IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6844 OF 2017

Shree Sant Gadagebaba Maharaj
Berojgar Seva Sahakari Sanstha
Maryadit and another … Petitioners.

Versus

State of Maharashtra
and others … Respondents.

WITH

WRIT PETITION NO.8849 OF 2017

Pimpri Chinchwad, City Self Employed
Service Co-operative Societies
Federation Ltd. … Petitioner.

Versus

State of Maharashtra
and others … Respondents.

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Mr. S.V. Sadavarte a/w Mr. Kalpesh Patil for the Petitioner in WP/6844/2017.
Mr. S.V. Sadavarte for the Petitioner in WP/8849/2017.
Mr. G.S. Godbole a/w Mr. Rohit P. Sakhadeo for Respondent Nos. 2 and 3.
Mr. A. P. Vanarase, AGP for Respondent-State in both WPs.

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CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.

DATE : 17th November, 2017.

P.C. :

Since the issues involved in the writ petitions are identical and similar prayers are made therein, they are heard together and are decided by this common order.

The petitioners are the societies formed by the unemployed persons. According to the petitioners, the Government had issued a resolution on 17.08.2002 granting certain benefits to the societies of unemployed persons. According to the petitioners, by the said government resolution, preference was liable to be granted to such societies while awarding contracts pertaining to maintenance and cleaning in various departments of the State Government and other local bodies including CIDCO, MSEB, etc. According to the petitioners, in pursuance of the government resolution, respondent-Pimpri Chinchwad Municipal Corporation had awarded contracts for cleaning of roads, drainage pipelines, etc. to the societies of unemployed persons between 2002 and 2017. It is stated that by the tender bearing No.3/2017, issued in the month of June, 2017, for the first time the Corporation had imposed the conditions regarding 'turnover' and 'Bank guarantee' which are onerous and arbitrary. It is stated that as per the tender conditions the average turnover for three years was in the range of Rs.1,41,000,00/- and Rs.7,86,000,00/- for the different wards. According to the petitioners, it was not possible for the societies formed by the unemployed persons to have a turnover to the extent, as was sought by the condition in tender No.3/2017, so also, the condition in the tender notice of furnishing a Bank guarantee of the aforesaid amount was arbitrary and had the effect of ousting the societies of the unemployed persons from participating in the tender process. The petitioners have approached this Court seeking a direction against the respondent-Corporation to strictly act in accordance with the government resolution dated 17.08.2002. The petitioners have challenged the tender notice dated 03.06.2017, in the aforesaid background.

Mr. Sadavarte, the learned counsel for the petitioners submitted that the condition pertaining to the average turnover between Rs.1,41,00,000/- and Rs.7,86,000,00/- is bad in law. It is submitted that such a condition was never inserted by the respondent-Corporation in any of the tenders that were floated earlier. It is submitted that it would not be possible for the societies like the petitioners to have a turnover between Rs.1,41,000,00/- and Rs.7,86,000,00/-. It is submitted that the condition of furnishing Bank guarantee for the aforesaid amount is also onerous and the said condition would virtually render the petitioner societies ineligible for participation. It is submitted that during the pendency of the writ petition, though the respondent-Corporation had accepted the some of the suggestions made by the petitioner societies, since the corrigendum to the tender notice was not published and the petitioners were not aware about the same, the petitioners could not participate in the tender process. The learned counsel seeks a direction against the respondent-Corporation to issue a fresh tender notice on the lines on which the corrigendum was issued.

Mr. Godbole, the learned counsel for the Corporation submitted that the main grievance of the petitioners and the other societies like the petitioners-societies was in respect of the condition in regard to the turnover and Bank guarantee. It is submitted by referring to the corrigendum published by the respondent-Corporation on its website on 21.07.2017 that a representation made by the petitioners for seeking only 30% of the turnover as mentioned in the tender notice dated 03.06.2017 and removing the condition pertaining to Bank guarantee was accepted in totality. It is submitted that a representation made by the petitioners was favorably considered during the pendency of the writ petition and the corrigendum was published on the website on 21.07.2017. It is submitted that the last date for the submission of the tender was extended till 27.07.2017, after the suggestions of the petitioner societies were accepted. It is submitted that in this background, it would not be possible for the respondent-Corporation to issue a fresh tender notice. It is stated that the government resolution dated 17.08.2002 merely enjoins a duty on the Corporation to give preference to the societies of unemployed persons and granting preference would not mean accepting the tender of the petitioners without considering the tenders submitted by others. It is stated that the petitioners would be considered along with others if they have applied and then the preference could be granted, all things being equal, between two or more persons.

We find that during the pendency of the writ petition, the respondent-Corporation has floated a fresh tender in respect of wards 'G' and 'H' on account of reconstitution of the wards. In our considered view, the respondent-Corporation could not have issued a fresh tender for wards 'G' and 'H' after the wards were re-constituted, without cancelling tender No.3/17 for wards 'G' and 'H'. However, though an objection is raised on behalf of the petitioners that the respondent-Corporation could not have issued a fresh tender notice in respect of ward 'E', we do not find any illegality in the issuance of the said tender notice as it is the case of the Corporation that after the issuance of the impugned tender notice, only three bidders had participated in pursuance of the tender notice for ward 'E' and one of them was disqualified. Since the petitioners have not disputed this position, the petitioners cannot effectively challenge the issuance of a fresh tender notice in respect of ward 'E', specially when the issuance of the same gives a fresh cause of action and the petitioners have not amended the prayers and have not made a prayer for cancellation of the said tender notice.

On hearing the learned counsel for the parties and on a perusal of the writ petitions, the documents annexed to the same and the affidavits filed on behalf of the respondent-Corporation, it appears that during the pendency of the writ petitions the grievance of the petitioners is substantially redressed by the respondent-Corporation. We find from the averments in the writ petitions that the petitioners were mainly aggrieved by the conditions pertaining to turnover and the furnishing of the Bank guarantee. In a representation made by the petitioners, the petitioners had requested the Corporation that the condition of 'turnover' could be relaxed by seeking only 30% of the turnover, that was mentioned in the tender notice. The respondent-

Corporation has accepted the said suggestion. The grievance pertaining to furnishing of the Bank guarantee was also favourably considered and the condition of furnishing Bank guarantee was removed. After considering both the aforesaid suggestions, the respondent-Corporation had issued a corrigendum on 21.07.2017. It is clearly mentioned in the corrigendum that the bidders would be required to have a turnover of only 30% of the average turnover of three years, as mentioned in the tender notice. So also, by the corrigendum, it was conveyed to the tenderers that the condition, in respect of furnishing the Bank guarantee was also removed. The last date for submission of the tenders was extended after the corrigendum was issued and the bidders were permitted to submit their bids till 27.07.2017. Since the objection raised by the petitioners to the conditions pertaining to Bank guarantee and turnover was accepted by the respondent-Corporation, the petitioners ought to have applied in pursuance of the corrigendum by withdrawing the writ petition. In the affidavit filed by the respondent-Corporation, it is clearly stated that the corrigendum dated 21.07.2017 was published on the website. In the rejoinder, the petitioners have not disputed the statement pertaining to the publishing of the corrigendum on the website. In the aforesaid set of facts, the petitioners cannot seek a direction against the Corporation to issue a fresh tender by removing the conditions that are accepted as per the corrigendum issued on 21.07.2017. If the corrigendum was published in the manner prescribed and if the petitioners were not aware of the same, the petitioners have to blame themselves. That cannot be made a ground for seeking a direction against the respondent-Corporation to issue a fresh tender. The petitioners also cannot claim that the tender should be granted exclusively to the petitioner-societies and not to others. Preference means granting something to a particular person or class to which the preference is provided for, when two or more persons are equal. The petitioners therefore cannot seek a direction against the Corporation to award the contract only to the societies of unemployed persons and to no other person.

Since the prayers made in the writ petitions cannot be granted in the circumstances of the case, we dispose of the writ petitions with no order as to costs.

At this stage, the learned counsel for the petitioners seeks the continuation of the ad-interim relief, directing the respondent-Corporation not to grant a work order, for a period of four weeks. The prayer is reasonable. Hence, we continue the ad-interim relief for a period of four weeks only. Order accordingly.

(*Riyaz I. Chagla* J) **(*Smt. Vasanti A Naik, J*)**