

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 28551 OF 2019

Umme Sakina Mahila Bachat Gat,
Malegaon .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

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- Mr. Yogeshwar S. Bhate for the Petitioner
 - Mr. M.M. Pable, AGP for Respondent Nos. 1 and 2 - State
 - Mr. S.S. Patwardhan for Respondent No. 3
 - Ms. Nareena Kumari, Sr. Panel a/w Priyanka Chavan, Jr. Panel for Respondent No. 4 - Union of India
 - Mr. M.M. Vashi i/by M/s. M.P. Vashi Associates for Respondent Nos. 5 to 17
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**CORAM : S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.**

DATE : NOVEMBER 22, 2019.

P.C.:

- 1.** We have heard Mr. Bhate appearing for the petitioner.
- 2.** On the earlier occasion also, Mr. Bhate complained that though eligible, the petitioner has been excluded from the bidding process.

3. It is only in order to find out whether the bidding process has been carried out fairly and in a non-arbitrary and non-discriminatory manner, we requested Mr. Patwardhan appearing for the Malegaon Municipal Corporation and the Administrator to take instructions.

4. A chart has been prepared and it is a part and parcel of the tender record. The conditions which have to be fulfilled for being eligible are set out in this chart. Since the women self help group must fulfill these conditions, we perused another table which was relied upon while holding that the petitioner is ineligible. Perusal of that shows that at Sr. No. 14, the name of the petitioner group appears and for the two years preceding the date of the tender notice, namely, the financial year 2016-17 and 2017-18, the turnover of the petitioner was below the stipulated minimum. The petitioner could not gain marks for the lowest minimum turnover of Rs. 40 Lacs. It means their turnover is below Rupees 40 lacs. In the second condition of being experienced in cooking and serving the cooked food in the schemes of the Government namely the provisions of tiffin to Children taking education in

school, the petitioner has no experience worth the name and is not being assigned even the minimum marks. The petitioner has been categorized as ineligible because it could not fulfill the criteria of minimum marks prescribed. It had a kitchen but as far as that is concerned, the petitioner could not satisfy that it possesses the necessary equipment and was functional. We do not think that the petitioner can premise its complaint by urging that it is ineligible but the rest of the bidders are also ineligible and therefore, the whole bidding process must be quashed.

5. The petition under Article 226 of the Constitution of India is filed by the petitioner to claim entry in the bidding process and on the premise that exclusion of the petitioner from array of the bidders is arbitrary and discriminatory. If the petitioner fails to discharge the burden that has been cast on it by law, it can hardly complain that others are also ineligible and ought not therefore be allowed to participate in the process. We do not think that the mandate of the Article 14 allows us to grant such a relief. The concept of equality is positive. The concept is understood ordinarily as not

permitting this Court to hold that two wrongs make one right. We cannot in the garb of our writ jurisdiction, perpetuate or continue any wrong. In the circumstances, there is no merit in the Writ Petition. This petition is dismissed but without costs.

[R.I. CHAGLA, J.]

[S.C. DHARMADHIKARI, J]

Ravindra
M.
Amberkar

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