

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

**WRIT PETITION NO.5478 OF 2015 WITH
CIVIL APPLICATION NO.6411 OF 2015**

Indapur Dairy and Milk Products
Limited (Sonai Dudh) ... PETITIONER

VERSUS

The State of Maharashtra
and another ... RESPONDENTS

.....
Shri V.D. Hon, Senior Counsel with
Shri A.V. Hon, Advocate for petitioner
Shri D.R. Kale, Govt. Pleader for State
Shri S.R. Choukidar, Advocate for respondent No.2

.....
WITH

CIVIL APPLICATION NO.5509 OF 2015

Sanjay s/o Bhaskarrao Kale ... APPLICANT
(INTERVENOR)

VERSUS

The State of Maharashtra and others ... RESPONDENTS

.....
Shri S.B. Talekar, Advocate with
Shri K.M. Nagarkar, Advocate for applicant
Shri D.R. Kale, Govt. Pleader for State
Shri S.R. Choukidar, Advocate for respondent No.2
Shri V.D. Hon, Senior Counsel with
Shri A.V. Hon, Advocate for original writ petitioner

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CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.

DATED: 11th June, 2015.

ORAL ORDER :

1. The petitioner, vide the present Writ Petition, basically seeks modification of the order dated 7th May 2015, passed in Civil Application No.4748/2015 in Public Interest Litigation No.18/2011. It also seeks inclusion of the name of the petitioner in the list of various dealers mentioned in para No.2 of the said order, so also seeks issuance of work order.

2. Mr. Hon, learned Senior Counsel for the petitioner submits that, the petitioner is a reputed Company supplying cow ghee to the present respondent No.2 Sansthan. According to the learned Senior Counsel, this Court, vide order dated 7th May 2015, restricted the purchase of ghee from various dealers of Amul, Gokul, Mahananda, Vikas, Hatsun and Warna. According to the learned Senior Counsel, when tenders are invited, the same cannot be restricted. The petitioner is also reputed Company which produces its own cow ghee under its own brand name Sonai. By restricting the purchase of cow ghee from the suppliers of the branded cow ghee as referred in the tender notice and the order, the petitioner, is prohibited from

participating in the tender process which is illegal and not permissible. According to the learned Senior Counsel, the tender dated 12.3.2015 was issued in English and also in vernacular language i.e. in Marathi. Though the English tender restricted inviting tenders of the six brands of cow ghee as referred to in the tender, however, the Marathi version, apart from cow ghee of these six Companies, had also added the word "*Ityadi*" (etc.), meaning thereby that it was also open for the other Companies to participate. The learned Senior Counsel submits that, the said Marathi version was the correct implementation of the order passed by this Court on 13.3.2015 in Civil Application No.3504/2015, wherein this Court had allowed the Civil Application in terms of prayer clause B and had also given liberty to the trust to explore few more sources through whom ghee can be procured. The learned Senior Counsel submits that, the petitioner cannot be prohibited from participating in the tender. There is nothing against the petitioner. No complaint has been filed against the petitioner at any point of time. The petitioner be permitted to participate in the tender. Even in the order dated 13.3.2015 passed in Civil Application No.1776/2014, the names of these six Companies referred above were named as in illustrative one. The said order also nowhere prohibited inviting tenders of cow ghee of other Companies. The learned Senior Counsel submits that, the order dated 7th May 2015, of which

modification is sought, is passed without notice to the petitioner and without hearing the petitioner. The said order is detrimental to the interest of the petitioner. Even vide the said order the Sansthan is allowed to collect the cow ghee from the petitioner for the stock till 31st May 2015. According to the learned Senior Counsel, the petitioner deserves to be allowed to participate in the tender process wherein the tenders are invited till 12th June 2015.

3. We have heard Mr. Chowkidar, learned counsel for the Sansthan – respondent No.2.

4. The order dated 7th May 2015 is passed on an application filed by Sansthan. The tender notice dated 12.3.2015 was issued. The English version of the tender notice reads as under :

“E-tenders are invited from authorized dealers/ processors for Amul, gokul, Mahananda, Vikas, Hatsun & Warna to supply of Cow Ghee for our Prasadalya, Ladu Nirmiti & Mandir Dept. for the year 2015-16 (Apr-2015 to March-2016).

5. The Marathi version of the tender notice reads as under :

"Shri Saibaba Sansthanche Prasadalya, Ladu Nirimit Va Mandir Vibhagansathi San 2015-16 Karita (Mahe April-2015 Te March-2016) Awashyak Gavran Toop Kharedikami Amul, Gokul, Mahananda, Vikas, Hatsun, Warna Ityadi Kampanichya Adhikrut Vitarakankadun Online Nivida Magawinyat Yet Ahet."

6. Going by the tender notice published on 12.3.2015, it is explicitly clear that e-tenders were invited from the authorised dealers/ processors for Amul, Gokul, Mahananda, Vikas, Hatsun and Warna for supply of cow ghee for the Sansthan for the year 2015-2016 i.e. April 2015 to March 2016, whereas in Marathi version, the word "Ityadi" (etc.) was there. This Court, considering the English version, had passed the order dated 7th May 2015 and had directed to reissue the tender on the same line as was issued on 12.3.2015 i.e. inviting tender of the said six brands of cow ghee. Vide order dated 7th May 2015, it was considered that the Sansthan cannot travel beyond the tender notice and that it would be guided by the tender notice. As the tender notice did not refer to the petitioner Company or the cow ghee of the petitioner Company's brand, the petitioner could not have been considered as per the said tender notice. The Marathi version was vague one. The only consideration while passing the order dated 7th May 2015 was the tender notice issued on

12.3.2015 and the said order was passed in consonance with the tender notice dated 12.3.2015. Considering the same, directions were issued to reissue tender notice as was issued on 12.3.2015 inviting the tenders from the competent bidders of the said reputed brands which were mentioned in the tender notice dated 12.3.2015.

7. The order dated 13.3.2015 passed by this Court was in terms of prayer clause (B) of the Civil Application No.3504/2015. However, the order dated 7th May 2015 was passed as we were required to consider the tender notice dated 12.3.2015.

8. The said tender notice is already issued. Naturally, pursuant to the said tender notice, the petitioner is not in a position to participate in the tender process. The said tender notice is for a period from July 2015 to March 2016 i.e. for 9 months. It is submitted that, this is a third time tender process has been issued. The Sansthan has spent lakhs of rupees in issuing the tender. It would not be appropriate to direct them to again reissue fresh tender notice.

9. Considering the aforesaid conspectus of the matter, we are inclined to restrict the order dated 7th May 2015 for the

current year i.e. the tender already issued. It is made clear that, if in future the tender notice is to be issued by the Sansthan, the Sansthan shall consider the application of all reputed producers of cow ghee as the consideration would be competitive rates and the quality of the cow ghee, and the same would not be restricted to the six Companies mentioned in the present tender. With this clarification, the Writ Petition stands disposed of.

10. In case the present tender notice, which is already issued, does not materialise or cannot be made final and if fresh tenders notice is required to be issued, then the Sansthan naturally will have to seek permission of this Court. At that time, the contentions of the present petitioner also would be considered.

11. In view of disposal of the Writ Petition, Civil Application Nos.6611/2015 and 5509/2015 are disposed of.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)