

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.13810 OF 2018

Shri Renukamata Sushikshit
Berojgarachi Swyam Rojgar
Seva Sahakari Sanstha, Maryadit,
Chopda, Tq-Chopda, Dist-Jalgaon,
(Shri Renukamata Educated Unemployed
Services Cooperative Society Ltd., Chopda,
Through its Chairman,
Rupeshkumar Bhaidas Ahire,
Age-36 years, Occu:Business,
R/o-6, "Rupkiran", Deshmukh Nagar,
Yawal Road, Chopda, Tq-Chopda,
Dist-Jalgaon.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Public Health Department,
Mantralaya, Mumbai,
- 2) The Director of Health Services,
Maharashtra, Arogya Bhavan,
1st Floor, Sent Jorje Hospital Compound,
Near C.S.T. Station, Mumbai,
- 3) The Joint Director of Health Services,
(Procurement Cell),
Arogya Bhavan, 1st Floor,
Sent Jorge Hospital Compound,
Near C.S.T. Station, Mumbai,

- 4) The Deputy Director of Health Services,
Nashik Region, Nashik,
- 5) Civil Hospital, Jalgaon,
Through its Civil Surgeon,
Jalgaon.

...RESPONDENTS

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Mr.Vijay B. Patil Advocate for Petitioner.
Mr.S.B. Narwade, AGP for Respondent Nos.1 to 5.

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**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE : 12TH DECEMBER, 2018

ORDER :

1. This Writ Petition under Article 226 of the Constitution of India is filed with following substantive prayer clause:

“[B] By appropriate writ, order or direction in the like nature of writ, a Tender for Diet Services as E Tender No. E-18/DHS/Pur.Sec/NHM/Diet Services/Plate System/2018-19 published by respondent No.2 (Exh-D) to be declared as discriminatory unreasonable and

further the said may be kindly be quash and set aside."

2. Learned counsel appearing for the Petitioner submits that the Petitioner is society registered under the Maharashtra Co-operative Societies Act, established by educated unemployed members for self employment. Learned counsel, referring to the Government Resolution dated 3rd November, 2018 issued by the Government of Maharashtra in its Public Health Department, submitted that as per the said Resolution, the State Government has granted administrative sanction for continuation of diet services in Public Health Department, and for calling e-tenders for each and every hospital under the Public Health Department and laid down certain terms and conditions. It is submitted that Respondent Nos.2 and 3 have called centralized District wise e-tender, which is absolutely not permissible and the same is contrary to the

Government Resolution dated 3rd November, 2018. Learned counsel further submits that tender schedule is illegal, bad in law and against the Government Resolution. Learned counsel further submits that closing date of tender is also contrary to the Government Resolution.

3. Learned counsel further submits that in the Government Resolution dated 3rd November, 2018, it has been specifically mentioned that while calling the e-tender, earlier Government Resolution dated 1st December, 2016 should be followed. The Respondent authorities have not published the tenders in the local as well State level newspaper having wide circulation and therefore on this count also the tender published by the Respondent Nos.2 and 3 is totally contrary to the Government Resolution dated 1st December, 2016. It is further submitted that condition to furnish security deposit for an amount of 3% of

contract value is absolutely contrary to the Government Resolution dated 1st December, 2016. The turn over of the Petitioner society is very less and if such District wise tenders system is permitted, then the Petitioner society will not get such tenders, as the conditions of E.M.D. tender fees and minimum qualifying turn over for one year is much more. It is submitted that the e-tender published by Respondent Nos.2 and 3 is only with an intention to deprive the petitioner society from participating in the tender process. Learned counsel therefore prays that the Petition deserves to be allowed.

4. On the other hand, learned A.G.P. appearing for the State has submitted that the present tender is issued for providing quality food to the patients admitted in the Government Hospitals. The Respondent authorities have laid down certain conditions in the tender, with an

intention that quality food is provided to the patients. It is submitted that it is the policy decision taken by the Government, to ensure that tenderer should be able to supply quality food to the patients admitted in the Government hospitals and therefore various conditions have been laid down including the condition of minimum turn over of one year. Learned A.G.P. submits that there is no substance in the Writ Petition and the same deserves to be dismissed.

5. We have carefully considered the submissions of the learned counsel appearing for the Petitioner and learned A.G.P. appearing for the State. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto.

6. We have carefully perused the conditions laid down in the e-tender issued by Respondent

Nos.2 and 3. The Respondent authorities have laid down certain conditions including the condition of minimum turn over of one year. Such conditions are laid down to ensure that tenderer should be able to supply quality food to the patients. We find that the conditions laid down in the e-tender notice are not at all arbitrary. It is the policy decision taken by the Government and therefore we are not inclined to entertain this Petition by exercising our extra ordinary writ jurisdiction. Hence the Writ Petition stands dismissed.

7. We make it clear that dismissal of this Petition shall not be construed as an impediment to the Petitioner to pursue to the State Government for redressal of its grievances.

[K.K. SONAWANE, J.]

asb/DEC18

[S.S. SHINDE, J.]