

BDPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDCITON
WRIT PETITION NO.13592 OF 2016**

M/s. Regent Bhairavi Corporation
Through
its Partner
Shri Ketan Ramdas Shende

..... Petitioner.

V/s

The State of Maharashtra & Ors.

..... Respondents.

Mr. A.V. Anturkar, Senior Counsel a/w Mr. A.A. Anturkar and Mr. Sandeep M. Pathak for the Petitioner.

Mr. P.G. Sawant, AGP for Respondent No.1/State.

Mr. G.S. Hegde for Respondent Nos. 2 to 6.

**CORAM: V.M. KANADE &
Ms. NUTAN D. SARDESSAI, JJ.**

DATE : 21st December, 2016

P.C:

1] Heard the learned Senior Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of Respondent No.2 to 6.

2] Petitioner is seeking writ, order and direction for quashing the tender process which was commenced vide tender notice dated 24/10/2016 and for other consequential reliefs. Respondent No.2 is a Corporation which has a fleet of buses popularly known as S.T. Buses, which take passengers all over

Maharashtra; one such route is from Mumbai to Pune and onwards via expressway. Petitioner is operating a Food Mall which is situated near the Khalapur Toll Plaza (towards Pune) on Mumbai-Pune expressway. It is the case of the Petitioner that Respondent No.2 - Corporation have been stopping their buses at Petitioner's Food Mall for refreshment.

3] It is submitted that S.T. Buses take a break at convenient hotel in order to enable the passengers to have their snacks. It is submitted that in order to provide snacks for its passengers, Corporation enters into arrangement with the hotels, which is normally for one year. Respondent 2 - Corporation asked the Petitioner whether Petitioner was willing to provide tea and one snack at a fixed rate of Rs 30/-. Petitioner gave reply and informed Respondent No.2 that he was not in a position to provide tea and one snack for Rs 30/-. Respondent No.2 therefore asked other Restaurants whether they are willing to provide the same at the said rate. According to Respondent No.2 - Corporation, number of hotels in the said area had agreed to provide snacks and tea at Rs 30/ and therefore the Corporation has asked them to submit their expression of interest by 15/11/2016. It is the case of Respondent No.2 that they have already earmarked number of hotels and agreement is to be executed between the parties.

4] Mr. Anturkar, the learned Senior Counsel appearing on behalf of the Petitioner, submitted that S.T. Corporation ought to have issued tender notice. He submitted that the Corporation,

being a State Undertaking, was under an obligation to follow tender process. He submitted that individual notices could not have been given to particular hotels. Secondly, he submitted that the Petitioner by letter dated 16/10/2016 which was served on the same day had informed Respondent No.2 that they were willing to offer snacks at Rs 30/- and in spite of that, arrangement between the Petitioner and Respondent No.2 was cancelled. Thirdly, he submitted that individual notices were given to some of the hotels and the Corporation had tried to pick and choose and favoured some hotels and the said action therefore was arbitrary, capricious and discriminatory.

5] On the other hand, Mr. Hegde, the learned Counsel appearing on behalf of the Corporation, submitted that the question of issuing tender did not arise because it was the Corporation's prerogative to decide as to where S.T. Buses would take halt. He submitted that the alleged second letter dated 16/10/2016 could not have been served on 16/10/2016 since it was Sunday. He submitted that the said letter appears to have been prepared with an earlier date since on 17/10/2016, Respondent No.2 had cancelled the earlier arrangement and informed the Petitioner that their buses would not halt at Petitioner's eating place from 18/10/2016. He submitted that this intimation dated 18/10/2016 was never challenged by the Petitioner. He further submitted that the Petitioner had thus suppressed some important facts from this Court regarding decision of Respondent No.2 not to halt their buses at Petitioner's eating place from 18/10/2016.

6] Mr. Hegde then submitted that Hotel NH-04 and Hotel Centre Point are situated very near to the expressway at the entry/exist point of the expressway and it is convenient for the passengers travelling to and from Lonawala to avail of the S.T. facilities and to travel on the said Buses to and from Lonawala since the Corporation have its booking counter at Hotel NH-04. He submitted that the decision was taken in the interest of passengers.

7] We find much substance in the submissions made by Mr. Hegde, the learned Counsel appearing on behalf of the S.T. Corporation. There cannot be any manner of doubt that the Corporation is under an obligation to ensure convenience of its passengers. The place at which the S.T. Bus is to halt during journey from Mumbai to the last point of destination is entirely on the Corporation and any hoteliers on the way cannot insist that S.T. Bus should stop at their hotels. The Corporation has taken a policy decision to halt their buses at the entry and exist point of expressway and this decision is taken, taking into consideration interest and convenience of the passengers. Secondly, it has to be noted that an opportunity was given to the Petitioner to offer snacks at Rs 30/- per person which offer was not accepted by the Petitioner. It appears that after the arrangement was stopped by the S.T. Corporation on account of refusal by the Petitioner to offer snacks at Rs 30/-, a back-dated letter appears to have been sent to show that before this decision was taken, Petitioner had revised its offer. Thirdly, it has to be noted that in the past also

no tenders were issued and decision was taken to halt S.T. Buses at the Food Mall of the Petitioner and at that stage the Petitioner did not challenge the said process and therefore it is not now open for the Petitioner, having availed of the benefit of the said process, to contend that the tender process was not followed. In fact, the notice dated 15/11/2016 is not a tender notice but it is a letter seeking expression of interest from the hotel owners nearby to inform the S.T. Corporation about their interest on or before the said date.

8] We do not find any substance in the submissions made by the learned Senior Counsel appearing on behalf of the Petitioner. Petition is therefore dismissed.

(Ms. NUTAN D. SARDESSAI, J.)

(V.M. KANADE, J.)