

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO.11405 OF 2015.

Lotus Surgical Bandages
and others. ... Petitioners.

Versus

The State of Maharashtra
and others. ... Respondents.

...

Mr.A.N.Sabnis, advocate holding for Mr.P.V.Barde,
advocate for the petitioners.
Mrs.M.A.Deshpande, A.G.P for the State.

...

**CORAM : S.V.GANGAPURWALA AND
A.M.BADAR, JJ.**

Date : 18.01.2016.

PER COURT :

1. Heard.

2. Mr.Sabnis, learned counsel submits that
the condition of annual turnover as mentioned at
clause 2.2 of the tender documents having No.E-

81, E-85 and E-96 is illegal. The condition of annual turnover is increased exorbitantly and illogically. The learned counsel submits that by putting restrictions of minimum annual turnover equal to the tender amount, the Small Scale Industries are being prevented from competing. The same is against the constitutional mandate as laid down in Article 19-(1)(g) of the Constitution of India. The learned counsel submits that in case the Small Scale unit like petitioner does not supply the equipments as per the tender, the Respondents have right to cancel the tender or blacklist the petitioner. It is erroneous on the part of the Respondents to impose such conditions by virtue of which the Small Scale Industries are not in a position to compete and participate in the tender process. The endeavour of the Respondent-State has to promote the Small Scale Industries. With the said avowed object even reservation is provided to the extent of 20% for Micro and Small Scale Industries. According to the learned counsel, the said policy of providing 20% reservation is in force when the tenders are floated. The said

aspect is also not considered.

3. The learned counsel relies on the judgment of the Division Bench of Punjab and Haryana High Court in a case of **"Punjab Drugs Manufacturers Association Vs. State of Punjab and others"** reported in **"AIR 1989 Punjab and Haryana 117"**.

4. Mrs.Deshpande, learned Asstt. Govt. Pleader submits that the petitioner has qualified for two tenders. The tenderers are required to have the annual turnover commensurate with the amount of tender, so as to instill confidence in the Respondents that tenderers would be in a position to comply the order placed by it. Learned A.G.P. Submits that in respect of all the tenders more than 10/12 SSI units have filled in the tender and the said tenders were meant only for SSI unit. The Medium and Large Scale units were not allowed to participate.

5. We have considered the submissions. The primary challenge of the petitioner is to the

condition in the tender with regard to the annual turnover. The condition is that the person filling in the tender should have annual turnover equal to the amount of the tender. The contention of the petitioner could have been considered if the competition would have been between Large Scale Industry on one hand and the Small Scale Industry on another. It is a fact that all the tenders received are from Small Scale Industries. The Respondents have even put a note saying that the tenders would not be accepted from the Large Scale Industries and shall be accepted only from the Small Scale Industries. It is also not a case that Small Scale Industries are not having the required turnover. In each category of tender more than 10/12 units have filled in the tender and majority of them are qualified. The competition is amongst the Small Scale Industries only. In a case of **"Punjab Drugs Manufacturers Association Vs. State of Punjab and others"** referred to supra, the tenders were restricted to the Public Sector undertakings and Private Sector undertakings were excluded. The same is not the

case in the present matter. All Small Scale Industries were allowed to participate who have turnover equal to the amount of the tender. Even the petitioner is qualified in two categories of tender. The competition is amongst the Small Scale Industries only. As all the Industries participating in the tender process are Small Scale Industries, question of 20% reservation would not be germane in the present matter. The said question would have arisen if the Large Scale Industries or the Medium Scale Industries would have been allowed to participate.

6. Considering the above, no relief can be granted to the petitioners. The Writ petition is dismissed. No costs.

(A.M.BADAR, J.)

(S.V.GANGAPURWALA, J.)

