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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13604 OF 2016

Ashish Trading Company

... Petitioner

vs.

The Additional Tribal Commissioner
& Ors.

...Respondents

Mr. Tushar Narayan Sonawane for the petitioner.

Mr. Rohit Deo, Advocate General, a/w Mr. Manish Pabale, AGP, & Ms. Shruti Vyas and Anuj Desai for the respondent nos.1 to 5.

CORAM : A.S.OKA, &

A. K. MENON, JJ.

DATE : 3RD APRIL, 2017

PC.

. Heard the learned counsel appearing for the petitioner and the learned Advocate General. This Writ Petition concerns the Tender no.1676 of 2015 issued by the Additional Commission of Tribal Development, Thane for supply of utensils to Government Ashram Schools within the jurisdiction of Additional Commissioner, Tribal Welfare, Thane. The petitioner submitted his tender. Accordingly to the case of the petitioner, he was found to be eligible and was in fact the lowest bidder. The prayer in this petition under Article 226 of the Constitution of India is for issuing a writ of mandamus directing the respondent to issue supply order to the petitioner. We may note here that the respondents issued a communication dated 7th January, 2017

recording that the Tender No.1676 of 2015 has been cancelled. The petitioner, by filing an additional affidavit, has sought setting aside the said decisions of cancellation of Tender.

2. The submission of the learned counsel appearing for the petitioner is that in fact the Ashram Schools need utensils. He has invited our attention to the photographs from page 43 onwards in support of the submission that Ashram Schools are using damaged utensil. He has tendered additional affidavit of the petitioner placing reliance on some of the documents. He submitted that the entire exercise of ascertaining the requirement of the various Ashram Schools was undertaken before the tender notice was issued. He invited our attention to the annexures to the additional affidavit. His submission is that the action of cancellation of tender process is malafide. He submitted that as per the Government Resolution dated 10th March, 2016, any purchase of equipment having price of more than three lakhs has to be made through the process of e-tender. He submitted that the decision of the State Government of allowing the school level committees to procure the utensils is contrary to the said decision.

3. We have heard the learned Advocate General. We have also perused the affidavit of Shri Prabhakar Bapurao Gawade, Deputy

Secretary, Tribal Development Department, Mantralaya, Mumbai in paragraph 9 of his affidavit, he has stated thus:-

“9. I say that, the Government has decided to cancel the e-tender (No.1676/2015) and set up an arrangement to procure utensils at the school level. Therefore, the Deputy Secretary, Tribal Development Department had issued a letter dated 6.1.2017 to the Commissioner, Tribal Development and Additional Commissioner, Tribal Development, Thane to inform that the above e-tender process is cancelled and the School Level Committees are authorized to purchase utensils as per their needs by following due procedure. I say that the concern Project Officer were directed to monitor/regulate such purchase of utensils by the School Committee. I say that the said School Level Committee comprises of 12 to 16 members and 75% Members are the parents of the students. I say that the concern Head Master of School act as a Chairman and committee is empowered to carry out miscellaneous expenses.”

4. In paragraph 12 and 13, Shri Gawade has stated thus:-

“12. I say that, none of the School Level Committee has purchased utensils after issuance of the letter dated 6.1.2017. I say that none of the School Level Committee has ever made a grievance regarding requirement of utensils till today or the Government has not received any complaint in this regard.

13. I say that, the Government shall issue necessary instructions to carry out a details assessment of the requirement of utensils at each school level and gather data for

each school within the jurisdiction of Additional Tribal Commissioner, Tribal Development, Thane. I say that the necessary instructions will also be issued for procuring the utensils through tender process only to ensure the quality and affordable price.”

5. In this petition under Article 226 of the Constitution of India, considering the scope of this petition in the light of the prayers made therein, we are not examining the question whether the Ashram Schools are using either damaged utensils or there are no proper utensils available. We are also not examining the correctness of the contention that none of the School Committees have ever made a grievance regarding the requirement of utensils or any complaint is made to the State Government. We are testing the legality of the decision of the State Government of scraping the tender process.

6. In paragraph 9 of the affidavit which we have quoted above, it is stated that an arrangement has been made for procuring the utensils through the School Level Committees. The constitution of the Committee is also set out in paragraph 13. There is a categorical assurance given by the State Government that necessary instructions will be issued for procuring utensils through tender process to ensure the quality and affordable prices. On conjoint reading of paragraphs 9

and 13 of the said affidavit, it is very clear that the School Level Committee will not entitled to procure utensils without following the tender process.

7. Merely because the petitioner was found to be the lowest bidder, no right is created in favour of the petitioner. There is nothing arbitrary about the decision of the State Government of procuring utensils at the school level by adopting the tender process.

8. Therefore this is not a fit case where interference should be made at the instance of the petitioner in a petition under Article 226 of the Constitution of India. Merely because the petitioner is the lowest bidder, there is no right created in his favour compelling the State Government to issue a work order to him for supply of utensils.

9. As the tender process has been scraped, the deposit amount paid by the petitioner is bound to be refunded to him.

10. Subject to what is observed above, the writ petition is rejected.

(A. K. MENON, J.)

(A. S. OKA, J.)