IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2998 OF 2019

RAMESH RAMBHAU KOLHE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr.Shaikh Mazhar A. Jahagirdar, Advocate h/f Mr.Satrajkhan H. Pathan, Advocate for the petitioner
Mr.N.R.Bhavar, Advocate for respondent No.2
Smt.M.A.Deshpande, AGP for the respondents/State

CORAM : PRASANNA B. VARALE & S.M.GAVHANE,JJ.
DATED : 06.03.2019

P.C. :-

. Heard learned counsel for the petitioner.

2. The petitioner who claims to be a social worker and having belief and faith on Shri Saibaba is approaching this Court with substantive prayer clause-B which reads thus:

> B] To issue directions to respondent No.02 trust to allot the contract to successful bidder in the rate quoted by him, by issuing a writ in the nature of mandamus or any other writ of the like nature or order.

3. Learned counsel appearing for the petitioner

submitted that tender notice was issued. The petition is filed in this Court on 18.02.2019. Copy was served to the learned counsel for respondent No.2. On receiving the copy learned counsel appearing for respondent No.2 caused his appearance and reply on behalf of respondent NO.2 Shree Sai Baba Sansthan Trust, Shirdi (hereinafter referred to as the 'Sansthan' for the sake of brevity) is also filed. Learned counsel invited our attention to tender notice issued by Sansthan, same is placed on record at Exh.A. This tender is inviting the bidders for providing pure Cow-Ghee for preparation of Laddus. The terms and conditions of the tender are also placed on record at page 13. Learned counsel for the petitioner by inviting our attention to the documents under the caption "BOQ Summary Details" placed on record at page 25 submitted that in response to the tender notice interested bidders submitted their claims. As per the procedure there was a scrutiny at the levels such as submission of technical bids and financial bids and as per the document of Tender Summary reports at page 23, total 21 bidders have approached Sansthan and on the procedural assessment of technical bids 14 bidders were short listed and these are bidders are referred in the tabular form at page 25. One VSP Corporation is a lowest bidder and rate quoted by VSP Corporation is

Rs.5,80,500.00. All the other bidders have quoted more amount than VSP Corporation. For ready reference we reproduced the said Statement.

BOQ SUMMARY DETAILS
Tender Title: Cow Ghee Pur Purchase for Ladu Nirmiti and Temple Department for the Period from January-2019 to March-2019
Tender ID: 2018_SAI_371066_1

	Sr. No.	Bidder Name	Amount	Bid Rank
BoQ1	1	VSP CORPORATION	580500.00	L1
	2	GANGA DAIRY	61275000.00	L2
	3	HARSH FRESH DIARY PRODUCTS PVT LTD.	62403750.00	L3
	4	SDP INDUSTRIES PVT LTD	62848800.00	L4
	5	KARNAL MILK FOODS LIMITED	65575000.00	L5
	6	SHIV INDUSTRIES	66005000.00	L6
	7	PREMIER AGRI FOODS PVT. LTD	67510000.00	L7
	8	INDAPUR DIARY AND MILK PRODUCTS LTD	67725000.00	L8
	9	PRABHAT DIARY LTD	68780650.00	L9
	10	SURAT DISTRICT CO-OPERATIVE MILK PRODUCERS UNION LTD	68800000.00	L10
	11	KOLHAPUR ZILLA SHAHAKARI DUDH UTPADAK SANGH LTD, KOLHAPUR	74175000.00	L11
	12	SHRI DUTT INDIA PRIVATE LIMITED	77400000.00	L12
	13	SHREE WARNA SHAHAKARI DUDH UTPADAK SANGH LTD.,	83420000.00	L13
	14	GOVIND MILK AND MILK PRODUCTS PVT LTD	89655000.00	L14

4. Learned counsel for the petitioner then submitted that though the petitioner approached this Court with prayer of issuance of directions to respondent

No.2 Sansthan to allot contract to successful bidder in the rate quoted by him by issuing a writ in the nature of mandamus or any other writ.

5. In view of the reply filed by the Sansthan the petitioner submits before this court that it is the greivance of the petitioner that the Sansthan is not acting judicially and transparently and is permitting the bidder who had earlier quoted lowest rate and then subsequently change his stand and effected change in the rates and the Sansthan allotted the work order in favour of the VSP Corporation against the terms of the tender notice. Learned counsel for the petitioner submitted that ground is raised by the lowest bidders VSP Corporation, there was an error and blindly accepting this excuse the Sansthan proceeded further and issued work order in favour of VSP Corporation and this exercise of the Sansthan lacks transparency.

6. Mr.Bhavar, learned counsel for respondent No.2 in his detail submission with reference to the statement made in the affidavit-in-reply as well reference made to the documents placed on record alongwith affidavit-in-reply submitted before this Court that the petition is devoid of any merits. The petitioner who claims himself

to be devotee and having not participated in any way in the tender process is approaching this Court only to with an attempt to unsettled a course which is legally, reasonably, adopted in the interest of Sansthan, as such the petition be dismissed is the submission of the Mr.Bhavar, learned counsel.

7. Learned AGP appears for respondent No.1/State.

8. With the assistance of both the counsel appearing for the respective parties, we have gone through the matter. When we made a specific query to the learned counsel for the petitioner, if the petitioner is approaching this Court with the request to this Court invoking our extra-ordinary powers under Article 226 of the Constitution of India and seeking Mandamus to the respondent Sansthan, on the backdrop of his grievance raised in the petition, on that backdrop of the grievance and the contentions made in the petition, respondent Sansthan can be said to be a respondent or a party to writ petition amenable to the writ jurisdiction of this Court either as State or the instrumentality of the State. Learned counsel then fairly submitted that though legally the petitioner may not claim such issuance of writ but the interest of the petitioner is only as a

devotee and is anxious to see whether transparent procedure is followed by Sansthan. Now, on this submission of the learned counsel, going through the material placed on record and hearing the submission of the Mr.Bhavar, learned counsel, we found that the procedure followed by Sansthan was neither irregular, nor illegal, nor which adversely affect the interest of the Sansthan. Certain facts we should be necessary to state in brief. Copy of the terms and conditions of the tender notice which are placed on record shows that apart from the other conditions it refers to the financial capacity of the bidders as per clause 22. It reads that the annual turn over of the bidders is expected of Rs.4,00,00,000/- (Rs.Four Crores) last three years three years i.e. 2015-2016, 2016-2017 and 2017-2018. It is stated in the affidavit-in-reply in para 6 that on opening of the technical bids on 10.12.2018, 14 bidders were found to be technically qualified. These bidders were eligible for opening commercial bids. Accordingly, commercial bids were open on 13.12.2018. Comparative statement of the rates quoted by the bidders is also placed on record. It is stated in the table under head caption 'Description of work, number of quantity, units, Bidder name, Rate, Amount, Bid Rank'. This comparative statement reads thus:

SR. No.	Description of work/item	No.of Qty	Units	Bidder Name	Rate	Amount	Bid Rank
1	Cow Ghee-Pure 15 Kg. New Tin Packing Agmark/FSSAI	2150	Quintal				
				VSP CORPORATION	270	580500	L1
				GANGA DAIRY	28500	61275000	L2
				HARSH FRESH DIARY PRODUCTS PVT LTD.	29025	62403750	L3
				SDP INDUSTRIES PVT LTD	29232	62848800	L4
				KARNAL MILK FOODS LIMITED	30500	65575000	L5
				SHIV INDUSTRIES	30700	66005000	L6
				PREMIER AGRI FOODS PVT. LTD	31400	67510000	L7
				INDAPUR DIARY AND MILK PRODUCTS LTD	31500	67725000	L8
				PRABHAT DIARY LTD	31991	68780650	L9
				SURAT DISTRICT CO-OPERATIVE MILK PRODUCERS UNION LTD	32000	68800000	L10
				KOLHAPUR ZILLA SHAHAKARI DUDH UTPADAK SANGH LTD, KOLHAPUR	34500	74175000	L11
				SHRI DUTT INDIA PRIVATE LIMITED	36000	77400000	L12
				SHREE WARNA SHAHAKARI DUDH UTPADAK SANGH LTD.,	38800	83420000	L13
				GOVIND MILK AND MILK PRODUCTS PVT LTD	41700	89655000	L14

9. It is further stated that at the time of opening of the commercial bids rates the representative of VSP Corporation was present and letter was submitted to the Managing Committee of the trust that there was an error while quoting the rates of pure cow-ghee and rate is quoted of Rs.5,80,500/- against the quantity 270 per kilogram. It ought to have been the quantum measure as per quintal and commensurate rate ought to have been quoted as Rs.27,000 per quintal, but for purely bonafide mistake it is quoted as Rs.270 and it was against the

quantum measure per kilogram. Now by arithmetical calculations treating offer per quintal at the rate Rs.27,000/- the offers of the tenders VSP Corporation was still lowest one. All the offers of the other bidders were higher than the rate quoted by the VSP Corporation. We may say that the immediate next bidder who was Ganga Dairy the rate quoted worth Rs.28,500 per quintal ranging it to lowest bidder No.14 who had quoted the rates Rs.41,700/- per quintal. Thus, bare perusal of these facts would show that the Management committee of the Sansthan did not deviate from object of protecting the interest of the Sansthan.

10. Mr.Bhavar, learned counsel appearing for respondent No.2 invited our attention to e-mail dated 05.01.2019 to submit that the Sansthan not only considered the financial aspect but Sansthan is also very much cautious about maintaining the quality of the procurement of pure cow-ghee. E-mail dated 05.01.2019 is satisfaction of the procedural safe guard of the Sansthan about the quality of the product. Perusal of this e-mail shows that under the order of Joint Commissioner, FDA Nashik, Mr.D.K.Sonavane, who is Officer of FDA alongwith one Mr.P.S.Patil, FSO members of the Sansthan visisted M/s. VSP Corporation, Umargaon, Dist. Balsad on

04.01.2019 and found that plant is as per schedule 4 of FSS Act. And the plant is satisfactory cleaned and hygiened, having sufficient capacity of obtaining cow milk and sufficient capacity of manufacturing cow ghee. Inspection report was annexed to e-mail and submitted to Sansthan.

11. Mr.Bhavar, learned counsel invited our attention to the documents placed alongwith affidavit-in-reply annexed at Exh.R-2. This is the copy of letter of intent dated 31.12.2018. The time table of supply cow ghee for the year 2019 is referred to. Supply is now divided in four quarters i.e. first quarter from 01.01.2019 to 31.03.2019, second from 01.04.2019 to 30.06.2019, third from 01.07.2019 to 30.09.2019 and four from 01.10.2019 to 31.12.2019. Approximate supply of quantity against each quarter is 2,150 quintal. Approximate annual procurement would be 8600 quintal per annum and in the letter of intent the total amount per quarter is also referred to. Thus, it can safely be said that procurement would go for round the year for the sizable quantity of pure cow-ghee so as to prepare Laddus and accordingly by accepting the statement of VSP Corporation that there was an error in referring to the amount and as it was referred to against per kilogram instead of per quintal and then issuing

letter of intent to VSP Corporation and Sansthan in turn receiving the amount from the successful bidder against the tender is not subjected to any financial loss and apprehension of the petitioner, thus, on all counts is found to be unjustified not only unjustified but also unsustainable. A statement is made in the affidavit-in-reply that as the work order is issued to VSP Corporation and the VSP Corporation already started supplying pure cow-ghee to the Sansthan and up to 31.01.2019 it supplied total 749.98 quintals of pure cow-ghee to Sansthan.

12. Before party we may also refer to a statement made in the affidavit-in-reply in paragraph N.5 and the same reads thus:

> "It is a trust carrying out various activities for the benefit of poor and needy persons. It is also providing various facilities viz. Tea, coffee and milk at canteen, accomodation at Bhakta Niwas, meals and Nasta at Prasadalaya and Laddu and Bundi Prasad to the devotees visiting Shree Saibaba Temple at Shirdi. One such activity of the trust is to run Prasadalaya for the devotees visiting Shree Saibaba Temple. The respondent-trust is providing Bundi Prasad at free of cost & Laddu prasad at No-profit No Loss basis to the devotees, who offer their prayers to Lord Saibaba."

. Thus, the devotees who are willing to purchase the Laddu Prasad are also not put to financial burden as the Laddu Prasad is being provided to these devotees on No Profit No Loss basis and other financial considerations are being taken care of by Sansthan.

13. Considering all above referred facts, we find merit in the submission of the Mr.Bhavar, learned counsel appearing for respondent No.2 that the petition is being devoid of merits, deserves to be dismissed.

14. Accordingly, we dismissed the writ petition.

[S.M.GAVHANE,J.] **[PRASANNA B. VARALE,J.]**