



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

**WRIT PETITION NO. 13841 OF 2024
AND
WRIT PETITION NO. 13834 OF 2024**

M/S SHREE OMKAR CONSTRUCTION THOROUGH IS PROPRIETOR
DADARAO SHAHUJI DHAGE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY
AND OTHERS

...
Advocate for the Petitioner : Mr. D. S. Bagul
AGP for Respondents/State : Mr. P. S. Patil
Advocate for Respondents No.3 and 4 : Mr. G. K. Naik Thigale
...

**CORAM : S. G. MEHARE &
SHAILESH P. BRAHME, JJ.**

DATE : 30-01-2025

PER COURT:-

1. Heard both sides finally.
2. The common questions of facts and law are involved in these petitions. Therefore, we propose to decide these petitions by common order.
3. Initially, Mr. Thigale, learned counsel for respondents No.3 and 4 sought time in these matters. Considering urgency in the matters and in view of the previous orders, we declined the request. He tendered on record a chart showing the status and the proposed action in the present matters along with other petitions which are on board today.

4. The grievance of the petitioner is that though the petitioner was selected in tender process being successful bidder, the respondents/authorities didn't issue the work orders.

5. The learned counsel for the petitioner submits that the selection was done on 27.12.2023, but till this date, no work order has been issued. He also points out that the first information report bearing CR No.403 of 2023 as well as sequence of events to make out a case that the respondents are deliberately dodging the process and not issuing the work order. He also tenders on record the order dated 10.07.2024 passed in Writ Petition No.2432 of 2024.

6. Mr. Thigale, learned counsel for respondents No.3 and 4 would point out that he has written instructions to issue the work order in the present petition, subject to : (a) section (II)(1) of the tender document, (b) decision of the proposal dated 16.01.2025 pending before the Government for black listing, and (c) First Information Report bearing C.R.No.338 of 2024 for the offences punishable under Sections 420, 464, 467, 468 and 471 of the Indian Penal Code. He would further submit that the subject to above contingencies, the authorities are ready to take further decision within seven days.

7. He would also point out that Section No.111 of the tender document pertaining to disqualification from tender process and

exclusion from future contracts. He would advert our attention to paragraph (9) of the *interim* order dated 10.07.2024 in writ petition No.2423 of 2022.

8. Though the learned counsel for respondents No.3 and 4 has submitted that the authorities are ready to take decision *albeit* subject to the contingencies stated above, we have reservations for permitting them to resort to such action. It is necessary to point out certain relevant sequence of events occurred in these two petitions.

9. In these matters, tender process was initiated on 26.08.2023. It was completed in the month of December 2023. The petitioner was declared to be successful bidder and communication to that effect was issued on 27.12.2023 by the respondent/ the Chief Engineer. The proprietor of the petitioner lodged First Information Report bearing C.R. No.403 of 2023 with Bhagya Nagar Police Station, District Nanded, against Superintending Engineer and another, for the offences punishable under Sections 12 and 7 of the Prevention of Corruption Act, 1988.

10. Thereafter, proprietor of the petitioner was implicated in first information report bearing C.R.No.0338 of 2024 registered with Shivaji Nagar Police Station, Nanded, on 20.08.2024. It is pertinent to note that the offence was pertaining to the work done by the petitioner in 2023. The allegations were levelled that couple of

forged documents were submitted by him. The petitioner had completed the said work in 2023 itself. Thereafter, it participated in many tender processes alongwith other bidders. The authorities didn't open bids or issue work order to it wherein it participated. As against this, wherever it did not participate, the process was concluded and the work orders were also issued.

11. The petitioner was required to approach this Court by filing Writ Petition No.3098 of 2024. The learned A.G.P. on instructions of Executive Engineer, Public Works Department, Nanded, made a statement that the tender would be opened by the end of that particular month. In view of that, by the order dated 26.03.2024, the writ petition was disposed of.

12. It is relevant to mention that the proceeding of black listing was taken up against the petitioner vide order dated 21.06.2024. The petitioner had already filed Writ Petition No.2432 of 2024 and by way of civil application, he was permitted to amend the petition and permitted to challenge the order of black listing. By interim order dated 10.07.2024, the order of black listing was stayed and following observations were made in paragraph No.9;

“9. In view of the above, by way of an ad interim relief, we are staying the operation of the impugned order, dated 21/06/2024. The Respondents are at liberty to file an additional affidavit-in-reply in the light of the amendment allowed by this Court. So also, if the

*concerned Respondents desire to withdraw the impugned order and follow the law laid down in **M/s. Erusian Equipment and Chemicals Ltd (supra)** and **State Bank of India and others Vs. Rajesh Agarwal and others (supra)**, they are at liberty."*

13. In pursuance of the order dated 26.03.2024, the tenders opened and the petitioner was technically disqualified due to proposal of black listing. Being aggrieved, petitioner was required to file petitions, namely, W.P.No.3848 of 2024, W.P.No.3090 of 2024 and W.P.No.3907 of 2024. Those petitions were partly allowed by order dated 16.07.2024, by quashing the impugned orders.

14. It is informed that despite the decision, the respondents authorities did not open the tender and the petitioner was required to file Contempt Petition No.1 of 2025 against the authorities and the contempt is still pending.

15. The present tender process should have been concluded in the month of December 2023. The petitioner has filed complaint against the Superintending Engineer for the offences punishable under Sections 7 and 12 of the Prevention of Corruption Act, 1988. The proprietor of petitioner was roped in C.R.No.0338 of 2024 registered on 20.08.2024 on the basis of some alleged forged documents of work completed in 2023. Despite the order of the Court, no compliance was made and the petitioner was required

to file a contempt proceedings. The sequence of the events discussed above reflects the conduct and vindictive approach of the respondents/authorities.

16. We are constrained to observe that earlier order of black listing dated 21.06.2024 has not been withdrawn till this date, despite the liberty granted by the Co-ordinate Bench. When the said order is in subsistence, the respondents/authorities have resorted to further action of black listing. It is represented that the proposal of black listing dated 16.01.2024 is submitted to respondent No.1 and it is pending.

17. It is apparent that the conduct of respondents is malicious. The proposal submitted on 16.01.2025 is after-thought and it is clearly designed to eliminate the petitioner from the tender process. We are constrained to observe that every attempt has been made to eliminate the petitioner from the tender process just to settle the personal scores. We have our reservations for the process of black listing initiated against the petitioner for which the proposal dated 16.01.2025 is pending with respondent No.1.

18. We would have accepted the submission of Mr. Thigale, learned counsel but after more than one year the respondents are coming with a plea that the proposal of black listing is pending and subject to that decision the work order would be issued. These are dilatory tactics of respondents which is unbecoming of.

19. The offence bearing C.R.No.338 of 2023 has been registered on 20.08.2024, after registration of offence bearing C.R.No.403 of 2023 by Proprietor of the petitioner. The proposal of the respondents/authorities that the further decision would be taken subject to C.R.No.338 of 2024 is also not acceptable. It is again vindictive approach. We are, therefore, not inclined to accept the proposal which is tendered today by the learned counsel for the respondents/authorities.

20. Considering the sequence referred above, we express displeasure against the respondents and the manner in which the tender process has been meddled with. Even we do not hesitate to observe that the respondents/ authorities have no regards to the order of the Court. They have audacity to misuse the process of the law. In that view of the matter, we pass the following order:-

ORDER

- (i) The writ petitions are allowed in terms of prayer clause 'B'.
- (ii) The respondents/authorities shall forthwith issue the work orders to the petitioner.

**[SHAILESH P. BRAHME]
JUDGE**

**[S. G. MEHARE]
JUDGE**