IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NOS.170 AND 483 OF 2018**

**WRIT PETITION NO. 170 OF 2018**

Mr. Jitesh Ghewarchand Jain,
Age 37 years, occ. Business,
Residing at 10/31, 2nd floor,
Rakhangimahal, Opp. Children Wadia Hospital,
Parel, Mumbai – 400 012. .... Petitioner
V/s.

1 State of Goa
Through its Chief Secretary
with his office at Secretariat
Porvorim, Goa.

2 The Dean
Goa Medical College
Bambolim Goa

3 M/s. Wellness Forever Medicare Pvt. Ltd.
401, 4th Floor, Plot No.09, C.S. No.30/10,
Palai Plaza, Dadar Matunga Division,
Opp. Pritan Hotel, Kohinoor Road,
Dadar (East), Mumbai – 400 041(India)
through its Director Mr. Mohan Chavan .... Respondents.

Mr. Gaurish N. Agni and Mr. T. Gawas, Advocate for the petitioner.

Mr. D.J. Pangam, Advocate General with Mr. Pravin N. Faldessai, Additional Government Advocate for the respondents No.1 and 2.

Mr. Pankaj Pai Vernekar, Advocate for the respondent No.3.

AND

**WRIT PETITION NO. 483 OF 2018**

Goa Trade & Commercial Workers' Union,
A registered Trade Union, duly registered under
the Trade Unions Act 1926, herein
Represented by its President Shri Christopher
Fonseca, having its office at 2nd floor,
Velhos Building, panaji, Goa 403 001. .... Petitioner

V/s.

1 State of Goa
Through its Chief Secretary,
having office at Secretariat,
Alto – Porvorim - Goa.

2 Goa Medical College,
Through its Dean,
Goa Medical College,
Bambolim - Goa

3 M/s. Wellness Forever Medicare Pvt. Ltd.
A company registered under the Companies Act,1956
Having its Corporate Office at 33, Manoj
Industrial Estate, Plot No.40/A, 3nd Floor,
G.D. Ambedkar Marg, Near Ram Mandir,
Wadala, West, Mumbai – 400 031.

4 Goa Antibiotics Pharmaceutics Ltd.,
Government of Goa undertaking,
having its registered office at Tuem Industrial
Estate, Tuem, Pernem- Goa. .... Respondents.

Mr. Ravi Gawas, Advocate for the petitioner.

Mr. D.J. Pangam, Advocate General with Mr. Pravin N. Faldessai, Additional Government Advocate for the respondents No.1 and 2.

Mr. Pankaj Pai Vernekar, Advocate for the respondent No.3.

Mr. A.D. Bhobe with Ms. K. Govekar, Advocates for the respondent No.4.

**Coram:- M. S. SONAK &**
**NUTAN D. SARDESSAI, JJ.**
**Date:- 16th September, 2019**

**Oral Judgment ( Per M. S. Sonak, J. )**

Heard Mr. Gaurish N. Agni, learned Advocate for the petitioner, Mr. D.J. Pangam, learned Advocate General for the respondents No.1 and 2 and Mr. Pankaj Pai Vernekar, learend Advocate for the respondent No.3 in Writ Petition No. 170 of 2018. Mr. Ravi Gawas, learned Advocate for the petitioner, Mr. D.J. Pangam, learned Advocate General for the respondents No.1 and 2, Mr. Pankaj Pai Vernekar, learned Advocate for the respondent No.3 and Mr. A.D. Bhobe, learned Advocate for the respondent No.4 in Writ Petition No.483 of 2018.

2. Rule in both these petitions. With the consent of and at the request of the learned Counsel for the parties we make the Rule returnable forthwith. Even otherwise we are informed that there were orders for disposal of these petitions finally, at the stage of admission. The pleadings were also completed and since these are matters involving award of tenders, it is only appropriate that some priority is given to these matters.

3. In both these petitions, the basic challenge is to the terms of the tender to run a medical store on contract basis at the Goa Medical College, Bambolim, Goa and other connected matters. The petitioners basically contend that the terms, including in particular the terms relating to experience and annual turnover were made over stringent so as to kill competition and render several persons / entities who were otherwise competent to discharge contract of this nature, ineligible from even competing in the tender process. Accordingly, it is only appropriate that both these petitions are taken up for disposal together.

4. The State of Goa invited tenders to run a medical store on contract basis for a period of 10 years at the Goa Medical College, Bambolim,Goa vide tender notice dated 12/01/2018 Clause 1.1 (ii) of the tender notice deals with the eligibility of the bidders and the same reads thus :

> "*The person/ firm/ institute / company having minimum 5 years experience of running the Medical Store in a govt./semi govt. hospital / dispensary / Public Sector Organization or having an minimum experience of 5 years of running a medical store in a private hospital having more than 2000 beds. Annual turnover of not less than Rs. Fifty Crore per yer for the last three financial years, for running Medical Stores having area admesaruing about*

> *approximate 160 sq.mts., at Goa Medical College @ Hospital (Location of Medical Store may change as per Hospital's convenience or any more location for patients convenience) on Contract basis, round the clock for the period to* ***ten (10)*** *years."*

5. According to the petitioners the aforesaid clause 1.1(ii), by which, the eligibility conditions for bidders have been fixed are arbitrary and a result of malafide exercise of the respondents. The petitioners contend that for setting up and operating a medical store in a Government Medical College, there is absolutely no necessity for prescribing 5 years experience and that too, experience in Government/semi Government Hospital, dispensary or Public Sector Organization. They point out the requirement of 5 years experience of running a medical store in a private hospital having more than 2000 beds is again arbitrary and aimed at killing competition. They point out that prescribing annual turnover of not less than ₹ 50 crores for the last three financial years, is again, an unreasonable and arbitrary condition, indented solely to kill competition. They point out that by imposing such arbitrary and malafide conditions, level playing field has been disturbed and the petitioner in Writ Petition No.170 of 2018, though competent to execute the contract in

question, has been rendered ineligible even to submit the bid there for.

6. Mr. Agni, learned Counsel for the petitioner while elaborating the challenging has submitted that the aforesaid eligibility conditions were tailor made to benefit only the respondent No.3 who was effectively the sole eligible tenderer in the entire process. He points out that the relevant considerations have completely been ignored whilst formulating tender conditions. For example, he points out that there are documents on record which suggest that the hospital only intends to procure medicines which are not otherwise available from the medical stores already in existence. He submits that this means that the annual purchases or turnovers qua such new medical store will never exceed ₹ 7 to 8 crores. He submits that in these circumstances, there was absolutely no justification for insisting upon annual turnover of not less than ₹50 crores for the last three financial years.

7. Mr. Agni, learned Counsel submits that even the criteria "*annual turnover*" has been kept purposely vague and unclear. He points out that the tender is only for operating the medical store having area of approximately 160 sq.mts. He submits that turnover

only for the sales of medicines can never been expected to reach ₹50 crores. He submits that all these matters have been kept deliberately vague solely to benefit the respondent No.3 in the present matter. Mr. Agni, learned Counsel points out that the Goa Antibiotics Pharmaceuticals Ltd. (GAPL) already operates a store at the Goa Medical College. He points out that GAPL was in a position to meet the requirements of the hospital at least substantially. He therefore submits that in no single year would there even be any requirement of supplying medicines in excess of ₹50 crores or above. He submits that all theses relevant considerations have been completely ignored and consequently there is arbitrariness in determining the eligibility conditions.

8. Mr. Agni, learned Counsel next submits that in the present case, the second tenderer was one Colaba Central Co-Operative Consumer's Wholesale and Retail Stores Ltd. (Colaba Central). He points out that Colaba Central did not fulfill the eligibility criteria as prescribed in the tender notice and consequently was not entitled even for its bid to be considered. Mr. Agni, learned Counsel submits that therefore this was a single bid which was received from the respondent No.3. Mr. Agni, learned Counsel submits that in such matters the CVC guidelines prescribe that the tender has to be

refloated at least on one or two occasions to see if further bidders actually bid for the tender in question. He submits that such procedure, which is mandatory, was not at all observed by the respondents.

9. Mr. Agni, learned Counsel submits that the Colaba Central does not have an annual turnover of ₹50 crores when it comes to dealing with medicines or insofar as its business of running a medical store is concerned. He further submits that Colaba Central has no experience in any public sector organization and so called medical store of Colaba Central has no direct nexus with the department of Atomic Energy or Bhabha Atomic Research Centre (BARC). He points out that the material placed by the petitioner on record indicates that even the distance of the BARC hospital and medical store of Colaba Central is 1.4 km. He points out that if this kind medical store is considered eligible then the petitioner must also regarded as eligible because the petitioner runs a medical store opposite the hospital run by Manikbai Nusarwanji Bahadurji T.B. Hospital. He submits that the business of Colaba Cetral is reported to have been taken over by Reliance Retail and therefore, Colaba Central, has no independent turnover whatsoever. He again submits that this is a case of a single bid which was received by the

respondents and the respondents were mandatorily required to comply with CVC guidelines rather than proceeding to allot the work to the respondent No.3 in the present case.

10. Mr.Agni, learned Counsel relied upon the decision in *Shri R.D. Shetty v/s. The International Airport Authority of India and others* reported in AIR 1979 SC 1628 to submit that the petitioner has locus standi to challenge the tender conditions. Mr. Agni also relied upon the following decisions : *Reliance Energy Ltd. And another v/s. Maharashtra State Road Development Corn. Ltd. And others [2007 Vol 8 SCC 1]; Jharkhan HC in Balajee Electrosteels Company (P) Ltd,. V/s. Bokaro Steel Plant and others in Writ Petition No. 422 of 2009 and Gharda Chemicals Ltd. V/s. Central Warehousing Corpn. [2005 Supreme (Delhi) 186]* in support of his contentions that the State Government is duty bound to adopt a level playing field in such matters and if the terms of the tender are found to be arbitrary or malafide, then, the same can be interfered with in the exercise of powers of judicial review by this Court. Mr.Agni, learned Counsel states that in this matter the petitioner is questioning the decision making process which led to the formulation of the tender conditions and such a challenge to the decision making process can always be considered by this Court in the exercise of powers of

judicial review. For this proposition of Mr. Agni, learned Counsel places reliance on the decision of the Hon'ble Apex Court in the case of *Tata Cellular v/s. Union of India [(1994) 6 SCC 651].*

11. Mr. Gawas, learned Counsel for the petitioner in Writ Petition No.483 of 2018 substantially adopts the contentions raised by Mr. Agni. He submits that the petitioners are the employees of Goa Antibiotics and Pharmaceuticals Ltd. (GAPL). He submits that if the contracts are awarded to third party, then, it is possible that GAPL gets no sufficient business of supplying medicines and other medical equipment to Goa Medical College. This in turn, might lead in reduction of business of GAPL and render the workers redundant or create a situation where GAPL is forced to resort to retrenchment. He submits that in these circumstances the petitioners have locus standi to question the action of the State and if the action of the State is found to be arbitrary or the decision making process is found to be vitiated, the same must be struck down. He relied on *Fertilizer Corporation Kamgar Union (Regd.), Sindri and others v/s. Union of India (UOI) and others reported in [(1981) 1 SCC 568]*, particularly on the aspect of locus standi. He also submits that the impugned tenders conditions must be struck down and consequently the award of tender in favour of the respondent No.3 must be struck down.

12. Mr. D.J. Pangam, learned Advocate General for the State of Goa submits that normally, the scope for interference in such matters is extremely narrow. He submits that the determination of terms and conditions in a tender documents are basically matters which relate to the realm of policy. In the absence of any patent arbitrariness being established, normally, Courts exercising judicial review must show a restrain in a matter of interference. He relied upon several decisions including but not restricted to *Directorate of Education and others v/s. Educomp Datamatics Ltd and others* [(2004) 4 SCC 19], *Municipal Corporation, Ujjain and Another v/s BVG India Limited and others* [(2018) 5 SCC 462] and *Tata Cellular (supra).*

13. Mr. Pangam, learned Advocate General submits that in this case, a committee of experts deliberated upon the tender conditions and on the basis of their recommendations, the tender conditions came to be formulated. He submits that there is absolutely nothing arbitrary or unreasonable in the tender conditions so formulated. He submits that malafides have simply been alleged without proper pleadings and in any case there is absolutely no material produced on record to make good the charge of mala fides. He submits that the criteria which has been formulated has direct nexus with the object of securing a tenderer who will operate the medical store for a period of

10 years. He submits that a tender in this case is not merely to set up a medical store, but also to supply the medicines on cashless basis under Din Dayal Swasthya Seva Yojana Scheme (DDSSY). He submits that the tender also includes supply of medical surgical items required by the Central Pharmacy of Goa Medical College. He submits that such supplies have to be made on credit basis and payment is to be made by the Government within 45 days once proper bills are raised in respect of the supplies made. He submits that for all these purposes, the expert committee was entitled to formulate the conditions in the matter of experience or annual turnover. He submits that there is absolutely no arbitrariness and unreasonableness involved and therefore the challenge may be rejected.

14. Mr. D.J. Pangam, learned Advocate General submits that Colaba Central, has not been impleaded as a party in any of these petitions. He submits that in their absence, there is no question of going into the issue of their eligibility. He submits that the expert committee, which evaluated the bids received, found that Colaba Central was very much eligible. He submits that even the documents placed on record by the petitioners or the documents placed on record alongwith the returns of the respondents make it clear that Colaba Central was very much eligible and this was not a case of

single bid tender. In particular, he points out to the communication dated 14/10/2008 issued by the Department of Atomic Energy about holding not less than 19 shops of Colaba Central. He points out that the medical store of Colaba Central is in the same complex where the hospital is located. He submits that there is no merit in the challenge as to the eligibility of Colaba Central. He submits that in this case the CVC guidelines relating to single bid tender were not at all attracted. therefore, there is no absolute infirmity in the award of the tender for the respondent No.3.

15. Mr. Pangam, learned Advocate General submits that the workers of the GAPL have absolutely no locus standi to challenge the terms and conditions of the tender. He points out that the GAPL which is a Government company has not been required to shift its medical store or to close down its medical store. He therefore submits that the Writ Petition No.483 of 2018 instituted by the workers of GAPL is entirely misconceived and may be dismissed. For all the aforesaid reasons the learned Advocate General submits that these petitions may be dismissed particularly since contract has already been awarded in favour of the respondent No.3 and the contract is in operation since last more than a year.

16. Mr. Vernekar, learned Counsel for the respondent No.3 adopts the submissions made by the learned Advocate General. He also relies on the decision of this Court in the case of *Ultracon Constructions Pvt. Ltd. And another v/s. State of Goa and others* (Writ Petition No. 735 and 738 of 2011) decided on 09/02/2012 and *Goa IT Business Association v/s. Government of Goa* [Manu/Mah/ 2190/2010] in support of the plea that these petitions may be dismissed. He also relied upon the decision of the Hon'ble Apex Court in the case of *Balco Employees' Union (Registered) v/s. Union of India and others* ( (2002) 3 SCC 333] to contend that workers will have no locus standi to institute a petition of this nature.

17. Mr. Bhobe, learned Counsel for the GAPL in Writ Petition No.483 of 2018 submits that GAPL could not participate in the tender process because the GAPL did not meet the eligibility criteria prescribed in the tender.

18. The rival contentions now fall for our determination.

19. The first challenge in the present petition is to the tender conditions which, inter alia, prescribe that a bidder must have minimum 5 years experience of running a medical store in a Government / Semi Government Hospital / dispensary / public sector

organization or having a minimum experience of 5 years running a medical store in a private hospital having more than 2000 beds. The challenge is also to the condition that the bidder must have an annual turnover of ₹50crores for the last three financial years for running medical store having an area admeasuring approximately 160 square meters or thereabout.

20. The legal position, when it comes to judicial review of the terms of the tender prescribing eligibility criteria, is quite well settled.

21. In *Tata Celular* (supra), the Hon'ble Apex Court has held that the modern trend points to judicial restraint in administrative action. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Further, the Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness but must be free from arbitrariness not affected by bias or actuated by malafides. Further the Court must also be alive to the position that

quashing decisions may impose a heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

22. In *Educomp Datamatics* (supra), the Hon'ble Apex Court has held that the terms of the invitation to tender are not open to judicial scrutiny because the invitation to tender is in the realm of contract. That the government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, malafide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide. Moreover, in such matters, it is normally for the authorities to set the terms of the tender. The courts would not interfere with the terms of the tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. While exercising the power of judicial review of the terms of the tender notice, the court cannot say that the terms of the earlier tender notice

would serve the purpose sought to be achieved better than the terms of tender notice under consideration and order change in them, unless it is of the opinion that the terms were either arbitrary or discriminatory or actuated by malice. In this case the provision of the terms inviting tenders from firms having a turnover of more than Rs. 20 crores has not been shown to be either arbitrary or discriminatory or actuated by malice.

23. To the same effect are the observations of the Apex Court in the case of *BVG India Limited* (supra).

24. This Court, in the case of *Utracon Constructions* (supra) and *Goa IT Business Association* (supra) has taken the same view when it comes to judicial review of the eligibility criteria in tender documents.

25. The challenge of the petitioners will therefore have to be examined by applying the aforesaid principles of judicial review in such matters.

26. The petitioners have no doubt contended that the eligibility criteria fixed in the present matters was tailor made to suit the respondent No.3. However, except for alleging this, there is no concrete material produced on record to establish this aspect. Initially when the petition was instituted there was absolutely no reference to

the respondent No.3. There was no averment that the tender criteria has been fixed by keeping in mind the respondent No.3. Apparently, after the petition was instituted, the respondent No.3 was impleaded as a respondent because by then, there was a decision taken for award of contract to the respondent No.3. In these circumstances we cannot say that the tender conditions were actuated by any malice or tailor made only keeping in mind the qualification possessed by the respondent No.3. The challenge on the ground of mala fides and malice therefore cannot be upheld in the light of the material placed on record by the petitioners. Allegations of malafide and malice are easier made than made out. If the petitioners expect to succeed on this ground then it is for the petitioners to place on record proper material in support. Merely because the contract has been ultimately awarded to respondent No.3, cannot lead to the interference but malafides were involved or that the tender conditions were tailor made to suit, interest of respondent No.3.

27. The State, has filed a return in response to various allegations in the petitions. The allegations of malafide and malice have been squarely denied. Even otherwise no sufficient materials were placed o record by either of the petitioners to take cognizance of the change of malafide or malice. In these state of the pleadings, it is not possible

for us to strike down the terms of the tender on the basis of the malafides or malice.

28. In the return filed by the State Government, the State Government also referred to the committee comprising of the Additional Secretary ( Health), Dean of GMC, Medical Superintendent, Under Secretary (Health), Joint Director( A/C and P/S ) GMC, Officer on Special Duty to the Hon'ble Home Minister and the Director (Admn) GMC. It is this committee which, after deliberation and discussion determined the eligibility conditions. It is on the basis of the report of this committee, which is a part of records that the decisions were taken in the matter of insisting upon the experience and annual turnover of not less than ₹50crores.

29. According to us, it is not possible for us to go into the details of the operations at the GMC and to determine whether there was any justification for insisting upon a tenderer having 5years experience or annual turnover over ₹50crores. It is not for this Court to be satisfied on the issue of quantum of experience or the quantum of annual turnover in such maters. All these are matters which are basically to be left to the authority inviting tenders. All these are basically policy matters. Therefore, as long as it is not shown that the decision making

process was entirely vitiated for non reference to relevant considerations or on account of reference to irrelevant considerations. normally, it is not for this court to exercise its powers of judicial review in such matter. It is not for this Court to enter into the realm of policy or make any value judgment by going into the nitty gritty of turnover of previous years or the actual requirements of medicines and other supplies at GMC. As long as there is no material on record to suggest any arbitrariness both in the conditions itself or in the decision making process, there is no question of interference in such matters.

30. The conditions, per se, do not suggest that they have no nexus whatsoever with the requirement of establishing a medical store at the GMC complex. Besides it was pointed out by the learned Advocate General as well as Mr. Vernekar, learned Advocate, that this contract is not restricted to merely setting up a medical store or supplying of medicines but, this contract also contemplates that the successful tenderer should agree to supply all medicines on cashless basis under the DDSSY scheme. This contract also contemplates supplies of surgical items or the requirements of Central pharmacy of GMC on credit basis. This contract also requires that the tenderer waits for a period of at least 45 days for its bills to be settled for supplies so

made. Taking into consideration all these aspects we cannot say that the requirement of 5years experience or requirement of annual turnover of ₹50crores was arbitrary or unreasonable or that such a criteria had no nexus whatsoever with the objects of the tender in question. In any case, taking into account the limited scope of interference in such matters we do not think that any case has been made out to strike down the tender conditions in the present case.

31. The issue as to whether Colaba Central was eligible or not, cannot, ordinarily be gone into in the absence of Colaba Central. Any finding on this issue will certainly prejudice Colaba Central, may be not in a context of the present tender but in a context of some other tenders which Calaba Central may have bid or may intend to bid. Therefore, there is really no case made to go into the issue of whether Colaba Central was technically qualified or not, particularly in a case where Colaba Central has itself made no complaint whatsoever for the non award of tender in its favour because its bid was not found to be as competitive as a bid submitted by the respondent No.3.

32. However, from the material placed on record at least prima facie, we cannot say that Colaba Central was not at all eligible even to be considered for the tender process. Here again, the tender

committee, has considered the bids received and there is really no scope to interfere with the decision of the tender committee. It is not possible for us to go into the issue as to whether a medical store which is about 1km away or about 400 mts away from the main hospital is to be regarded as a part of the hospital complex itself. Again, there is no scope to go into the issue as to whether the business of Colaba Central has been really taken over by some other agency. All these are highly disputed questions of fact which obviously cannot be gone into in the absence of Colaba Central and that too at the behest of the petitioners who are themselves ineligible for the matter.

33. Even if it is assumed for the purpose of arguments that Colaba Central was ineligible, that by itself, will not entitle any of the petitioners to have their tenders considered. The issue of consideration of the tender of the petitioner in Writ Petition No.170 of 2018 would arise only if the eligibility conditions were to be quashed and directions were to be issued to the respondents to frame eligibility conditions which were less stringent than the ones now framed. Since the challenge to the tender conditions, has failed and no useful purpose will be served in going into greater details on the issue of the eligibility of Colaba Central and thereafter deciding whether this was really a case of a single bid.

34. The decision relied upon by the petitioners no doubt, speaks about a level playing field. In the present case, we do not think that by formulating the eligibility conditions in the manner in which the State Government has formulated them, there is any dent to the principle of a level playing field. Merely because only two tenders were received, it cannot be said that the entire object of formulating the tender conditions was to kill competition. The decisions in *Gharda Chemicals*(supra) and decision of Jharkhand High Court turn on their own facts. In the said decisions, the respective High courts came to the conclusion that the tender conditions were manifestly arbitrary and unreasonable. In the present case, we cannot say that the tender conditions are manifestly arbitrary or unreasonable or that they have no nexus whatsoever with the object of awarding the contract in favor of the tender who has experience and financial capacity to comply with the what is required in such tender. The principles of 'level playing field' referred to in *Reliance Energy Ltd.* (supra) has not been disturbed in present case. The decisions relied therefore do not further the case of the petitioners.

35. Prima facie, we also agree that the contentions of Mr. D.J. Pangam, learned Advocate General that the workers of GAPL lack locus standi to institute the petition of this nature. Even by striking

down the terms and conditions of the tender, all that will happen is that the competition might increase. That by itself, will not redress the issue of apprehended retrenchment. In any case, the learned Advocate General has pointed out that notwithstanding the present tender, the outlet allotted to GAPL had not been disturbed. Even conceding locus standi, we have already held that there is no arbitrariness or malafides involved in formulation of tender conditions. Therefore, even on merits no relief can be granted in the Worker's petition.

36. For all the aforesaid reasons, we see no merits in either of these petitions. We therefore dismiss these petitions but leave to the parties to bear their own costs.

**NUTAN D. SARDESSAI, J.** **M. S. SONAK, J.**

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