



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2021

(Arising out of SLP (Civil) No.13683 of 2018)

Multitask Solutions

....Appellant(s)

Versus

Zilla Parishad Washim & Ors.

.... Respondent(s)

J U D G M E N T

A.S. Bopanna,J.

1. Leave granted.
2. The appellant herein is assailing the order dated 24.02.2018 passed by the High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No.4789 of 2014. Through the said order, the High Court has directed the State of Maharashtra and the Chief Executive Officer of Zilla Parishad,

Washim to initiate steps to recover all amounts paid to the appellant herein. Further, direction is also issued to file appropriate police complaints in the matter.

3. Though the writ petition in which the impugned order was passed is considered as a petition in public interest, the genesis of the same is necessary to be noted so as to consider whether an order of the present nature is justified in the instant case without reference to the contractual obligation between the parties.

4. The Zilla Parishad, Washim had issued an e-tender notice for purchase of E-learning kits under the Sarva Shiksha Abhiyan scheme. The notification inviting tender was published on the website vide letter No.1/2014-2015 dated 13.06.2014. An advertisement was also published in the local newspapers. The tender was to be opened on 10.07.2014 at 17:00 hours. Due to technical glitch the same could not be opened, but the e-tenders were opened on 11.07.2014. However, due to certain lacunae in the process committed by all the tenderers, the e-tender was published afresh on 13.06.2014, both on the website as well as in the local newspapers. The opening of e-tender was scheduled on 19.08.2014 at 11:00 am. The four

tenderers, namely the appellant, respondents 2, 3 and 5 had participated in the tender process. In the ultimate analysis the 5th respondent's concern namely M/s Kasturi Suppliers, Nagpur was technically disqualified due to which the financial bid of the remaining three tenderers were opened. The appellant herein being the lowest, was awarded the supply order dated 19.08.2014 for supplying the E-learning Kits to 22 Zilla Parishad Schools.

5. The respondent No.5 herein claiming to be aggrieved by the tender process whereby they had been disqualified, filed the writ petition before the Bombay High Court. The challenge in the writ petition was therefore to the tender process whereby the respondent No.5 was disqualified and the supply order was ultimately placed with the appellant. The High Court by order dated 06.04.2015 did not see reason to entertain the writ petition on the issue relating to the grievance put forth by the respondent No.5 with regard to the tender process wherein they were disqualified since several disputed questions of fact arise for consideration and work order was already implemented. The High Court in that view, through order dated 13.04.2015 took cognizance of the writ petition in public interest while

continuing to retain the petitioner who was a business competitor and proceeded further with the matter only because the amount was released in haste. In the said process, the High Court was of the opinion that there was a *prima-facie* case to conduct inquiry into the handling of matter by the then Chief Executive Officer of Zilla Parishad, Mr. Ruchesh Jaivanshi.

6. Further, the High Court also took note of the contentions put-forth by respondent No.5 herein, a business competitor of the appellant that on an average, in the other Zilla Parishads similar equipment had been procured at a price which is lesser by Rs.90,000/ to Rs.1,00,000/- per unit. Certain other discrepancies were also referred to. In that light, the High Court through the order dated 08.09.2014 directed the parties to maintain status-quo and the petitioner was directed to serve the respondents. Pursuant thereto, the response was filed by the respondents to the writ petition and a consideration was made by the High Court. In the said process, the High Court had directed the respondent No.4 herein to secure details relating to similar systems which were supplied to the schools in the other Zilla Parishads in the State and also the price at which it was procured.

7. When the writ petition was listed before the Court on 07.12.2015 it was indicated to the Court that an appropriate inquiry would be made and a report would be submitted. Accordingly, an inquiry report was submitted, to which response was filed by the appellant herein in the form of an additional written submission. Further, affidavit of Mr. Ruchesh Jaivanshi, CEO, Zilla Parishad was placed on record. In that background, the High Court had been informed that the Headmaster of the school is responsible for clearing the supply and installation of kits, which had been done. It was further brought to the notice that the upgradation of the software and the training could not be performed by the appellant herein due to the order of status-quo. The High Court noted the nature of the supplies made by the appellant to the schools under the Zilla Parishad, Washim and observed that the supply order at Gadchiroli Zilla Panchayat was issued to the respondent No.2 herein, also by same CEO. Since both these suppliers had participated in both the places, the High Court has assumed foul play and has abruptly arrived at the conclusion that the State Government and the Chief Executive Officer of Zilla Parishad, Washim are to proceed in the matter as per law and

initiate steps to recover all amounts paid to the appellant herein and further directed the filing of police complaints. The appellant being successful in the tender process regarding which no fault was found is aggrieved by the directions issued by the High Court to recover the amount despite the kits being supplied by him.

8. We have heard Ms. Bansuri Swaraj, learned counsel for the appellant and Shri Hrishikesh Chitale, learned counsel for the respondent No.5. The respondents No.1 to 4 though served are unrepresented. We have perused the appeal papers including the counter-affidavit filed on behalf of the respondent No.5.

9. At the outset, as already noted the genesis of the petition was the challenge to the tender process wherein the appellant had succeeded and the supply order was placed on them. The writ petition though ultimately considered as being in public interest was initiated by the respondent No.5 herein who is the proprietor of M/s Kasturi suppliers, one of the participants in the tender process who had failed in the technical evaluation. Hence, essentially what is to be taken note is that the writ petition entertained by the High Court though ultimately styled

as in public interest was initiated by a rival business competitor who had also participated in the tender process and failed. The reason for which the High Court had thought it fit to treat the petition in public interest is due to the contentions put forth by such rival business establishment which had failed in the tender process. The contention was with regard to the difference in price of the kits supplied to Zilla Parishad, Washim and to the schools in other Zilla Parishads. It is no doubt true that the High Court thereafter directed the respondent No.4 herein – State of Maharashtra to place on record the affidavits indicating the details pertaining to such purchase of E-learning kits by the other Zilla Parishads and also the process adopted by the Zilla Parishad, Washim. The State Government had accordingly made an inquiry on this aspect and an inquiry report at Annexure P-14 to this petition was filed before the High Court. A perusal of the order impugned passed by the High Court does not indicate any reference made to the details contained in the inquiry report or to the subsequent affidavit filed by the then CEO of the Zilla Parishad so as to analyse and arrive at its conclusion. On the other hand, the High Court has abruptly proceeded to direct

the recovery of the amount from the appellant and also directed to proceed further in the matter by filing complaints.

10. A perusal of the inquiry report would indicate that it refers to three dimensions (i) it relates to the manner in which the funds have been utilised by the Zilla Parishad, Washim, (ii) it refers to the tender process wherein the four tenderers had participated and the appellant being the lowest tenderer and (iii) the report refers to comparative statement of the purchase of E-learning kits by the various Zilla Parishads and the price at which it was procured. Though, certain observations have been made in the inquiry report indicating that the Zilla Parishad had not appropriately dealt with the funds which had been allotted for other purposes but had diverted the same for purchase of E-learning kits, that is an aspect for which the appellant cannot be faulted. The appellant, like the respondent No.5 had participated in the tender process in response to the notification which was published both on the website and the newspapers. It was not for the appellant to find out as to how the project was funded. In terms of the tender, the bids were submitted and ultimately the supplies were made. For acknowledging that the kits have been supplied and installed,

the certificate was required to be issued by the Chairman and Secretary of the School Management Committee as per condition No.5 to the supply order. The Headmaster of the school is also the Secretary of the School Management Committee and as such the certificates issued indicate that the supplies were made is the contention on behalf of the appellant. In any event, the High Court has not recorded a finding that the supplies were not made by the appellant and the installation had not been completed. In fact, the High Court by its earlier order dated 06.04.2015 had declined to entertain the challenge to the tender process since the work order was already implemented even as on the date when notice was issued in the writ petition on 08.09.2014.

11. Even that be so, since the supply order had been issued in favour of the appellant, the supplies will have to conform to the terms and conditions failing which the official respondents in any event would have the right to proceed against the appellant pursuant to the terms of contract. Such proceeding in any event will have to be conducted after providing opportunity to the appellant. At this stage, no such process has been conducted. As such the recovery of the amount ordered is

premature. The lacuna noticed by the inquiry committee relating to the appellant is that, appellant has not updated the software and that the training of the teachers for two days as agreed has not been conducted. In that regard, the explanation put-forth by the learned counsel for the appellant is that the appellant though was willing to comply with the terms of supply order, the same could not be done in view of the status-quo order dated 08.09.2014 passed by the High Court which was in force during the pendency of writ petition. To that extent, we find the explanation to be justified but the appellant cannot be absolved of their obligation and they will have to perform the same at least at this stage and the payment towards that will be subject to compliance. Hence, the appellant shall undertake the upgrading of software as agreed under the contract and also impart training to the teachers. However, at this distant point of time if the same is not technically and practically feasible, the appellant cannot be allowed to enrich themselves to that extent and the proportionate amount will be deductible after following due process. However, the entire payment for the supplies made also cannot be recalled as ordered by the High

Court since the cost of equipment already installed cannot be denied.

12. Further, with regard to the statement contained in the inquiry report relating to the purchase made by the various Zilla Parishads, there is no clear finding in the report as to whether the payment of the price as quoted by the appellant is justified or if it is exorbitant and whether over quoted amount is approved. Be that as it may, the supply of E-learning kits being of different types, the further details relating to the configuration; the features; the brand and such other technical details are necessary to compare the different sets of devices supplied which is not an exercise that can be done in a proceeding of the present nature, but it is left to the official respondents to look into that aspect.

13. In that circumstance, the withdrawal of the payment made to the appellant and restraint against balance payment without reference to all these aspects would not be justified. However, the ends of justice would be met if liberty is reserved to the respondent No.4 to provide opportunity to the appellant and the Zilla Parishad concerned and take stock of the actual supplies made by the appellant. In that regard, an appropriate

conclusion shall be reached as to whether the payment made is commensurate to the supplies already made by the appellant in furtherance to the terms agreed in the contract. Further, with regard to the upgradation of the software agreed under the contract the same be also completed. With regard to the determination to be made in that regard, if the appellant has any grievance, liberty is reserved to avail the remedy in accordance with law before the appropriate forum. If the upgradation and training is undertaken and the appellant justifies the balance payment, there shall be no impediment to release the same.

14. It is relevant to take note that Mr. Ruchesh Jaivanshi, the then CEO of Zilla Parishad was before this Court in SLP D. No.13869/2018 assailing the same order dated 24.02.2018. This Court by order dated 09.05.2018 clarified that all proceedings referred in paragraph 12 of the impugned judgment will be with the participation of the petitioner therein and the proceedings shall be taken up on their own merits being uninfluenced by any observations in the impugned judgment. The said order will apply in so far the proceedings if any in the action contemplated against the then CEO. Insofar

as the appellant herein who was a party to the writ petition, all action shall be in the manner as indicated herein.

15. In the light of the above, the order dated 24.02.2018 passed by the High Court, impugned herein is not sustainable and the same is set aside.

16. The appeal is accordingly allowed subject to the above observations. There shall be no order as to costs.

17. Pending applications, if any, shall stand disposed of.

.....**J.**
(HEMANT GUPTA)

.....**J.**
(A.S. BOPANNA)

**New Delhi,
August 17, 2021**