

Jvs.

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

**WRIT PETITION NO. 11127 OF 2024
WITH
INTERIM APPLICATION (ST) NO. 23459 OF 2024**

V. M. Matere Infrastructures India	}	
Pvt. Ltd.	}	Petitioner
versus		
Pimpri Chinchwad Municipal	}	
Corporation & Ors.	}	Respondents

Mr. Atul Damle, Senior Advocate with Mr. Rupesh Geete, Ms. Payal Vardhan, Mr. Aditya Mhase and Ms. Priya Dangat i/b. Mr. Manish Kelkar for petitioner.

Mr. Kedar Dighe for respondents 1 to 3 (PCMC).

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
AMIT BORKAR, J.**

DATE: 16th AUGUST 2024

P.C.:

1. Affidavit in reply to the interim application, filed by learned counsel representing Pimpri Chinchwad Municipal Corporation (respondent no. 2) [hereinafter referred to as "the respondent-Corporation"], is taken on record.

2. Heard Mr. Damle, learned senior counsel for the petitioner and Mr. Dighe, learned counsel representing the respondent-Corporation.

3. Rule.

4. Rule is made returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for final disposal.

5. Under challenge in these proceedings, instituted under Article 226 of the Constitution of India, is an order dated 29th July 2024, whereby the petitioner-company has been disqualified in the tender process undertaken for development of fire station near Hedgewar Bhavan and doing other ancillary works in Ward No. 15. Admittedly, the petitioner's bid was found to be technically responsive and on opening of the financial bid, the petitioner's bid was found to be lowest as is apparent from a perusal of the impugned order dated 29th July 2024 itself. However, despite having been declared to be L-1, the petitioner has been disqualified for the reason that in respect of certain earlier works allotted to the petitioner, the petitioner has failed to complete the works within the stipulated time.

6. By the impugned order, the petitioner has further been debarred from participation in further tenders. It also provides that L-2 in the subject tender shall be considered as L-1.

7. The respondent-Corporation has filed an affidavit in reply, however, from a perusal of the said affidavit, it is apparent that so far as debarring the petitioner from participation in future tenders is concerned, the petitioner was never given any opportunity of hearing nor was any show-cause notice issued to the petitioner to put-forth its case. As has been held in various judgments of Hon'ble Supreme Court, including the latest pronouncement in the case of ***the Blue Dreamz Advertising Pvt. Ltd. & Anr. vs. Kolkata Municipal Corporation & Ors.***, [***Special Leave Petition (Civil) No. 11682 of 2018***] decided

on 7th August 2024, any order of blacklisting or debarment since visits the party concerned with very adverse civil consequences, hence, no such order of debarment or blacklisting can be passed without giving opportunity of hearing to the party concerned or without issuing any show-cause notice wherein the reasons for intended action of blacklisting or debarment should be disclosed.

8. Learned counsel for the respondent-Corporation has also failed to bring to the notice of the Court any relevant document or any other evidence from where it can be inferred that before passing the order of debarment, the petitioner was given an opportunity of hearing or it was issued any show-cause notice as per the requirement of law.

9. Accordingly, we have no hesitation to hold that the impugned order dated 29th July 2024, so far as it debars the petitioner from participation in the tenders is concerned, the same is not sustainable. We, thus, quash the said portion of the impugned order dated 29th July 2024 and permit the respondent-Corporation to take decision afresh by giving opportunity of hearing to the petitioner and issuing a show-cause notice disclosing therein the grounds of intended action.

10. So far as the other part of the impugned order dated 29th July 2024, whereby the petitioner has been disqualified despite having been declared to be L-1, is concerned, learned counsel for the respondent-Corporation has stated that in case the petitioner submits an undertaking to the Municipal Commissioner of the Corporation concerned for completion of the earlier works within the stipulated time, its bid can be considered.

11. Accordingly, in respect of this portion of the impugned order dated 29th July 2024, we permit the petitioner to furnish the undertaking as aforesaid and once any such undertaking is furnished, the decision to disqualify the petitioner shall be reconsidered and a fresh decision in terms of this order regarding the petitioner's disqualification shall be taken within three weeks' time from the date the petitioner furnishes the undertaking.

12. We permit the petitioner to furnish the undertaking within seven days.

13. It is needless to observe that till re-consideration of the petitioner's disqualification in the subject tender is concluded, the respondent-Corporation shall not act upon the subject tender.

14. The writ petition is disposed of with the aforesaid observations and directions. Rule is made absolute in the aforesaid terms.

15. In the light of the disposal of the writ petition, the interim application does not survive and stands disposed of as such.

JAYANT
VISHWANATH
SALUNKE

Digitally signed by
JAYANT
VISHWANATH
SALUNKE
Date: 2024.08.16
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(AMIT BORKAR, J.)

(CHIEF JUSTICE)