
(1987) 04 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 453 of 1987

Haribhai Velji

APPELLANT

Vs

Maharashtra State Electricity Board, Bombay and Others

RESPONDENT

Date of Decision : 03-04-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1988 Bom 114 : (1987) 3 BomCR 7

Hon'ble Judges : Qazi, J;Loney, J

Bench : Division Bench

Advocate : P.G. Palshikar and D.K. Deshmukh, for the Appellant; K.H. Deshpande, R.E. Moharir, V.R. Manohar and B.N. Mohta, for the Respondent

Judgement

Qazi, J.—The petitioner is registered with the Public Works Department of the Government of Maharashtra as approved Contractor for the whole of the Maharashtra State. The respondent No. 1 Maharashtra State Electricity Board (for short "the Board") invited tenders vide tender notice dt. 12-12-1986 (Annexure-F). According to the tender notice, blank forms of the tender could be obtained from the office of the Executive Engineer, Nagpur on production of attested copy of the registration, solvency certificate in similar works on payment of Rs. 200/- per copy in cash, from 22-8-1986 to 7-1-1987 during office hours on any working day. The tenders were to be submitted in the office of the Superintending Engineer on or before 9-1-1987. The petitioner as well as the respondent No. 3 submitted their tenders, but the Board accepted the tender of the respondent No. 3 in preference to the tender of the petitioner. The petitioner contended that the respondent No. 3 had no registration and, therefore, his tender should not have been accepted. The challenge to this effect is raised in Ground No. (ii) of the petition, which reads as follows :

"It is submitted that in the instant case in the tender notice at Annexure-F it is specifically stated that the tenders are invited from registered contractors. Even the blank forms of tender can be given only to those who produce the

registration certificate. Thus according to the tender notice, the person concerned being registered with the authorities mentioned in the tender notice was the condition precedent not only for submission of the tender, but even forgetting the blank form of tender. As the respondent No. 3 is not a registered contractor he was ineligible for getting the blank forms of tender and also for submitting the tender. The petitioner, therefore, submits that in no circumstances the tender submitted by respondent No. 3 could have been considered by respondent No. 2."

2. There is no dispute that the respondent No. 3 is not a registered contractor. It is obvious from the tender notice that the registration is one of the essential requirements and hence we would have quashed the decision of the Board in accepting the tender of the respondent No. 3 on this ground alone. However, it was contended on behalf of the respondents that the tender was opened on 9-1-1987 and the letter of indent was issued on 19-1-1987 on the basis of which the work order was issued on 30th Jan., 1987. On the basis of these documents, the respondent No. 3 already commenced the work and has completed the work of excavation and bed concreting worth Rs. 30,000/-. The details about the work done and investments made by the respondent No. 3 is enumerated in para 18 of the return of the respondent No. 3. It is worthwhile to quote the same in order to appreciate the contention of the respondents that the interference with the impugned order at this stage would not be sound exercise of discretion on our part. Para 18 reads thus :

"As detailed hereinbefore, the tender was opened on 9-1-1987, letter of indent was issued on 19-1-1987 on the basis of which the work order was issued on 30-1-1987. On the basis of these documents, this respondent has already commenced the work and has completed the work of excavation and bed concreting worth Rs. 30,000/-. Further, this respondent has already transported materials for completing the work at the cost of near about Rs. 70,000/- and has also purchased materials of steel, angles worth near about Rs. 1 lakh. He has also entered into several commitments and contracts for fulfilling the agreement and completing the work. The agreement in pursuance to the work order has already been executed. The petition appears to have been filed on 5-3-1987 i.e. after a lapse of near about 11/4 months from the date of the work order during which time this respondent has already as stated above made sufficient progress in execution of the work entrusted under the contract to the prejudice of this respondent. It is submitted that the petitioner is guilty of laches and negligence. The petitioner cannot be allowed to take benefit of its own wrong and negligence inasmuch as on the showing of the petitioner itself if the petitioner was doubtful about the eligibility of this respondent, he could have challenged and he ought to have challenged the same as was challenged by him in Writ Petition No. 162/87. The present petition is nothing but an afterthought one depriving this respondent of his huge investment and the work so far done and to indulge this respondent in various litigations and difficulties anyhow. It appears that the petitioner was not interested in the work covered by the tender Annexure-F i.e. Tender Notice

No. T/35 and was interested in the work under Annexure-G Tender Notice No. T/37 and therefore did not challenge the said acceptance of Tender Notice No. T/35 in favour of this respondent. Now seeing that the tender No. T/35 has already been withdrawn the petitioner anyhow wants to put this respondent to loss, trouble and harassment at this late stage when sufficient progress in execution of the work has already been made by this respondent in pursuance to the same. It is submitted that the petitioner is guilty of laches and negligence in not taking proper steps at appropriate time and in allowing this respondent to go on with the execution of the work under the agreement and incur various investments and commitments. The petitioner cannot be allowed to take benefit of its own wrong and laches and deprive this respondent of his huge investments and commitments and put in jeopardy. It is therefore a fit case in which this Hon"ble Court may refrain from its discretionary jurisdiction under Article 226 of the Constitution of India. Otherwise, it would amount to giving benefit to the petitioner of its own wrong and laches and deprive this respondent of its legitimate dues and investments and commitments and put this respondent to substantial injury."

3. The Board has also filed an affidavit "and asserted that the work has actually been commenced and any interference at this stage would only prejudice of the construction work which is of urgent nature. The Board has stated -

"The respondents are filing a detailed chart showing the work carried out by the respondent No. 3 of Control Room building without Switch Gear Room at 220 KV Sub-Station, Sun-glat, Bhandara. Chart also indicates steel and cement issued by the Board " to the tune of Rs. 1,82,125-00 (approximately). The respondent No. 3 has brought steel of :Rs. 42,079.7- (approximately) and other materials of value of Rs. 6,6007- (approximately). This statement/chart is being filed as Annexure No. "A" to this affidavit. The respondent No. 3 has raised the Bill to the tune of Rs. 68,000/- against which payment of Rs. 10,000/- has been made on 5-3-1987.

The respondents further submit that the respondent No. 3 has completed excavation of pits and laying bed concrete of control room columns footing."

This statement on behalf of the Board has been made on affidavit sworn in by the Executive Engineer. No doubt, the petitioner disputes the statement made on behalf of the respondents about the quantum of work done and the investments made. But, nonetheless the fact that the work has commenced is not disputed. We have no reason to doubt the statement made on behalf of the Board. After hearing the counsel at some length and after going through the relevant papers, we are satisfied that the work has commenced and substantial investment is made by the respondent No. 3. There seems to be much substance in the contention of the Board that the work of construction is of urgent nature and any interference with the same at this stage is bound to result in delay and it may create more problems and complications. Under these circumstances, we do not think, it would be a sound exercise of discretion on our part to upset the decision

of the Board and void the contract. We also see some substance in the contention of the respondents that the petitioner is guilty of laches and that he cannot be allowed to take the benefit of its own wrong. In our view, he could have challenged the impugned order in Writ Petition No. 162 of 1987 in which Tender Notice No. T/37 dt. 13-12-1986 (Annexure-G) was challenged. No doubt, the petitioner has tried to explain the delay by submitting :that he was not initially aware that the respondent No. 3 had no registration and that he came to know of the said fact subsequently. But, we think, it is all afterthought. At any rate, as we have observed above, we are satisfied that in view of the peculiar facts and circumstances of this case, it would not be expedient and just to interfere with the impugned order. The petition is, therefore, dismissed. Rule is discharged.

4. Shri Palshikar requested that the order of status quo dt. 6-3-1986 should be continued for one week to enable him to approach the Supreme Court. We accordingly direct that though the petition is being dismissed, status quo shall continue for one week only from today.