

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

Writ Petition No. 1807 of 2016

Sai Mahila Bahuddesh Sanstha, thr. Its President Rajiyabi Numan

v.

State of Maharashtra & anr.

Office Notes, Office Memoranda of Coram
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. S.P. Bodalkar Advocate for the Petitioner.
Mr. S.M. Ukey, Addl. G.P., for Respondents 1 & 2.

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Coram : Smt. Vasanti A. Naik &
V.M. Deshpande, JJ.

Date : 15th March, 2016.

By this writ petition, the petitioner challenges the e-bidding process undertaken by the respondent no. 2 vide tender notice dated 08.3.2016 being arbitrary, unreasonable and violative of the provisions of the Constitution of India. According to the petitioner, condition nos. 7 (h)(j)(l) (x) (e) and (g) are arbitrary and unreasonable. The tender conditions read thus :-

“7.

(h) Machinery Performance Certificate : Proposer must furnish a list of machineries installed in his premises and a

latest certificate from a Chartered Engineer registered with the Institution of Engineers (India), stating that the machineries are sufficient to meet the production requirement of various Ready to Cook Food Mixes as per product specification given under this proposal and also stating that the machineries can effectively perform for a further period of 5 years. The certificate shall also clearly indicate the installed capacity of such machinery.

(j) The Proposer should have In house Quality Control facilities, and any quality control laboratory equipped with appropriate laboratory equipment's for testing the parameters prescribed in Food Safety and Standard Act (Prevention of Food Adulteration Act) and as per the specifications given in the proposal regarding the Nutrient contents, Moisture content, Microbiological and Chemical contamination, Physical conditions e.g. dryness, softness, consistency, Micronutrient contents. Proposer must submit list of equipment's list of technically qualified personnel engaged in quality control etc.;

(l) The latest consent letter received from the micronutrient manufacturer/importers, for the supply of micronutrient, minimum for the contract period to the proposer, should be submitted before the work order gets

awarded.

(x) Blue print/drawing of the plant approved by Food and Drug Authority from where the product as specified in this proposal will be produced and supplied by the proposer. The design/detail should cover location and capacity (in MT) of silos, covered storage areas with capacity in MT, open storage areas with capacity in MT, process divisions like extrusion, cleaning, grinding etc. Propers shall also submit Notarized copies of the following registration/licenses for producing Extruded Fortified Blended Food as specified in this proposal.

(e) A valid license under FSSA, 2006.

(g) ISO 22000:2005, ISO 14001:2004, OHSAS 18001:2007, Good Manufacturing Practice.

According to the petitioner, the said conditions are arbitrary and the imposition of the said conditions would disentitle the amateurs like the petitioner from participating in the tender process.

It is submitted on behalf of the respondents by the learned Additional Govt. Pleader, by placing reliance on the judgment of the Hon'ble Supreme Court reported in **(2012) 8 SCC**

216 (Michigan Rubber (India) Ltd. v. State of Karnataka & ors.) that the discretion exercised by to the tendering authority to set conditions of eligibility in the tender cannot be interfered with by the Courts on the ground that some other terms could have been fairer, wiser or more logical. It is submitted that in view of the directives of the Hon'ble Supreme Court in the case reported in of **Shagun Mahila Udyojak Sahakari Sanstha Maryadit v. State of Maharashtra & ors.** it would be necessary for the participating tenderers to possess the machinery of particular requirements and specifications. It is stated that the respondents have exercised the discretion in a fair and judicious manner while incorporating condition nos. 7 (h)(j)(l) (x) (e) & (g) in the tender notice.

On hearing the learned counsel for the parties and on a perusal of the judgment of the Hon'ble Supreme Court reported in *(2012) 8 SCC 216*, it appears that there is no scope for interference with the conditions in the tender notice in exercise of the writ jurisdiction, more so, when the conditions do not appear to be onerous and have been included in the tender notice in view of the policy of the Government and the judgment of the Hon'ble supreme Court in the case of **Shagun Mahila Udyojak Sahakari Sanstha Maryadit v. State of Maharashtra & ors. in Civil Appeal No.**

7104/11.

In view of the aforesaid, we dismiss the writ petition,
with no order as to costs.

Judge

Judge

/TA/