



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

WRIT PETITION NO.11186 OF 2024

Bhushan Electricals, through its
Proprietor Kavita Bhushan Tayde ... **PETITIONER**

VERSUS

The State of Maharashtra & ors. ... **RESPONDENTS**

.....
Mr. K.B. Borde, Advocate for petitioner
Mr. A.S. Shinde, A.G.P. for State
Mr. S.R. Dheple, Advocate for R.No.2 and 3
Mr. Vinod P. Patil, Advocate for R.No.4
.....

WITH

WRIT PETITION NO.11725 OF 2024

Bhushan Electricals, through its
Proprietor Kavita Bhushan Tayde ... **PETITIONER**

VERSUS

The State of Maharashtra & ors. ... **RESPONDENTS**

.....
Mr. K.B. Borde, Advocate for petitioner
Mr. A.S. Shinde, A.G.P. for State
Mr. V.V. Gujar, Advocate for R.No.2 and 3
Mr. D.A. Madke, Advocate for R.No.4
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WITH

WRIT PETITION NO.11729 OF 2024

Bhushan Electricals, through its
Proprietor Kavita Bhushan Tayde ... **PETITIONER**

VERSUS

The State of Maharashtra & ors. ... **RESPONDENTS**

.....
Mr. K.B. Borde, Advocate for petitioner
Mr. A.S. Shinde, A.G.P. for State
Mr. V.V. Gujar, Advocate for R.No.2 and 3
Mr. D.A. Madke, Advocate for R.No.4
.....

**CORAM : R.G. AVACHAT AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 22nd APRIL, 2025

ORDER :

Heard. All these three Writ Petitions are taken up together for decision since common question of facts and law arise therein.

2. The subject matter of these Writ Petitions are the tender processes for the work of electrification of Primary Health Centres under Zilla Parishad, Jalgaon.

3. The petitioner, a sole proprietary firm, participated in the tender process. The petitioner firm's bids were rejected at technical bid level. The present petitions have, therefore, been filed.

4. Learned counsel for the petitioner would submit that, in the eye of law, husband and wife are different entities. The firm has been registered way back in 1992. The mother-in-law of the petitioner was the original proprietor of the firm. On her demise, her daughter-in-law became proprietor of the firm. She married Bhushan Tayade in the year 2006 and thereafter Bhushan Tayde was appointed in Zilla Parishad. He was then transferred to Jalgaon Headquarters and appointed with the Works Department of Zilla Parishad.

5. The learned Advocate would further submit that, if the orders impugned herein are upheld, it would tantamount to civil death of the proprietor of the petitioner firm. She would be perpetually debarred from participating in the tender process. He would further submit that, the authorities concerned should not have succumbed to the complaint made by a stranger, who

was not participant in the tender process. Adverting our attention to certain documents relied on by the contesting respondents, he would submit, the document at Page No.246 was in the nature of a document bearing her mother-in-law's electronic signature. The cell phone originally belonged to her mother-in-law. On her demise, the cell phone is being used by the husband. Since then, the petitioner- wife scored out the cell phone number from the letter head. He would further submit that, not a single SMS was made to any of the authorities related to the tender work from the said cell phone. Everything was through electronic mode and that too, E-mail. Email ID has been referred to in that regard with OTP. He would further submit that, before the impugned order was passed, the petitioner was not given notice.

6. The learned counsel has relied on the Apex Court judgment in case of **Tarsem Singh Vs. Bharat Sanchar Nigam Ltd. etc. [AIR 2004 P & H 156]** and specifically adverted our attention to the observations :-

“The aforesaid judgment of the Division Bench has assumed finality as we are told, the respondents did not

file any appeal against this judgment in the Supreme Court. Apart from the aforesaid judgment having assumed finality and the declaration of law made therein, which has binding effect upon the respondents, we once again take this opportunity of reiterating that indeed a prospective tenderer cannot be barred at the very threshold from participation in a tendering process, if he is otherwise fully eligible on all counts, merely on the ground that someone or the other related to him is employed in one capacity or the other in a particular BSNL Unit, which had called the tenders. Disqualifying or barring of such prospective tenderer per se only on this ground, in our considered opinion, is a highly arbitrary act, without there being any nexus with the object sought to be achieved.
As each case would depend on its own merits, such case can be dealt with properly, but right from the threshold barring a prospective tender only on the ground of his relative being employed would be patently in violation of Article 14 of the Constitution of India, the same being a wholly arbitrary exercise of administrative power."

7. It was submitted by Mr. Vinod Patil, learned counsel appearing for respondent No.4 in Writ Petition No.11186/2024 that, the tender work has now been completed. Photographs to that effect have been produced on record. This fact is disputed/ denied by learned counsel for the petitioner. The respondent No.4 was a successful bidder. Due to pendency of these petitions, the contract price due to him has not been paid.

8. It was submitted by learned counsel for the respondent Zilla Parishad that the work orders to these works are issued subject to the outcome of the decision of these Writ Petitions. We are conscious of the fact that the complaint made by a stranger without any supporting material should be shown a dust bin, but in the recent past, we have come across certain instances whereat the whistle blowers are doing their job in right perspective, whereby truth and illegalities are unearthed. The present case would also be a glaring example thereof. The husband of the proprietor of the petitioner firm joined service with the very Zilla Parishad as Engineer in the year 2016. It is informed that, since his appointment, almost all the works of the Works Department have been bagged in the name of the petitioner. This speaks in volumes. This fact is also disputed/ denied by learned counsel for the petitioner.

Rule 14 of the Zilla Parishad District Services (Conduct) Rules, 1967 reads thus :

“14. Private trade or employment:-

(1) No Parishad servant shall except with the previous sanction of the Chief Executive Officer

engage, directly or indirectly, in any trade or business or undertake any employment :

Provided that, a Parishad servant may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of literary, artistic or scientific character, subject to the condition that his official duties do not thereby suffer and that he discontinues such work if so directed by the Chief Executive Officer.

Explanation :- Canvassing by a Parishad servant in support of the business of insurance agency or commission agency, owned or managed by any member of his family shall be deemed to be his engaging in trade or business within the meaning of this sub-rule.”

9. It is true that, the petitioner’s husband to have not directly been involved in the bidding process nor has he influenced anyone. The employee is also barred to participate in the tender process indirectly as well. Document at page 246 is the bid submission confirmation submitted by the petitioner, wherein the cell phone number of her husband (the employee with the Zilla Parishad) has been given. Moreover, there is another document under the signature of District Collector, appointing the petitioner’s husband on election duty, wherein his cell phone number is one and the same.

10. We are conscious of the legal position that, in law, the husband and wife are treated two distinct entities. The material on record, however, indicates that, for long the petitioner's firm has bagged number of contracts. The petitioner's husband having been serving with the very Department, could be said to have played some indirect role. The documents on record vouch for the same. We refrain ourselves from making further observations with a view to avoid them in coming in the way of the petitioner's firm in its business.

11. We have one another strong reason to dismiss the petition, since the work contract has already been completed. The same has been stated by the concerned Advocates. Photographs have also been placed on record. In this factual scenario, we find that, no writ under Article 226 of the Constitution of India need be issued in favour of the petitioner. The petitions thus stand dismissed.

(SANDIPKUMAR C. MORE, J.)

(R.G. AVACHAT, J.)

fmp/-