

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4419/2016

Vidarbha Yuvak Swayamrojgar Seva Sahakari Society, Sanstha through
President , Wardha

...Versus...

State of Maharashtra, Public Health Department, through its Chief Secretary,
Mumbai and others

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

Court's or Judge's orders

Shri R.S. Charpe, Advocate for petitioner
Mrs H.N. Prabhu, AGP for respondents

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : 15.12.2016

By this petition, the petitioner challenges the order of the respondent no.3, dated 18.7.2016, cancelling the contract awarded to the petitioner for supplying diet services to the patients in the Government Hospitals in Buldhana District.

In pursuance of a tender floated by the respondent, the petitioner was awarded a contract for providing diet services to the patients in the Government Hospitals for three years w.e.f. 26.11.2014. According to the petitioner, though the petitioner is efficiently providing the services to the patients in the Government Hospitals, by the impugned communication, dated 18.7.2016, the respondent no.3 has cancelled the contract awarded to the petitioner for supplying diet services to the

Hospitals in Buldhana District solely on the ground that as per the Government Policy, it is necessary to award the contracts after floating E-tenders. It is stated that a contract for three years could not have been cancelled merely because the policy of the Government changed during the subsistence of the contract.

Mrs. Prabhu, the learned Assistant Government Pleader appearing for the respondents states that though the impugned order refers to a Government resolution providing that contracts could be awarded after floating the E-tenders, the contract awarded to the petitioner is not cancelled for the said reason. It is stated that the petitioner has appointed a sub-contractor for providing diet services to the patients in the Hospitals and the petitioner was also served with a show-cause-notice in that regard. It is stated that the contract for supplying diet services to the Hospitals in Buldhana District is cancelled due to the said reason.

The impugned order is liable to be set aside as the contract awarded to the petitioner for supplying diet services to the Hospitals in Buldhana District appears to have been wrongly cancelled by referring to the policy of the Government of awarding the contracts vide E-tenders. There is nothing in the impugned order to show that the contract awarded to the petitioner is cancelled for appointing a sub-contractor for supplying diet services to the patients in the Hospitals in Buldhana District. Even assuming that a notice was served on the petitioner, asking the petitioner as to why an appropriate action should not be initiated against him for engaging a sub-contractor for supplying diet services, the impugned order does not appear

to have been passed on the said ground. We are not inclined to accept the case of the respondents that the contract of the petitioner is cancelled for a reason other than the reason that is mentioned in the impugned order.

It is well settled that the validity of an order must be judged by the reasons mentioned in the same and the reasons cannot be supplemented in the shape of an affidavit-in-reply or otherwise. It would be worthwhile to refer to the judgment of the Hon'ble Supreme Court, reported in *AIR 1978 Supreme Court 851* in this regard. It is held by the Hon'ble Supreme Court in the said judgment that if additional grounds are permitted to be brought in at a subsequent stage, an order bad in the beginning may by the time it comes to Court on account of a challenge would get validated by the additional grounds that are subsequently brought.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside. The respondent no.3 is free to take action against the petitioner, in accordance with law.

Order accordingly. No costs.

JUDGE

JUDGE