cannot permit this. We thus pass the following order, viz.

ORDER

- a) Let the Affidavits in Reply be filed by the Respondents within two weeks, after serving copy thereof upon the learned Counsel for the Petitioner, who may file the Rejoinder Affidavit within next ten days.
- b) In the meantime, it is directed that no further

payment shall be made to Respondent No.3 in relation to the work being performed by it pursuant to the subject tender.

6. Stand over to 1st March, 2024 at 2.30 p.m. for final hearing.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)