

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY****BENCH AT AURANGABAD****WRIT PETITION NO.8375/2014**

Shalimar Transport and Carting  
Contractor, through its Proprietor,  
Shaikh Hameed s/o Shaikh Rahim,  
age 66 yrs., occu.business,  
r/o Shalimar Function Hall,  
Rameshwar Plot, Rahamatnagar,  
Parbhani. Dist.Parbhani.

...Petitioner..

**Versus**

- 1] The State of Maharashtra,  
through its Principal Secretary,  
Food, Civil Supply and Consumer  
Protection Department, Mantralaya,  
Mumbai.
- 2] The Divisional Commissioner,  
Office of the Divisional Commissioner,  
Delhi Gate, Aurangabad.
- 3] The Collector, Collector Office,  
Parbhani.
- 4] The District Supply Officer,  
Collector Office, Parbhani.

...Respondents..

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Miss.Pradnya Talekar, Advocate h/f Shri S.B. Talekar,  
Advocate for petitioner.

Shri K.M. Suryawanshi, AGP for the Respondent nos.1  
to 4.

**CORAM : B.P. DHARMADHIKARI  
& A.M. BADAR, JJ.**

**DATE OF RESERVING JUDGMENT: 03.12.2014**

**DATE OF PRONOUNCING JUDGMENT : 12.12.2014**

**JUDGMENT [ PER A.M. BADAR,J]**

1] Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2] By the instant petition, the petitioner firm is praying for quashing and setting aside the show cause notice dated 10.9.2014, issued by the respondent no.3 - Collector, Parbhani, directing him to execute the contract , with a threat that on failure to do so, the earnest money amount of Rs.16,30,288/- deposited by him will be forfeited and that the petitioner firm will be black-listed. The petitioner is further praying for directing respondent Nos. 1,3 and 4 to grant tender rates as per the Monthly Wholesale Price Index existing at the time of execution of tender contract, as provided for under Government Resolution dated 26.11.2012. It is case of the petitioner firm that on 31.12.2012,

respondent No.1 State, has issued an advertisement inviting tender for allotting work of transportation of food grains for public distribution at Parbhani District for the period from 2013 to 2016, as per the norms laid down in Govt. Resolution dated 26.11.2012. The petitioner - firm submitted its bid alongwith requisite documents by on-line application dated 25.1.2013 and deposited an amount of Rs.16,30,388/- as earnest amount. The bids were to be opened on 29.1.2013 at 4.00 p.m. However, on that date, respondent No.4 District Supply Officer, informed the bidders that because of the Court order, tender would not be opened until further orders. The petitioner came to know that some of the transporters filed W.P. No. 10541 of 2012, and due to the interim orders passed therein, tenders were ordered not to be opened. Ultimately, that writ petition alongwith other connected matters came to be dismissed on 7.1.2014.

3] It is case of the petitioner that after about a year from submitting tender, and precisely on 15.1.2014, respondent No.4 - District Supply Officer,

Parbhani, intimated the petitioner firm that the tenders will be opened at 5.00 p.m. of 16.1.2014 and its representative should remain present at the office of the Collector, Parbhani, for the said purpose.

4] On 16.1.2014, the petitioner - firm submitted a representation stating that the bid was submitted by it on 25.1.2013 i.e. prior to one year. The petitioner represented that due to hike in rates of diesel and other charges as per the Wholesale Price Index be considered and rates, as applicable as per the Yearly Wholesale Price Index, be given. According to the petitioner, the bids were opened on 16.1.2014 and bid of the petitioner was found to be lowest. He had quoted only 49% more than the base rate. As such, the bid of the petitioner was forwarded to respondent No.1 - Principal Secretary. The petitioner was pursuing his case that rate be increased as per the existing Yearly Wholesale Price Index and he was assured that once his bid is accepted by the High Level Committee, his demand

would be considered.

5] According to the petitioner, he has objection to the rates sought to be approved by the respondent State Government because there is increase in Wholesale Price Index due to passage of 19 months. He was asked to visit the office of respondent No.4 – District Supply Officer, Parbhani, for executing the agreement on 19.7.2014. Without paying any heed to his objection, by the impugned communication dated 10.9.2014 (Exh.P), the petitioner was called upon by respondent No.3 – Collector, Parbhani, to execute an agreement within a period of one week from receipt of the said communication, under a threat that else, his security deposit would be forfeited and necessary proceedings under the Essential Commodities Act, 1955 shall be initiated against him. The petitioner replied to the said notice of respondent No.3 – Collector, by mentioning that if question of increased rates as per the Yearly Wholesale Price Index as of July, 2014 is not addressed, then he will have to work in loss and after a lapse of 120 days, tender rates does not remain valid. According to the

petitioner, Monthly Wholesale Price Index is increased by 12.30% from January, 2013 to June, 2014 and, therefore, base rate of Rs. 55.13 needs to be increased by adding Rs. 3.98, so as to award base rate of Rs.59.11 for 2 kilometers. As such, according to the petitioner, the impugned show cause notice dated 10.9.2014 is totally illegal.

6] The petition came to be opposed by respondents, by filing affidavit in reply. According to respondents, as the other transporters have challenged the advertisement issuing tender by filing W.P. No. 10541 of 2012, due to interim orders passed therein, the process of opening tender was stopped. Ultimately, that petition alongwith connected matters, came to be dismissed on 7.1.2014. Thereafter, as per the directions of the Government, respondent No.4 – District Supply Officer, informed the petitioner and other contractors that the tender for Parbhani District would be opened on 16.1.2014. Upon opening of bids, the rates quoted by the petitioner as + 49, were found to be lowest and,

therefore, the proposal was submitted to the respondent No.1 Principal Secretary of the Department for approval. After some correspondence and after refusal of the petitioner to reduce the quoted rates, ultimately, the High Level Committee, approved rates quoted by the petitioner at + 49.

7] According to respondents, as the petitioner was found to be the successful bidder, upon approval by High Level committee, he was called upon to execute the agreement vide letter dated 19.7.2014. Then, as the petitioner, by his letter dated 22.7.2014, objected that the rates quoted were existing in January, 2013 and same cannot be accepted after a period of 19 months, a meeting was called on 25.7.2014, but, in that meeting, the petitioner refused to negotiate the rates and to execute the agreement. Therefore, according to respondents, a show cause notice impugned in the petition came to be issued on 10.9.2014, and by another letter dated 10.9.2014, State Government is requested to grant permission for re-tendering. The State Government

has directed to start the process of re-tendering in the District. According to respondents, as the petitioner initially refused to execute the agreement, the impugned notice came to be issued for forfeiture of security deposit and for black-listing the petitioner. According to respondents, the petitioner was aware of the terms and conditions of the tender which was for the period from the year 2013-2016.

8] On behalf of the petitioner, Miss. Talekar, learned counsel submitted that the petitioner is very much willing to accept the work subject to increase in the rates as per the Wholesale Price Index and the petitioner cannot be asked to work on old rates quoted by him prior to 19 months. Learned counsel for the petitioner further submitted that with passage of time, there is increase in price of fuel, other commodities as well as labour. As such, the petitioner cannot be forced to execute the agreement to perform the work on old rates quoted by him. According to learned counsel for the petitioner, as per Clause 20 of the Government Resolution dated



26.11.2012, the contract was required to be executed within 120 days from the opening of the tender and the rates quoted in the tender were valid for 120 days from the date of opening the tender. As such, according to learned counsel, the petitioner is no longer under obligation to accept the work at old rates unless respondents agree to consider his claim for increase in rates, as per clause 27 of the Government Resolution dated 26.11.2012.

9] Per contra, learned AGP, submitted that the tender was transportation of food grains for public distribution for the period from the year 2013 to 2016 and, therefore, the petitioner was under obligation to execute the agreement as per the bid submitted by him. Learned AGP further argued that the petitioner was called for negotiations time and again after dismissal of the writ petitions, wherein interim order was operating. However, he failed to negotiate and has refused to execute the agreement. As such, according to learned AGP, respondent No.4 – District Supply Officer , has rightly issued show cause notice for forfeiture of security deposit as

well as for black-listing the petitioner. Learned AGP further argued that the State Government has directed the respondent No.3 – Collector, Parbhani, to initiate the process of re-tendering as well as for taking action against the concerned bidder as per the terms and conditions of the Government Resolution dated 26.11.2012. Therefore, according to learned AGP, the petition deserves to be dismissed.

10] Undisputedly, Government resolution dated 26.11.2012 lays down the procedure to be followed for inviting tenders for transport of food grains for public distribution system from the contractors. In terms of that Government resolution, respondent no.3 – Collector, Parbhani, on 31.12.2012 issued a notice inviting tenders for allotting work of transportation of food grains for public distribution for Parbhani District for the period from 2013 to 2016. It is not in dispute that the petitioner – firm submitted its bid in pursuance to the notice inviting tenders. Following chronology of events will demonstrate how the matter proceeded :-

Sr.No.	Date	Event
1	31.12.2012	Advertisement inviting tenders for allotting transportation of food grains for public distribution for Parbhani District was issued.
2	25.1.2013	The petitioner – firm submitted its bid.
3	29.1.2013	All bids received in pursuance to the notice inviting tenders were to be opened.
4	24.1.2013	Interim order came to be passed in WP 10541/12 directing respondents that bids shall not be opened and no work order be issued until further order.
5	7.1.2014	WP 10541/12 along with connected matters came to be dismissed.
6	15.1.2014	Respondent no.4 – District Supply Officer issued letter (Exh.I) to all bidders directing them to attend the office of respondent no.3 – Collector, Parbhani, at 5 p.m. of 16.1.2014 for opening bids.
7	16.1.2014	The petitioner informed Collector, Parbhani (Exh.J) that one year has lapsed after submitting bid by him and rates quoted in the said bid were as per prices of diesel and overheads prevailing at that time. The petitioner further informed that if the bids are to be opened now, then he be granted increase / decrease in rates quoted by

		him as per the prevailing Wholesale Price Index.
8	3.6.2014	The petitioner informed respondent no.3 – Collector, Parbhani (Exh.L) that he is unable to reduce the rates quoted by him.
9	19.7.2014	Respondent no.3 – Collector informed the petitioner (Exh.M) that the State Government has accepted rates quoted by him and, therefore, he should attend the office on 19.7.2014 for executing agreement as per terms and conditions of tender notice.
10	22.7.2014	The petitioner informed respondent no.3 – Collector, Parbhani (Exh.O) that 19 months have lapsed from submitting bid by him and, therefore, rates of transportation be fixed as per rates quoted by him and on granting increase / decrease as per prevalent Wholesale Price Index. The petitioner informed that if this condition is accepted, then he is ready to execute agreement.
11	26.8.2014	The State Government informed respondent no.3 – Collector (Annexure R-7) that as contractor has refused to execute an agreement, action as per provisions of Government resolution dated 26.11.2012 be taken against him and steps for re-tendering be commenced.
12	10.9.2014	Respondent no.3 – Collector, Parbhani, informed the

		petitioner – firm by impugned letter dated 10.9.2014 (Exh.P) that it is unnecessarily refusing to execute an agreement as per the bid submitted by him. The petitioner was further informed that he should execute an agreement within one week, else the earnest money deposited by him shall be forfeited and the firm will be blacklisted.
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11] At this juncture, it is apposite to consider the terms and conditions of tender which are in tune with the provisions of Government resolution dated 26.11.2012 (Exh.D). As per condition No.20 of the tender notice as well as Government resolution dated 26.11.2012, the rates quoted by the bidders shall be held valid for 120 days from the date of opening of bids. Any time spent on litigation is excluded from this period. As per condition No.21, if the lowest bidder refuses to execute an agreement, then the earnest money deposited by him is liable to be forfeited. As per condition No.27, the successful bidder is entitled for revision of rates quoted by him as per the Wholesale Price Index published by the

Central Government. This condition provides that after a period of one year during the contract period, the contractor is entitled for proportionate increase or decrease in rates quoted by him, as per Wholesale Price Index. According to the petitioner, the rates quoted by him on 25.1.2013 are no more valid because as per tender condition No.20, the rates so quoted are valid only upto 120 days from the date of opening of bids. As against this, according to respondents, because of pendency of writ petition and interim order passed therein from 24.1.2013 to 7.1.2014, the bids could not be opened and, therefore, this period is liable to be excluded.

12] On 25.1.2013, the petitioner – firm has submitted its bid in pursuance to the tender notice issued by respondents. All bids received in pursuance to the tender notice were to be opened on 29.1.2013. As such, offers made by the bidders were to be considered by respondents on 29.1.2013 as per the provisions of the Government resolution dated 26.11.2012. However, this process was delayed for a

period of about one year because of interim order and pendency of Writ Petition No.10541/2012 and connected matters. As such the proposal submitted by the petitioner - firm was not even considered by respondent - authorities upto 16.1.2014. By letter dated 15.1.2014 (Exh.I), respondent no.4 - District Supply Officer informed all bidders to attend the office of Collector on 16.1.2014 at 5-00 p.m. for opening the bids received in pursuance to the tender notice. The petitioner - firm by its communication dated 16.1.2014 (Exh.J) has informed respondent no.3 - Collector that period of one year is over since the date of submission of its bid, rates quoted therein were the then prevailing prices of diesel and overheads. The petitioner - firm categorically informed respondent no.3 - Collector that if the bids are to be opened now, then the petitioner - firm be granted suitable increase or decrease in the rates quoted by it as per the Wholesale Price Index. This demand of the petitioner - firm was certainly in tune with condition No.27 of the Government resolution dated 26.11.2012 as well as the terms and conditions

of the tender. True it is that such proportionate increase or decrease as per Wholesale Price Index is to be granted after a period of one year from the date of agreement but in the case in hand, bids could not be opened for a period of about one year due to pendency of writ petition. As per tender notice, the contract is for transportation of food grains for the period from 2013 to 2016. The communication of acceptance of rate quoted by the petitioner on 25.1.2013 was on 19.7.2014 i.e. after one year of the notified contract period. It is trite that order of Court should not prejudice anybody. Right of the petitioner flowing from the conditions set out in the tender document cannot be allowed to be adversely affected due to non-opening of bids because of interim order passed in the writ petition. It is crystal clear that even prior to opening of the bids, by representation dated 16.1.2014 (Exh.J), the petitioner - firm has protested and made its intention clear that if the respondent - authorities are willing to give him benefit of suitable increase or decrease in Wholesale Price Index, then only the



bid submitted by it should be opened. This happened prior to acceptance of proposal submitted by the petitioner – firm. It is clear that respondents, without considering this objection of the petitioner, opened the bids on 16.1.2014 and found the rates quoted by the petitioner – firm to be lowest amongst all tenderers.

13] It is not in dispute that as the petitioner refused to negotiate the rates quoted by him, ultimately for the first time on 19.7.2014, respondent no.3 – Collector has informed the petitioner the decision of High Level Committee that the State Government has accepted the rates quoted by him and he should attend the office on 19.7.2014 for executing agreement. It needs to mention here that thus offer made by the petitioner – firm came to be accepted by respondent – State authorities on 19.7.2014 and that too without considering the objection of the petitioner – firm about grant of hike in rates quoted by him in terms of condition No.27 of Government resolution dated 26.11.2012 and

the tender conditions. After passage of one year's time due to pending litigation, the petitioner had made his offer conditional one and that too in tune with condition No.27 of Government resolution dated 26.11.2012 as well as terms and conditions of the tender document. Letter dated 16.1.2014 (Exh.J) of the petitioner to respondent no.3 – Collector makes it clear that even much before the communication of acceptance of the offer made by the petitioner – firm, it was made clear to the respondent – authorities that the petitioner – firm is not willing to go further in the matter due to passage of time and the petitioner – firm is ready and willing to participate in the process only if benefit of increase in rate as per Wholesale Price Index is granted to it. This conditional offer made by the petitioner – firm finds support in the terms and conditions of tender and the Government resolution holding the field. The petitioner was very much entitled to revoke the proposal submitted by him at any time before the communication of its acceptance by respondent – authorities. Even the petitioner was

competent to revoke its offer because of lapse of a period of more than one year because of pendency of Writ Petition No.10541/2012. A proposal can always be revoked after lapse of a reasonable time without communication of the acceptance in view of provision of Section 6 of the Contract Act. After disposal of writ petition on 7.1.2014, the matter was further delayed because of insistence by the State authorities to the petitioner to reduce the rates quoted by him. Even if the time spent on pendency of the petition is excluded from consideration as per condition No.20, still communication of acceptance of offer of the petitioner on 19.7.2014 (Exh.M) was not within a period of 120 days from the date of opening of bids. As such it cannot be said that the rates quoted by the petitioner in the bid submitted by him on 25.1.2013 were valid even after completion of more than 120 days. Authorities of respondent no.1 – State have not consented to grant of increase or decrease in rates as per prevalent Wholesale Price Index at the time of communication of acceptance of bid of the petitioner after a lapse of about one and

half year from submission of bid. Respondents were obliged to respect the terms and conditions of tender advertisement and particularly condition No.27 by offering to perform their obligation to grant suitable increase or decrease in Wholesale Price Index as the rates quoted by the petitioner came to be approved by the High Level Committee of respondent – State after a lapse of about one and half year. By not doing so, respondents have abused their powers and acted high-handedly. The Government while entering into contract is expected not to act like a private individual but should act in conformity with certain healthy standards and norms. Action of the State should not be arbitrary, irrational or irrelevant. It must be justifiable on the basis of policy formed by it. However, in the case in hand, impugned communication dated 10.9.2014 (Exh.P) informing the petitioner that on his failure to execute an agreement, earnest money deposited by him will be forfeited and the firm will be blacklisted is totally unjustified and unsustainable in view of provisions of Government resolution dated 26.11.2012

and conditions of tender notice as well as the reasons given in foregoing paragraphs.

14] The petitioner has also prayed for directing respondents to grant tender rates as per Wholesale Price Index existing at the time of execution of the tender contract. However, respondents have already taken decision to start the process of re-tendering the work covered by the earlier tender notice. This decision communicated by letter dated 26.8.2014 by respondent no.1 - State to respondent no.3 - Collector, Parbhani, is placed on record as Annexure R-7. The petitioner - firm is not willing to execute the agreement because of passage of a period of about one and half year from the date of submission of bid. The petitioner has not challenged the decision of the State to initiate the process of re-tendering. As such no directions can be given to respondents as prayed for by the petitioner in prayer clause (B). Needless to mention that if the petitioner participates in the process of re-tendering, then his bid shall be considered along with bids of other

tenderers on merits.

15] In the result, the petition is partly allowed. The communication dated 10.9.2014 issued by respondent no.3 – Collector, Parbhani (Annexure P) is quashed and set aside. Rule is made absolute in terms of prayer clause (A). No order as to costs.

**[A.M. BADAR]**  
**JUDGE**

**[B.P. DHARMADHIKARI]**  
**JUDGE**