

**BASAVRAJ
GURAPPA
PATIL**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.6518 OF 2021
WITH
INTERIM APPLICATION (ST) NO.3899 OF 2023
IN
WRIT PETITION NO.6518 OF 2021**

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BASAVRAJ GURAPPA
PATIL

Date: 2023.02.16
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M/s. Patil Transport Service

..... Petitioner

Vs.

The State of Maharashtra & Ors.

..... Respondents

Mr. Girish Godbole a/w. Mr. Akshay Petkar, Aniketh Malu and
Mr. Pranav Shah for the Petitioner

Mr. A. A. Kumbhakoni, Senior Advocate a/w. Mr. P. P. Kakade, GP,
Mr. Akshay Shinde, "B" Panel Counsel with Mr. R. P. Kadam, AGP for
the State

**CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

**RESERVED ON : FEBRUARY 8, 2023
PRONOUNCED ON : FEBRUARY 16, 2023**

ORDER: (PER ACTING CHIEF JUSTICE)

1. The Respondent No.1 floated a tender for appointment of transporters for transporting food-grains and other essentials to Fair Price Shops (for short the "FPSs") . The Petitioner is held ineligible on account of insufficient experience.

2. Mr. Godbole, the learned Counsel for the Petitioner submits that the Government Resolution dated 15th January 2021 and the request

of proposal specifies the eligibility criteria for tender / bid process for appointment of transporters. It is specified that the bidder should have experience of transportation of 33% of the Government food-grains transported in the preceding 3 years. According the learned Counsel, the information sheet uploaded on the web portal of Respondent No.1 contains erroneous quantities for the transport of food-grains in last three years. In the pre-bid meet the Petitioner indicated that the information sheet published along with the Retail Fair Price (for short “RFP”) for Nasik District contains wrong and erroneous numbers i.e. the quantity of the food-grains transported during the preceding three years. On or about 2nd June 2021 the District Supply Officer provided revised and correct information sheet for appointment of transporters for transporting food-grains and other essentials for the FPSs in Nasik District. The Respondent No.1 uploaded the revised information sheet for Nasik District which still contained erroneous quantities. The learned Counsel for the Petitioner submits that in Nasik District, the quantity of transportation of food-grains in the Stage-I and the Stage-II cannot be the same. The Respondents erroneously calculated the same as 2,15,171 MT for Stage-I and Stage-II. The learned Counsel submits that in Nasik Municipal Corporation area there was direct transportation which is included in Stage-I. The transportation

volume in Stage-I has to be more than Stage-II. The same principle will apply in four other Districts viz. Nasik, Solapur, Nagpur and Aurangabad. Consequently, Clause 11 and 11.1 of the Sheet showing the details of quantity of food-grains transported so also of Stage-I and Stage-II is incorrect. In the revised list the same was correctly shown by the DSO Nasik. That was provided on 2nd June 2021. The same was issued by the DSO pursuant to the directions of the Government. The experience certificate issued to the Petitioner would categorically demonstrate that the Petitioner has the necessary experience of transportation of food-grains of the quantity indicated in Stage-I and Stage-II.

3. Mr. Godoble, the learned Advocate further submits that the impugned order holding the Petitioner disqualified, is a non-speaking one and is sought to be supported by the affidavit, which is not permissible. Clause 5.1 of the Government Resolution requires the actual quantum of goods transported to be the basis whereas the Government has taken a wrong figure of 6,52,032 MT which is not the actual quantum transported but is the quantum for which contracts were awarded. Actual figure is 6,20,167.53 MT. The learned Counsel submits that even if the case of the Respondents is accepted, still the Petitioner fulfills the criteria in Stage-I for the financial year 2018-2019 and 2019-2020. Reliance is placed on the judgment of the

Division Bench of this Court at Aurangabad in the case of *Shalimar Transport and Catering Contractor Vs. Government of Maharashtra and Ors. in Writ Petition No.9279 of 2021 delivered on 13th October 2021*. The learned Counsel further submits that the impugned order is absurd and irrational since it was the Petitioner who was alone awarded the work of transportation for the entire Nasik District for the financial year 2018-2019 and 2019-2020. The Petitioner could not have been disqualified. The Government has taken a wrong figure of *Niyatan* which means the amount for which the contract was awarded instead of taking the figure of goods actually transported, which is correct criteria of 5.1 read with clause 1.1 and 1.2 of the Government Resolution so also clause 6.1 of the RPF. In fact, for Nagpur District, the same correct method is applied.

4. Mr. Kumbhakoni, the learned Senior Advocate for the Respondents supports the order and submits that according to the District Sheet and the information from the DSO Nasik, the food-grains transported in the last three years in the Nasik District is 6,52,032 MT and 33% of the said figure comes to 2,15,171 MT. Thereafter RFP document was published on 21st May 2021. The DSO Nasik, under letter dated 2nd June 2021 submitted the amended information. Bare perusal of the said information would reveal that at Sr.No.8 the DSO has mentioned that the total food-grains

transported in last three years in the Nasik District is 6,97,654 MT. In column No.11 and 11.1 of the said document, the DSO has mentioned figure as 1,98,992 MT and 1,81,992 MT being 33% of the total transportation that has taken place in Nasik District for last three years in Stage-I and Stage-II transportation. However, if one calculates 33% of the figure mentioned in column 8 i.e. 6,97,654 MT, same comes to 2,30,226 MT but the DSO has stated the figures 1,98,992 MT and 1,81,992 MT in columns 11 and 11.1, respectively which is apparently not correct. As there was a mistake in the said District Sheet, the Respondents relied upon the District Sheet which was submitted by the DSO on 4th March 2021 while considering the technical bids. The Petitioner was rightly disqualified.

5 Certificate of the Petitioner would reveal that the Petitioner has transported the food-grains in both the stages i.e. Stage-I and Stage-II. The State Government has framed its policy in the form of Government Resolution dated 15th January 2021 and the tender is issued in terms of the said Government policy.

6 We have considered the submissions canvassed by the learned Counsel for the parties. The only dispute is about the eligibility of the Petitioner vis-a-vis transport of the required quantity of food-grains. The District Sheet that was published along with RFP shows the

following figures:

अ. क्र.	वाहतुक कंत्राट निविदा प्रक्रियेसाठी जिल्हा/परिमंडळाची माहिती	नाशिक
७	जिल्ह्यांतर्गत पहिल्या टप्पा व थेट वाहतुकीसाठी मासिक आवश्यक वहन क्षमता (मे. टन मध्ये)	७२५
७.१	जिल्ह्यांतर्गत दुस-या टप्प्याच्या वाहतुकीसाठी मासिक आवश्यक वहन क्षमता (मे. टन मध्ये)	७२५
८	जिल्ह्यातील/परिमंडळातील मागील ३ आर्थिक वर्षातील एकूण नियतन (CMR वाहतुकीसह) (मे. टन मध्ये)	६,५२,०३२
९	जिल्ह्यातील/परिमंडळातील नियमित नियतन विचारात घेउन अन्नधान्याच्या वाहतुकीवर (CMR वाहतुकीसह) मागील तीन आर्थिक वर्षातील झालेला एकूण खर्च (रूपयामध्ये)	६९,०८,०१,०००
१०	जिल्ह्यात CMR तांदुळाचे उत्पादन होत असल्यास नमूद करावे (सरासरी वार्षिक मे. टन)	निरंक
११	निविदाकाराचा कामाचा अनुभव (मागील ३ आर्थिक वर्षातील एकूण वाहतुकीच्या ३३%) पहिल्या टप्प्यासाठी — मे. टन मध्ये	२,१५,१७१
११.१	निविदाकाराचा कामाचा अनुभव (मागील ३ आर्थिक वर्षातील एकूण वाहतुकीच्या ३३%) दुस-या टप्प्यासाठी — मे. टन मध्ये	२,१५,१७१
१२	निविदाकाराची आर्थिक कुवत (मागील ३ आर्थिक वर्षातील एकूण वाहतूक खर्चाच्या ३३%) — (रूपयामध्ये)	२२,७९,६४,३३०
१३	निविदाकाराने जमा करावयाची इसारा रक्कम (मागील ३ आर्थिक वर्षातील एकूण वाहतूक खर्चाच्या ३%) (रूपयामध्ये)	२,०७,२४,०३०
१४	यशस्वी निविदाकाराने जमा करावयाची बँक गॅरंटी (मागील ३ आर्थिक वर्षातील एकूण वाहतूक खर्चाच्या ५%) (रूपयामध्ये)	३,४५,४०,०५०

7 It appears that the Petitioner has subsequently made some grievance and the DSO Nasik submitted another District Sheet which provided for the following figures:

अ. क्र.	वाहतुक कंत्राट निविदा प्रक्रियेसाठी जिल्ह्याची माहिती	नाशिक
१	जिल्ह्यासाठीचे भारतीय अन्न महामंडळाच्या विहित बेस डेपोंचा तपशील	१) भारतीय अन्न महामंडळ, (FCI) मनमाड, ता. नांदगाव २) केंद्रीय वखार महामंडळ, (CWC) नाशिक रोड, ता. नाशिक
२	जिल्ह्यातील शासकीय धान्य गोदामांची एकूण संख्या व तपशील	एकूण १८ गोदामे १) गोल्फ क्लब नाशिक (त्र्यंबकेश्वर गोदाम) २) धाविअ नाशिक (नाशिकरोड) — थेट वाहतुक

		३) नाशिक ग्रामीण (नाशिकरोड) ४) इगतपुरी ५) दिंडोरी ६) कळवण ७) पेठ ८) पिंपळगाव बसवंत ता. निफाड ९) चांदवड १०) अंगणगाव ता. येवला ११) मुसळगाव ता. सिन्नर १२) धाविअ मालेगाव १३) निळगव्हाण ता. मालेगाव ग्रामीण १४) बागलाण १५) नांदगाव १६) मनमाड ता. नांदगाव १७) सुरगाणा १८) देवळा
३	तलुकानिहाय चालू असलेल्या शिधावाटप दुकानांची संख्या	२६०९
४	पहिल्या टप्प्याच्या वाहतूकीची भारतीय अन्न महामंडळाच्या विहित बेसडेपोपासून जिल्ह्यातील शासकीय धान्य गोदामांपर्यंतची सरासरी अंतरे (किलोमीटर मध्ये)	६५
५	दुस-या टप्प्याच्या वाहतूकीची जिल्ह्यातील शासकीय धान्य गोदामांपासून संलग्न शिधावाटप दुकानांपर्यंतची एकूण सरासरी अंतरे (किलोमीटर मध्ये)	२२
६	जिल्ह्यातील प्रस्तावित थेट वाहतूकीसाठी संबंधीत भारतीय अन्न महामंडळाच्या बेस डेपोपासून संबंधीत महानगरपालिका/नगरपालिका/नगरपरिषद क्षेत्र, तालुका मुख्यालयापर्यंतची सरासरी अंतरे (किलोमीटर मध्ये)	६८
७	जिल्ह्यांतर्गत पहिल्या टप्प्या व थेट वाहतूकीसाठी मासिक आवश्यक वहन क्षमता (मे. टन मध्ये)	७७५
७.१	जिल्ह्यांतर्गत दुस-या टप्प्याच्या वाहतूकीसाठी मासिक आवश्यक वहन क्षमता (मे. टन मध्ये)	७२८
८	जिल्ह्यातील मागील ३ आर्थिक वर्षांतील एकूण नियतन (CMR वाहतूकीसह)(मे. टन मध्ये)	६९७६५४

९	जिल्ह्यातील नियमित नियतन विचारात घेउन अन्नधान्याच्या वाहतुकीवर होत असलेला एकुण वार्षिक खर्च (CMR वाहतुकीसह) (मागील तीन आर्थिक वर्षातील प्रत्यक्ष वाहतुकीच्या आधारे) (रूपयामध्ये)	५५४२७९४३१
१०	जिल्ह्यात CMR तांदुळाचे उत्पादन होत असल्यास नमूद करावे (सरासरी वार्षिक मे. टन)	४५३
११	निविदाकाराचा कामाचा अनुभव (मागील ३ आर्थिक वर्षातील एकूण वाहतूकीच्या ३३%) पहिल्या टप्प्यासाठी – मे. टन मध्ये	१९८०२७
११.१	निविदाकाराचा कामाचा अनुभव (मागील ३ आर्थिक वर्षातील एकूण वाहतूकीच्या ३३%) दुस-या टप्प्यासाठी – मे. टन मध्ये	१८१९९२
१२	निविदाकाराची आर्थिक कुवत (मागील ३ आर्थिक वर्षातील एकूण वाहतूक खर्चाच्या ३३%) (रूपयामध्ये)	१८२९१२२१२
१३	निविदाकाराने जमा करावयाची इसारा रक्कम (मागील ३ आर्थिक वर्षातील एकूण वाहतूक खर्चाच्या ३%) (रूपयामध्ये)	१६६२८३८३
१४	यशस्वी निविदाकाराने जमा करावयाची बँक गॅरंटी (मागील ३ आर्थिक वर्षातील एकूण वाहतूक खर्चाच्या ५%) (रूपयामध्ये)	२७७१३९७२

8 According to the Respondents, in the Stage-II, the Petitioner had transported about 2,05,325 MT of food-grains in the financial year 2019-2020 which according to the District Sheet issued, ought to be 2,15,171 MT. The same is below than the one required in the District Sheet.

9 In matters of tender, this Court would not sit in appeal over the decision taken by the Principal. The Court would be more concerned

with due adherence with the decision making process. This Court would not normally interfere in tender matters unless it is shown that the decision making process has been faulted with and/or the decision is arbitrary.

10 The question is how far this court would dwell upon the mathematical calculations. The Respondents have considered the District Sheet about the quantum of the food-grains transported by the Petitioner during the past three years as required under the tender document and the minimum 33% of the total figure transported last three years required.

11 The Respondents, it appears, have considered the calculations as per the District Sheet issued by the Officer concerned. This Court would not presume that the volume of the transportation in Stage-II would always be less than the Stage-I. That was for the Authorities to consider. This Court would not go beyond the District Sheet that is placed on record. The Respondents, even from the District Sheet relied by the Petitioner, are in a position to demonstrate that 33% of the total metric ton as shown in the said sheet viz. 6,97,654 would be 2,30,225.82, however, the same is calculated as 1,98,027 and 1,81,992/-. The same would be *ex-facie* incorrect.

12 The Petitioner did not allege *mala fide* against the Respondents nor any such specific instances of *mala fide* are placed on record. The Petitioner is disqualified on the ground of non-compliance of the tender conditions. The decision arrived at by the Respondents cannot be said to be improbable.

13 In light of the above, no interference is called for. The Writ Petition is disposed. No costs.

14 The Interim Application also stands disposed of.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)

15 At this stage, the learned Counsel for the Petitioner seeks continuation of interim orders for a period of four weeks.

16 Mr.Kumbhakoni, the learned Senior Advocate for the Respondents opposes the said request.

17 Considering that the interim relief was operating, we continue the same for a period of two weeks. Needless to state, on lapse of two weeks, the said protection shall come to end.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)