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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO.38 OF 2018

IN

WRIT PETITION NO.1037 OF 2017

MAHALSA SERVICES, THR.

PRADEEP P. SHET

.... Petitioner

Versus

STATE OF GOA, THR. ITS CHIEF

SECRETARY AND ANOTHER.

.... Respondents

Mr. S. D. Lotlikar, Senior Advocate along with Mr. P. Sawant,
Advocate for the Petitioners.

Mr. Ashwin D. Bhobe, Special Counsel for Respondents No.1 & 2.

Mr. A. F. Diniz, Senior Advocate along with Ms. Gina Maria Almeida,
Advocate for Respondent No.3.

Coram:- M.S. SONAK &
SMT. M. S. JAWALKAR, JJ.

Date:- 2nd March, 2020

P.C.:

Heard Mr. S. D. Lotlikar, learned Senior Advocate along with
Mr. P. Sawant for the Petitioners, Mr. Ashwin D. Bhobe, learned
Special Counsel for Respondents No.1 & 2 and Mr. A. F. Diniz,
learned Senior Advocate along with Ms. Gina Maria Almeida for
Respondent No.3.

2. This petition seeks review of our order dated 29.06.2018 in Writ Petition No.1037 of 2017. As against the Judgment and Order dated 29.06.2018 the review petitioner had in fact instituted Special Leave Petition No.24267/2018. The same was however disposed of by the Hon'ble Apex Court as follows:

“ Learned counsel for the petitioners seeks permission to withdraw this petition with liberty to file Review Petition before the High Court.

Permission sought for is granted.

The special leave petition is dismissed as withdrawn with liberty afore-mentioned.

In case the petitioner fails before the High Court, liberty is reserved to them to move this Court once over again challenging the main order as well as the order passed in the Review Petition.”

3. The main ground urged in support of the review petition is that though this Court was informed on affidavit that a policy decision has been taken by the State to withdraw four hospitals from the purview of the original tenders, since, a composite tender was to be issued in respect of these four hospitals in relation to facility management services, in fact, no such policy decision exists.

4. This Court, in paragraph 21 of the Judgment and Order noted the contents of the affidavit filed by the Director of Health Services

and further observed that since a statement is made on oath by the Director of Health Services that this is an experiment which the State proposes to undertake, there was no good reason why this statement should not be accepted merely because sufficient documents that would reflect the policy were not placed before us.

5. In the review petition, it was urged that though there was no such government policy in existence, an incorrect statement was made on oath by the Director of Health Services as to the existence of the policy. Mr. Lotlikar elaborated that the award of tender in favour of respondent no.3 was not in consonance with any such alleged policy and further, since the terms of the tender was ten years, certainly, this cannot be styled as an experiment, which the State intended to undertake in pursuance to an alleged policy decision. Mr. Lotlikar also submitted that there was no policy decision as such ever made available and further, there is nothing on record to indicate that any approval from the Finance Department was ever obtained which is a mandatory requirement under the business rules.

6. Accordingly, on 11.02.2020 we made the following Order:

“ Heard Mr. S. D. Lotlikar, the learned Senior Advocate for the applicants, Mr. A. D. Bhobe, the learned Counsel for the respondent nos.1 and 2 and Mr. Diniz, the learned Counsel for the respondent no.3.

2. *This petition seeks review of judgment and order dated 29.06.2018 in Writ Petition No.1037 of 2017. This petition was disposed off by accepting the statement made by the Director of Health Services on affidavit that the Government has taken a policy decision to issue a composite tender so as to include facilities like Electrical/Plumbing/minor civil and carpentry repairs within the Hospitals on experimental/pilot basis.*

3. *Mr. Lotlikar, the learned Senior Advocate for the review petitioner, however, submits that there is no such policy decision in existence and the statement made on oath by the Director of Health Services was not correct.*

4. *Mr. Bhobe, the learned Counsel for the respondent nos.1 and 2, submits that there is such policy decision in existence and even the entire file in which such policy decision is contained, was offered to the petitioner for inspection. In particular, he submits that there is a note of the concerned Minister which incorporates the policy decision.*

5. *Before we proceed further in the matter, we direct the Director of Health Services to file an affidavit in this review petition to explain the basis on which a statement was made in the previous affidavit regards the existence of policy decision. If statement is said to be based upon certain documents including the note/noting of the concerned Minister, the affidavit should enclose all such documents including the note/noting in order to make the position of the existence or otherwise of the policy decision quite clear.*

6. *The affidavit is to be filed on or before 17.02.2020 and a copy of the same to be furnished to the learned Counsel appearing for the petitioner and the respondent no.3.*

7. The matter is now posted for further consideration on 20.02.2020.”

7. In pursuance of the aforesaid Order dated 11.02.2020, Dr. Geeta Kakodkar, who is holding the charge of Director of Health Services has filed an affidavit dated 17.02.2020 before us. Paragraphs 1, 2 and 3 of the affidavit read as under:

“1. Vide Order dated 11.02.2020, this Hon'ble Court was pleased to direct the Respondent No.2 to file an affidavit to explain the basis on which a statement was made in the previous affidavit regarding existence of policy decision and if such statement was made based on the documents to enclose such document to the affidavit.

2. I say that I am Acting Director of Health Services, the Respondent No.2. I say that I am aware of the facts of the case and I am authorized to file the present affidavit on behalf of the Respondent Nos.1 & 2.

3. I say that the statement made in para 9 of the Affidavit in reply filed in Writ Petition No.1037/2017 was made on the basis of the policy decision incorporated in the Note dated 20.06.2017 of the Hon'ble Minister of Health, State of Goa and on the basis of the notings / approvals of the various Departments. I say that the notings include the observations/ approval of the Hon'ble Chief Minister and the Hon'ble Health Minister.

Annexed hereto and marked as Annexure R2/A colly are the copies of the Note dated 20.06.2017 of the Hon'ble Minister of Health, State of Goa and the relevant Notings on the file from pages 123/N to 134/N “Annual Maintenance

Contract Sweeping & Swabbing DHS” maintained by the Public Health Department.”

8. Along with the affidavit, notes and notings which are said to contain the policy decision have been annexed and placed on record.

9. At this stage, considering the limited parameters of review jurisdiction, it will not be appropriate for us to go into the issue as to whether the decision which is reflected in the annexures to the affidavit dated 17.02.2020 in fact constitutes the policy decision in terms of the law and further, if it does, whether the same is legal and proper. All these are matters which can be gone into in case, the petitioner, chooses to challenge this decision by instituting any appropriate petition. The scope of review petition is extremely limited and we would have perhaps been inclined to review our Judgment and Order, if, it was established beyond doubt that there was no policy decision at all and some false statement was made before us.

10. Today, some decision or rather, some notings are placed on record. The respondents choose to style these notings as reflective policy decision of the government. Whether the same is really a policy decision as is contemplated under the law and further, whether the same is legal or not are matters of independent challenge. These are

not the matters, which can be examined in exercise of our limited review jurisdiction.

11. Therefore, we dispose of this review petition but by granting liberty to the petitioner to challenge the decision of the respondents, which decision, is reflected in the annexures to affidavit dated 17.02.2020. All contentions of all parties in relation to such challenge are expressly left open. We further clarify that in considering such challenges, there will be no question of we being influenced by any of the observations made by us in our Judgment and Order dated 29.06.2018 particularly because in the said Judgment and Order, we were mainly concerned with the existence of the policy and not its legality or otherwise.

12. In pursuance of the decision, respondent no.3 has been awarded a fresh tender. Therefore, though respondent no.3 was not a party in the original petition, he was impleaded as a party in the review petition. Now that we are granting liberty to the petitioner to challenge the decision of the State Government needless to add that the petitioner will be entitled to challenge the consequential decision of withdrawal of four hospitals from the scope of the original tender and of awarding the tender to the respondent no.3, again in accordance with law and on its own merits. We clarify that all contentions of all parties are left open.

13. With liberties as aforesaid, we dispose of this review petition.

14. All concerned to act on the basis of an authenticated copy of this Order.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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