

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.8407 OF 2019
WITH
CIVIL APPLICATION NO.11014 OF 2019

Ganesh Hamal Mapadi Sahakari
Sanstha, Bhadgaon, having office
at Yashwant Nagar, Bhadgaon,
through its Chairman Dilwar Shah
Gulab Shah and anr.

..Petitioners

Versus

State of Maharashtra, through its
Department of Food, Civil Supplies
& Consumer Protection and ors.

..Respondents

Mr S.S. Advocate h/f Mrs Rashmi S. Kulkarni, Advocate for petitioners
Mr S.G. Karlekar, A.G.P. for respondents no.1 and 2
Mr H.P. Jadhav, Advocate for respondent no.3

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 11.09.2019

ORAL ORDER :

1. Mr Kulkarni, learned Counsel for the petitioner submits that respondent no.3 was not qualified as per the terms of the tender for allotment of work. The learned Counsel submits that the petitioner was the lowest tenderer. Respondent no.3 - Society was registered just prior to one month of the tender. The condition no.9.1 of the tender stipulates that the tenderer should have at least one year's experience of handling food-grains in government godowns. According to the Counsel, the petitioner has not accepted the refund of the earnest deposit amount as is contended by respondents no.1 and 2. Learned Counsel submits that even for three months, the respondent

no.3 could not have allotted the work. The tender of 2018 was revived even as per affidavit filed by respondents no.1 and 2.

2. Learned A.G.P. submits that the petitioner and respondent no.3 were the lowest tenderers for work of handling food-grains at Bhadgaon. Written consent was given by petitioner to allot the work to respondent no.3 - Society considering that the grant of work was only a stop gap arrangement. It is further submitted that the stop gap arrangement is made till 17.9.2019 only.

3. It appears from the affidavit that the work allotted to respondent no.3 is only for three months, commencing from 17.6.2019.

4. The stop gap arrangement is only made.

5. The affidavit is filed by the District Supply Officer. Paragraphs 9 and 11 read thus :

"9. I say and submit that, considering the stay to the composite tender process the earlier tender process initiated vide tender notice dated 17/12/2018 was revived and the work of handling of food grains was awarded to the respondent no.3 for the Government Grain Godowns at Bhadgaon and Chalisgaon as stop gap arrangement and the same shall be effective till 11/09/2019 considering the stay of three months granted to the composite tender process.

11. I say and submit that, considering the fact that the petitioner society and the respondent no.3 were the lowest tenderers for work of handling of food grains at Bhadgaon, a written consent was given by the petitioner society to award the work in favour of the respondent no.3 society considering the fact that the grant of work in the said tender process was only a stop gap arrangement."

6. It would appear that on oath, the District Supply Officer has made statement that the petitioner - society gave written consent to allot the work in favour of respondent no.3 - society, considering the fact that the grant of work was stop gap arrangement. It is also stated in the affidavit in reply that the earnest deposit amount has been refunded to the petitioner in June 2019 and the petitioner has accepted the refund of the amount.

7. In the submissions made before this Court, the learned Counsel for the petitioner reiterates about non-acceptance of the earnest money refunded. The same would be disputed question of fact, which cannot be gone into in this petition.

8. Considering the averments made in the affidavit filed by District Supply Officer, particularly in paragraphs no.9 and 11, it is only stop gap arrangement, we are not inclined to go into the merit of the contentions. The duration of the work under challenge comes to end on 16.9.2019.

9. In case the petitioner is aggrieved, the petitioner may take up steps in that regard.
10. Writ Petition disposed of. No costs.
11. In view of disposal of writ petition, civil application no.11014 of 2019 also stands disposed of.

(ANIL S. KILOR, J.)

(S.V. GANGAPURWALA, J.)

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