



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

WRIT PETITION No. 8341 OF 2018

PETITIONER :- Dwarkai Swayam Seva Sahakari Sanstha
Maryadit, Mangrul, Tq. District Yavatmal
through Secretary Smt. Minakshi
Sawadkar, R/o. Pimpalgaon Road,
Yavatmal.

...V E R S U S...

RESPONDENT :-

1. State of Maharashtra through its
Principal Secretary, Social Welfare and
Special Assistance Department,
Mantralaya, Mumbai- 400 032.
2. The Commissioner,
Social Welfare Department, Pune.
3. The Deputy Commissioner,
Social Welfare Department, Amravati.
4. The Assistant Commissioner,
Social Welfare, Yavatmal.
5. Birsa Swayamrojgar Seva Sahakari
Sanstha Maryadit, Yavatmal,
Reg. No. 1546 through its President
Nandu Deorao Kudmethe,
R/o. Netaji Nagar, Yavatmal.
6. Guru Gajanan Bhojnalaya & Caterers
through its Proprietor Gajanan Sitaram
Gade, Vasantrao Naik Chowk, Pusad,
Taluka-Pusad, Yavatmal.

WITH

WRIT PETITION No. 8342 OF 2018

PETITIONER :- Prabuddha Vividh Seva Sahakari Sanstha
through President Shri Pravin Wadekar,
Aged about 43 years,
R/o. Tope Nagar, Amravati.

..V E R S U S..

RESPONDENT :-

1. State of Maharashtra through its
Principal Secretary, Social Welfare and
Special Assistance Department,
Mantralaya, Mumbai- 400 032.
2. The Commissioner,
Social Welfare Department, Pune.
3. The Deputy Commissioner,
Social Welfare Department, Amravati.
4. The Assistant Commissioner,
Social Welfare, Washim.
5. Shila Sudhakar Gadekar through its
Proprietor Gajanan Bhaji Vikreta &
Bhojnalaya, Pusad,
R/o. Ashok Park, Pusad, Near Shivalaya
Temple, Tah. & Dist. Yavatmal.

Shri R. S. Parsodkar, Advocate for petitioner.
Shri A. M. Kadukar, A.G.P. for respondent no. 1 to 4.
Mrs. M. R. Chandurkar, Advocate for respondent no. 5 and 6 (in
WP 8341/2018).

CORAM :- SUNIL B. SHUKRE AND
S. M. MODAK, JJ.

DATED :- 20.06.2019.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.):

1. Rule. Rule is made returnable forthwith. Heard finally by the consent of learned Counsel appearing for the parties.

2. We will decide these two petitions by common judgment, as the issue involved in these petitions is one and the same. There is a question -

Whether disqualification of the petitioners in the tenders invited for making food supply to the Government Boys and Girls Hostels is consistent with the record and does not amount to mala fide action on the part of respondent nos. 1 to 4 ?

3. By the e-tender notice bearing no. 111/2018, online tenders were invited for allotment of contract of food supply to the Boys and Girls Government Hostels. The conditions of the tender were mentioned in the notice and also in tender document. The tenderers were required to submit online tender forms, and also to fill up technical and financial details in two separate envelops called 'Technical Bid' envelop and 'Price Bid' envelop. The date of opening of tenders was mentioned in the tender notice. It came to be extended from time to time, and ultimately Technical Bid envelop was opened by respondent nos. 1 to 4 in April-2018.

4. The petitioners in these two petitions were intimated that they did not qualify for second round relating to opening of the 'Price Bid' envelop as they lacked in essential technical qualifications. The lack of technical qualifications was explained further by pointing out that in the By-laws of the petitioner-society, it was not mentioned that object of petitioner-society was supply of food/preparation of food. Aggrieved thereby, the petitioners have approached this Court by filing these two separate petitions.

5. Shri R. S. Parsodkar, learned counsel for the petitioners in both the petitions submits that petitioners were duly qualified and in order to support his argument, he has invited our attention to the copy of By-laws of the society. According to learned A.G.P. there were other reasons also for disqualification. Mrs. M. R. Chandurkar, learned counsel for the intervenor submits that whatever may be the final result of these petitions, it is necessary that the tender process in the present case is allowed to proceed further in accordance with law, at least in the interest of supply of nutritious meal to the inmates of Boys and Girls Hostels.

6. We have perused the By-laws of petitioner-society and we are satisfied that there is a great substance in the argument of

learned counsel for the petitioners and no merit in the argument of the learned A.G.P.

7. By-laws clearly make mention of specific objects of the Society which are many and there is also a mention of supply of food / preparation of food. Respondent nos. 1 to 4 in fact have not controverted these aspects of the matter specifically and reply of these respondents is silent in this regard. There are some documents placed on record not only by petitioners, but also by respondent nos. 5 and 6, which are relating to internal functioning of respondent nos. 2 to 4, which indicate that no proper procedure has been followed in processing the tenders submitted by various tenderers in the present case. These documents having been obtained by the petitioners and respondent nos. 5 and 6 under the provisions of Right to Information Act, can not be said to be incorrect. Relying upon these documents, we find that the Internal Tender Committee of respondent no. 4 had found that the petitioners herein were qualified. This committee did not opine that By-laws of the petitioner-Society contained no such object as supply of food/preparation of food. The documents placed on record on behalf of respondent nos. 5 and 6 indicate that in so far as tender involved in W.P. 8341/2018 is concerned, even though

the petitioner therein was disqualified on technical count, still its price bid envelope was opened. The inference which could be drawn is that factually, the said petitioner was qualified qua the technical bid and that is the reason why its price bid envelope was opened. But, later on suddenly the petitioner was declared as disqualified on technical count. This would show that processing of tender has been done in a malafide manner, perhaps for indulging into some kind of favoritism or for the reasons best known to the Authorities. Thus, the whole tender process in the present case has stood vitiated. This Court cannot permit respondent nos. 1 to 4 to go ahead with the tender process involved in both these petitions, that is to say, the contractual work concerning the Yavatmal and Washim districts. Question is answered accordingly.

8. In view of the above, both the petitions are allowed. E-tender notice no. 111/2018 in so far as it relates to Yavatmal and Washim districts is hereby quashed and set aside. It is also made clear that this notice relating to district of Amravati, would remain as it is.

9. Respondent nos. 1 to 4 are at liberty to issue a fresh tender notice, and if they do so, tender process shall be completed

as early as possible in accordance with the norms laid down in that behalf. We also direct that fresh tender notice, if it is to be issued, shall be issued within 10 days from the date of receipt of this order.

10. Rule is made absolute in the above terms. No costs.

JUDGE

JUDGE

RR Jaiswal