

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 16 OF 2016

Ajit Kumar Maruti Sonawane & Anr. .. Petitioners
V/s
Principal Secretary,
Social Justice and Special Assistance Department
and Ors. .. Respondents

Dr. Suresh Mane i/b Ms. Disha Shetty for the petitioner.
Mr. A.B. Vagyan, Government Pleader with Ms. Tintina Hazarika for
the State.

**CORAM: DR. MANJULA CHELLUR, CJ. &
G.S. KULKARNI, J.**

DATE : 20th JANUARY 2017

P.C.:

Heard learned counsel for the petitioners.

2. The petitioners have come before this Court seeking
following prayers:

“A. *This Hon'ble Court may be pleased to issue the Writ of Mandamus or any other order or any other appropriate writ, directions in the nature of Mandamus thereby be pleased to quash and set aside the impugned GR No. 2013 dated 10/09/2015 as it is in violation of Article 46 of the Constitution of India.*

- B. *The Tribal Development Department, Maharashtra State may be directed by this Hon'ble Court to cancel or withdraw the impugned GR No. 2013 dated 10/09/2015.*
- C. *The Hon'ble Court may be pleased to issue the direction, order, writ or any other appropriate remedy to the State of Maharashtra to suitably amend t4he governmental GR No. BCH/2015 dated 31/08/2015, so as to provide hostel wise tender process for all SC hostels like all ST hostels.*
- D. *The Hon'ble Court may be pleased to issue the Writ of Mandamus or any other order or any other appropriate writ, directions, to the State of Maharashtra for providing the identical procedure in the matter of tendering of the essentials of such SC/ST hostels.*
- E. *Till and until pending and final disposal of this PIL, the GR dated 10/09/2015 may be stayed by this Hon'ble Court.*
- F. *Till and until this Hon'ble Court may be pleased to grant interim/ad-interim in terms of prayer clause (E)."*

2. No doubt, initially when the present public interest litigation was filed, certain interim directions were made, to which a response in the form of affidavit in reply is already placed more than once. Ultimately the statement made on behalf of the State today indicates how Social Justice and Tribal Development Department of the Government of Maharashtra is in charge of the issue. As we

notice, the said Department was established in 1984 and from time to time several directions were issued for improvement of infrastructure of hostels and facilities to the students coming from deprived classes, i.e. Tribals, Scheduled Castes, Scheduled Tribes and Other Backward Class.

3. In the year 2014, a decision was taken to supply essential materials to the hostels which are known as Government Hostels and Tribal Ashram Shalas. They also indicated certain guidelines how the tender process has to be conducted. In August 2015, there was already a tender process in existence for all the hostels in the State. Subsequently in 2015, another GR was made trying to give some preference to tribal supplier if the price quoted by the tribal supplier and the general supplier were the same. In January 2016, another GR came to be made stating that the lowest rate quoted by the backward class, institutions or individuals is to be considered. Subsequently by Notification or GR dated 1st December 2016, earlier GRs were replaced taking the following measures, i.e. by way of new procurement policy, which is narrated at page 3 of the written submissions:

“In case of large scale procurements, priority must be given to Micro and Small Enterprises in about 20% of the total value procurements. Out of the said 20%, around 4% must be reserved for Micro and Small Enterprises belonging to Scheduled Caste or Scheduled Tribes.”

4. Learned Government Pleader relies upon the judgment of Madras High Court in the case of *Dentro Pharmaceuticals (P) Ltd. vs. The State of Tamil Nadu & Anr., reported in MANU/TN/0661/1994 : 1995 (1) MLJ 444*, wherein the grievance was with regard to supply of I.V. Saline in polyethylene container which was intended to be called by way of tender. Para 6 of the judgment is relevant, which reads as under:

"6. In Hindustan Development Corporation MANU/SC/0219/1994 : AIR 1994 SC 988, it has been observed that "the Government in a welfare State, has got wide powers in regulating and dispensing of special services like leases, licenses and contracts etc. The magnitude and range of such Governmental function is great. The Government while entering into contracts or issuing quotas is expected not to act like a private individual, but should act in conformity with certain healthy standards and norms. Such actions should not be arbitrary, irrational or irrelevant. In the matter of awarding contracts inviting tenders is considered to be one of the fair ways. If there are any reservations or restrictions then they should not be arbitrary and must be justifiable on the basis of some policy or valid principles which by themselves are reasonable and not discriminatory." It may be pointed out that it is open to the Government or its Department to call for tenders according to its requirements and a manufacturer or a supplier cannot claim any right that the tender conditions should be such that he should be eligible to apply. Therefore,

the appellant cannot claim that I.V. saline fluids manufactured and supplied in bottles must also be included in the tender conditions and the tender condition No. 21 should be deleted. It is not at all open to the manufacturer to insist that the conditions of tender should be in a particular manner. As long as the conditions of the tender are not violative of Article 14 of the Constitution of India and are not shown to be opposed to any other law, it is not possible to interfere with the same. As far as Tapati Oil Industries case MANU/MH/0263/1984 : AIR 1984 Bom 161 is concerned, it considered the question of promissory estoppel. We have already pointed out that there is no scope for applying promissory estoppel in this case.”

5. Learned Government Pleader also relies upon the judgment in the case of ***State of Punjab vs. Ram Lubhaya Bagga & Ors., reported in (1998) 4 SCC 117***. Para 25 of the judgment is relevant, which reads as under:

“25. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.”

6. On perusal of the revised procurement policy vis-a-vis the above two decisions, one has to see whether there is any justification in the cause espoused by the petitioners in this petition. The main grievance of the petitioners is that the entire fund, which is meant for Scheduled Castes, Scheduled Tribes and Other Backward Class, has to be made use only for the welfare of these communities. Apparently, the hostels, where essential supplies have to be made, are meant for the students coming from these reserved categories of Scheduled Castes, Scheduled Tribes and Other Backward Class. The entire fund is not spent for any other purpose other than the purpose for which it is meant. While procuring the essential supplies to these hostels, when tenders are called for, according to the petitioners, even the tenders must be restricted to the people coming from these communities so far as the essential supplies.

7. We are not able to accept the stand of the petitioners for the reasons explained in the above two decisions of Madras High Court and the Supreme Court. Apart from that, we also feel that if tender is restricted to a limited group of persons, the competition will be very less and there is likelihood of ultimately sacrificing the quality of supply rather than improving the quality. Even otherwise, in the new procurement policy, 20% is reserved for Micro and Small Enterprises and out of that, 4% is earmarked for reserved category. It is not totally neglecting the interest of the reserved category and

even otherwise, there is no statutory obligation in these matters to earmark certain percentage to reserved category.

8. Under these circumstances, we are of the opinion that there is no justification in the stand of the petitioners and apart from that, even if remotely there is any grievance, it is answered by the revised procurement policy. Accordingly the PIL is disposed of.

9. It is needless to mention that all earlier interim directions stand modified and are subject to final order now passed.

(G.S. KULKARNI, J.)

CHIEF JUSTICE