



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.6805 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR.JUSTICE L. S. PIRZADA

Approved for Reporting	Yes	No

M/S DG NAKRANI THROUGH ITS AUTHORIZED PARTNER
 DIPAK G. NAKRANI
 Versus
 SMIMER HOSPITAL & ORS.

Appearance:

MR MIHIR THAKORE SENIOR ADVOCATE WITH MR. RAJAN J
 PATEL(6775) for the Petitioner(s) No. 1
 MR KAUSHAL D PANDYA(2905) for the Respondent(s) No. 1
 MS SHRUTI DHRUVE AGP for the Respondent(s) No. 2,3

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA
and

HONOURABLE MR.JUSTICE L. S. PIRZADA

Date : 03/11/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. **RULE.** Learned advocate Mr.Kaushal D. Pandya waives service of notice of Rule on behalf of respondent No.1 and learned Assistant Government Pleader Ms.Shruti Dhruve waives service of notice of Rule on behalf of respondent Nos.2 and 3.

2. In the present writ petition, the petitioner-firm has assailed Resolution No.804 of 2025 dated 19.04.2025 of respondent No.2 - Surat Municipal Corporation, debarring the petitioner along with forfeiture of EMD and also registering a criminal offence for filing a false affidavit in the tender



process.

BRIEF FACTS :

3. Respondent No.2 – Corporation, by way of Online Tender Notice No.09/2022-23, invited bids for providing sanitation services at respondent No.1 – SMIMER Hospital. The petitioner submitted its bid and duly participated in the tender process, and upon successful evaluation of both technical and financial bids, the petitioner was declared successful, having emerged as L1 (lowest) tenderer. Accordingly, in the meeting of the Administrative Committee of respondent No.2 held on 17.04.2023, it was decided that the work order, as per the terms and conditions of the tender document, would be allotted in favour of the petitioner.

4. It appears that the Editor of *Daily Mitra Darpan* filed a complaint before respondent No.2 – Corporation, alleging that false details were given by the petitioner in the form of affidavits for securing the contract. Accordingly, respondent No.2 – Corporation conducted a vigilance inquiry. It appears that the Standing Committee sent a proposal to respondent No.2 – Corporation on 10.12.2024 for debarring the petitioner for two years for giving false information in the affidavit filed in the tender process. Thereafter, the petitioner was also heard by respondent No.2 – Corporation by the Standing Committee, and on 18.04.2025, the petitioner gave a detailed representation to the Standing Committee regarding the contents of the affidavit filed in the bid document.



5. Ultimately, by the impugned Resolution dated 19.04.2025, being No.804 of 2025, respondent No.2 ordered the debarment of the petitioner for two years along with forfeiture of the EMD. A further decision was taken by the Standing Committee to file a police complaint for producing an affidavit containing false assertions. The same is assailed in the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER :

6. Learned senior advocate Mr.Mihir Thakore appearing with learned advocate Mr.Rajan J. Patel for the petitioner, at the outset, pointed out the affidavit filed by the petitioner in the prescribed format of the bid document at page 152. He submitted that respondent No.2 - Corporation has considered two facets of the assertions made in the said affidavit, as mentioned in paragraph Nos.2 and 3. It is submitted that respondent No.2 has held that the petitioner has made false assertions on two counts — first, that despite the statement in the affidavit that no police case has been filed against the petitioner, various criminal cases are registered before the Court of Additional Chief Judicial Magistrate (Labour Court No.1) under the provisions of the Minimum Wages Act, 1948, which were not disclosed; and second, that though the petitioner-Company was blacklisted, an assertion was made that it was never blacklisted by any Government Authority or organization.



7. So far as the first reason of non-disclosure of the police complaint is concerned, it is submitted by learned senior advocate Mr.Thakore that the petitioner-Company was never required to do so since there is no police case registered against the petitioner or any case by CBI/FEMA/Income Tax/Sales Tax Authorities, and hence, it was not supposed to disclose the same. It is submitted that the complaints filed against the petitioner-Company by the employees under the Minimum Wages Act, 1948, before the Chief Judicial Magistrate cannot be considered as police cases and hence, they were not required to be disclosed in the affidavit.

8. With regard to the second reason about the blacklisting of the petitioner-Company, learned senior advocate Mr.Thakore has submitted that, in fact, in the impugned resolution, there is not a whisper about blacklisting of the petitioner-firm; the resolution is only premised on the alleged false assertions made with regard to suppression of filing of the criminal cases under the Minimum Wages Act, 1948.

9. It is submitted that initially, the petitioner was blacklisted vide order dated 23.10.2017 passed by the District Development Officer, Vadodara. However, subsequently, the said order of blacklisting was cancelled vide order dated 23.03.2018 and hence, the petitioner was not supposed to disclose the same in the tender process, which was initiated in the year 2023. Thus, it is urged that on both counts, the impugned resolution is required to be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

10. Per contra, learned advocate Mr.Kaushal Pandya appearing for respondent No.2 - Corporation has submitted that respondent No.2 - Corporation, after receipt of the complaint filed by one Ms.Bhavna Parmar, published in *Daily Mitra Darpan*, alleging irregularities committed by the petitioner, conducted a vigilance inquiry and ultimately found that the petitioner had made false assertions in the affidavit by suppressing the filing of criminal cases and also its blacklisting. It is submitted that after the petitioner was heard by the Standing Committee, respondent No.2 - Corporation decided to debar the petitioner for two years from any contract of respondent No.2 - Corporation, to seize the EMD, and to initiate criminal proceedings for filing a false affidavit. It is submitted that the affidavit filed by the petitioner in the bid document under Annexure-III suppressed the correct facts about filing of criminal complaints and its blacklisting. Learned advocate Mr.Pandya has invited the attention of this Court to the order dated 23.10.2017 passed by the District Development Officer, Vadodara, blacklisting the petitioner-Company, and has submitted that though subsequently, the said order was set aside, the petitioner was required to disclose such information in the affidavit and, having not done so, respondent No.2 - Corporation debarred the petitioner-Company and also directed to register the criminal offence. So far as the first aspect of non-disclosure of the criminal cases is concerned, it is submitted that the petitioner is facing criminal cases under the Minimum Wages Act, 1948 filed by



the employees for not paying minimum wages, and hence, the same would fall within the contents of para No.2 of the affidavit wherein the petitioner declared that no police cases are pending against it.

11. Thus, it is urged by learned advocate Mr.Pandya that looking to the glaring misstatements made in the affidavit by the petitioner, the impugned resolution may not be set aside. It is also submitted that after the impugned resolution, respondent No.2 - Corporation has floated a new tender for the very same work. Learned advocate Mr.Pandya has also invited the attention of this Court to the contents of paragraph No.18 of the affidavit dated 21.07.2025 and has submitted that after the impugned resolution dated 19.04.2025, respondent No.2 - Corporation issued another tender notice on 05.05.2025. However, on completion of the tender process, only one qualified bidder was available and, therefore, the said tender was closed and a re-tender was published on 09.07.2025, in which L1 is already declared. However, no finalization has been done and no work order has yet been issued by respondent No.2 - Corporation.

12. We have heard the learned advocates appearing for the respective parties at length.

ANALYSIS AND OPINION :

13. The entire case of the respective parties hinges on the affidavit dated 24.02.2023 (Annexure-III) (Criminal Liability

Undertaking) (page No.152) submitted by the petitioner in the bid document. The same is incorporated as under:-

*“CRIMINAL LIABILITY UNDERTAKING
(Annexure-III)*

(To be executed on Rs.300/- Non-judicial Stamp Paper duly attested by Public Notary)

I Anil J Solanki S/o Jagdishbhai V Solanki Resident of 168, Iscon Mega City, Bhavnagar Do solemnly pledge and affirm:

1. I am the ~~Proprietor/Partner/Director~~/authorized signatory of M/s.D G Nakrani.

2. No police case and/or case by CBI/FEMA/Income Tax/ Sales Tax authorities are pending against the ~~Proprietor/Partner/Director~~ of the ~~firm~~ company (Agency) and also against the firm/company. (Indicate any convictions if any against the above persons or Firm/ Company.)

3. The ~~Proprietor/Partner/Director~~ of the ~~firm~~/ company (Agency) and also the firm/company have never been blacklisted by any Government authority/organisation.

4. I/We have not quoted the price higher than previously supplied to any Government Institute/Organisation/ reputed Private Organisation or DGS&D rate in recent past.

*Name & Signature
Seal of the participating Bidder
Company
Affirmation/Verification
Anil J Solanki,
Partner of M/s D G Nakrani”*

14. It is not in dispute that the petitioner was declared L1 in



the tender process, initiated with the tender notice issued in the year 2023. The Administrative Committee, which met on 17.04.2023, also decided that the work order, as per the terms and conditions of the tender document, would be allotted in favour of the petitioner. However, it appears that a third party - Editor of *Daily Mitra Darpan* filed a complaint against the petitioner before respondent No.2 - Corporation, pointing out irregularities. Accordingly, respondent No.2 - Corporation undertook the necessary vigilance exercise and proceedings, inquiring into such irregularities. The petitioner was also personally heard and a detailed reply was given on 18.04.2025 to the Standing Committee, clarifying its stand about filing of the police complaint as well as blacklisting. The format under Annexure-III of the Criminal Liability Undertaking is not in dispute.

15. We may first deal with the assertions made by the petitioner in paragraph No.3 relating to blacklisting by any Government authority or organization.

16. The documents on record reveal that the petitioner was blacklisted on 23.10.2017 by an order passed by the District Development Officer for violation of tender conditions.

17. It appears that thereafter, in view of the order passed by the Additional Director, Gandhinagar, on 20.01.2018, the District Development Officer, Vadodara, cancelled/annulled the order of blacklisting vide order dated 23.03.2018. Thus, the order of blacklisting was not in existence in view of the



order dated 23.03.2018. There is no condition pointed out to this Court by the respondents mandating that the petitioner must mention blacklisting even if such action has been subsequently cancelled/annulled. The format of Annexure-III of the undertaking does not specify such requirement.

18. We may, at this stage, refer to the contents of the impugned Resolution No.804 of 2025 dated 19.04.2025. In the entire resolution, there is no whisper about the reason assigned by respondent-Corporation for debarring the petitioner on the ground of suppression of its earlier blacklisting in 2017. The impugned resolution only refers to the filing of a false affidavit relating to non-disclosure of criminal complaints. When a specific query was raised by the Court to learned advocate Mr. Pandya to point out whether the resolution mentions the aspect of blacklisting of the petitioner in 2017, he was unable to point out anything establishing that such aspect was considered in the impugned resolution. Thus, the petitioner could not have been debarred based on paragraph No.3 of the affidavit dated 24.02.2023. The impugned resolution does not mention the same; it only refers to the criminal liability certificate filed by the petitioner not disclosing any criminal offence.

19. Now, we shall deal with the primary cause of debarring the petitioner, i.e., non-disclosure of "police case". Respondent-Corporation has heavily relied upon the contents of paragraph No.2 of Annexure-III - the Criminal Liability Undertaking - wherein the petitioner has asserted that "no

police case and/or case by CBI/FEMA/Income Tax/Sales Tax Authorities is pending either against the partner or against the firm/company.”

20. It is the case of respondent-Corporation that several criminal complaints have been filed against the petitioner-Company under Section 22 of the Minimum Wages Act, 1948, hence the petitioner was supposed to disclose those criminal complaints. Section 22 is incorporated as under:

“Section 22: Penalties for certain offences.

Any employer who-

(a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act, or

(b) contravenes any rule or order made under section 13, shall be punishable with 'Imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both: Provided that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under Section 20.”

21. A bare reading of Section 22 shows that it prescribes penalties for certain offences, such as payment of less than the minimum wages and contravention of any rule or order made under Section 13 of the Act, with punishment by imprisonment or fine.

22. Indubitably, violation of the provisions mentioned under Section 22 is an offence. However, the expression used in the format Annexure-III, “no police case”, has been construed

against the petitioner by respondent No.2 - Corporation as suppression of "criminal complaints" under the Minimum Wages Act. A 'police case' is governed by Section 154 of the Cr.P.C. (now Section 173 of the BNSS), which prescribes registration of First Information Reports in cognizable offences defined under Section 2(c) of Cr.P.C. (Section 2(g) of the BNSS). The offence under the Minimum Wages Act, 1948 does not fall within the category of a police case.

23. In the present case, the documents on record reveal that the complaints have been filed before the Additional Chief Judicial Magistrate under Section 22 of the Minimum Wages Act, 1948. Thus, such complaints cannot be construed as or given the colour of a police case. Unquestionably, respondent No.2 - Corporation has not pointed out that any police case relating to a cognizable or non-cognizable offence has been registered against the petitioner. Respondent No.2 - Corporation has erred in considering complaints under the Minimum Wages Act, 1948, filed by the employees against the petitioner, as police cases. Hence, it cannot be said that the petitioner has made any false assertion in the affidavit dated 24.02.2023. The petitioner was not supposed to disclose the complaints filed before the Additional Chief Judicial Magistrate under the provisions of the Minimum Wages Act, 1948, by the employees and was supposed to disclose only police cases, which are absent in the present case. Thus, on this count also, the impugned resolution is required to be quashed and set aside.



24. It is pertinent to note that the petitioner, in the representation dated 18.04.2025, had clarified all these aspects before the Standing Committee. However, the Standing Committee, by the impugned resolution, ignored the same and also decided to register a criminal offence against the petitioner for filing a false affidavit. Hence, we are of the considered opinion that the decision taken by respondent No.2 - Corporation vide Resolution No.804 of 2025 dated 19.04.2025, debarring the petitioner for a period of two years, forfeiting its EMD, and simultaneously registering a criminal offence against the petitioner, is illegal and arbitrary and hence deserves to be quashed and set aside.

25. As the present writ petition succeeds, the impugned resolution dated 19.04.2025 is hereby quashed and set aside. Respondent No.2 - Corporation is directed to release the EMD and pay the same to the petitioner within a period of two weeks.

26. So far as the consequential direction sought by the petitioner to issue the work order in favour of the petitioner is concerned, we cannot ignore the subsequent developments in the present matter. It is not in dispute that after passing of the impugned resolution, respondent No.2 - Corporation again issued a tender notice dated 05.05.2025 for the very same work. However, since only one bidder qualified, the Corporation closed the said tender process and re-tendered the work by issuing a tender notice dated 09.07.2025.



27. At this stage, it is informed to us that in the said tender process, another company has been declared as L1. Under the circumstances, we direct respondent No.2 - Corporation to consider the case of the petitioner in view of the order passed by this Court and to pass necessary orders after hearing the respective aggrieved parties. Necessary orders shall be passed within a period of two weeks from the date of receipt of this order. At this stage, learned advocate Mr. Rajan J. Patel has submitted that, in fact, the petitioner had applied in the subsequent tender notice dated 09.07.2025; however, the petitioner was not considered as it was debarred for a period of two years. This aspect shall also be considered by respondent No.2 - Corporation while passing necessary orders.

28. Accordingly, the present petition is allowed. Rule is made absolute.

(A. S. SUPEHIA, J)

(L. S. PIRZADA, J)

STANCY GOMES / SNB-07