IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.459 OF 2024
(Ankush s/o Santosh Kakde .vs. State of Maharashtra and others)
WITH
WRIT PETITION NO.8099 OF 2023
(Gunjan s/o Dnyaneshwar Janbandhu and others .vs. State of Maharashtra and others)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Shri R.K. Thakkar, Advocate for the petitioner,
Shri A.M. Kadukar, Assistant Government Pleader for respondent no.1,
Shri Amol Mardikar, Advocate for respondent nos.2 to 4.
………

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATE : 27.08.2024.

We have heard the learned counsel for the parties and the affidavit tendered by the Chief Officer, Nagar Panchayat, Mouda is taken on record.

2. The challenge in the petition is to the tender notice dated 20.10.2023 published on 24.10.2023, wherein a declaration is sought that the tender notice is null and void. In the alternative, the direction is sought that the petitioner’s tender be considered being the lowest one.

3. On 7.12.2023, this court has caused notice to the respondents. On 21.12.2023, the respondents have sought time in the matter and as such this court has passed an interim order not to finalize the work in relation to which the petitioner is contesting the claim in the petition.

4. It appears that thereafter, through an affidavit, it is brought on record that before the order dated 21.12.2023 was passed, a work order was already issued on 5.12.2023 and by the date, this court passed an order on 21.12.2023, it is claimed by the learned counsel for the said respondent that 40% execution of the work was already over. The nature of work executed under the tender in question is in relation of construction of the village road.

5. Having noticed that the conduct of the respondent-Chief Officer of the Nagar Panchayat, Mouda is in disregard to the order of this court dated 21.12.2023. This court on 8.8.2024 caused notice of contempt to the Chief Officer of the respondent no.2-Nagar Panchayat, Mouda. The Chief Officer of the respondent no.2 is present in the court and has tendered an affidavit in response to the notice of contempt. In categorical terms, it is stated that the work orders were issued on 30.11.2023 and 5.12.2023, whereas the interim order was passed by this court on 21.12.2023. It is claimed that the said respondent had no malafide intention to show any disrespect or disregard to the orders of the court.

6. The fact remains that this court has not passed initially an order of injunction purely with an intention to have the response of the respondent - Nagar Panchayat to the claim put forth in the petition.

7. After the service of the notice on the respondent, on 21.12.2023 having realized that there is a degree of illegality in processing the tender, passed an interim order not to finalize the

tender. On the said date, the respondent was duly represented before this court and the fact about tender being finalised viz. by issuing work order and alleged completion of work to the extent of 40% could have been brought to the notice of the court. There is no explanation coming-forth before this court from the said respondent.

8. It appears that the counsel for the said respondent has placed appearance on 21.12.2023 and sought adjournment. It is further reflected in the affidavit that on 22.12.2023 the Vakalatnama was placed on the record and, thereafter, the reply was placed on record on behalf of the said respondent. Once this court has passed an interim order in the matter, least that was expected of the officer of the respondent-Nagar Panchayat to understand the meaning of express order passed by this court. Rather the respondent-Chief Officer has proceeded to permit the successful bidder to execute the work order contrary to the order of this court passed on 21.12.2023.

9. The perusal of the affidavit reflects that the said officer in paragraph 14 is tendering conditional apology. Apart from above, we are required to be sensitive to the stand of the said officer in paragraphs 16 and 17 of the affidavit which read thus :

> *16. It is submitted that the respondent no.02 gets fund from the government for execution of the tender work which is required to be utilized in a time bound manner. Having not done so would require the respondent no.02 to remit back the entire amount to the government which would frustrate the execution of the tender work.*

> *17. The answering deponent was under bona fide impression that the interim order is only in relation to the work orders and therefore the work in progress was allowed to be continued.*

10. That being so, we are prima facie satisfied that the conduct of the Chief Officer Rucha d/o Keshavrao Dhabarde is in contempt of the order of this court dated 21.12.2023.

11. At this stage, the counsel appearing for respondent no.2 and the contemnor submits that an additional opportunity be given for filing additional affidavit so as to enable the said respondent to tender unconditional apology before the court.

12. Stand over to **30th August, 2024.**

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**

Gulande

Signed by: A.S. GULANDE
Designation: PS To Honourable Judge
Date: 28/08/2024 15:21:55