

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6177 OF 2020

1. Yogeshwari Devi Mahila Bachat Gat,
Osmanabad,
Through its President
Chaya w/o Bharat Sherkar
Age : 53 years, Occ. Housewife
R/o Ramnagar, Laxmi colony,
Osmanabad, Dist. Osmanabad
2. Tamanna Mahila Bachat Gat,
Washi,
Through its President
Nasreen d/o Ahmed Bagwan,
Age : 37 years, Occ. Housewife
R/o Para Road, Washi, Dist. Osmanabad
3. Renukamata Mahila Bachat Gat,
Naldurg,
Through its President
Kalpana w/o Sakharam Gaikwad,
Age : 48 years, Occ. Housewife,
R/o Indira Nagar, Naldurg,
Tq. Tuljapur, Dist. Osmanabad
4. Bharti Mahila Bachat Gat,
Osmanabad,
Through its President
Renuka w/o Rahul Mane,
Age : Major, Occu. Housewife,
R/o Vairag Road, Osmanabad,
Dist. Osmanabad
5. Shivshakti Mahila Bachat Gat,
Tuljapur,
Through its President
Sangeeta w/o Chandrakant Raut,
Age : Major, Occ. Housewife,
R/o Tuljapur, Tq. Tuljapur,
Dist. Osmanabad
6. Saraswati Mahila Bachat Gat,
Through its President
Babai d/o. Laxman Chavan,
Age ; Major, Occu. Housewife,
Andur, Tq. Tuljapur, Dist. Osmanabad

7. Neharu Yuvati & Sai Sakhi Bahuuddeshiy
 Samajik Sanstha,
 Through its President
 Manjusha w/o Ramesh Khaladkar
 Age : Major, Occ. Housewife
 R/o Near Deshpande flour mill,
 Near Bus Stand,
 Osmanabad,
 Dist. Osmanabad

8. Jijamata Mahila Bachat Gat,
 Through its President
 Chandarakala w/o Rajendra Patil,
 Age : Major, Occ. Housewife
 R/o Sanja Road, Osmanabad,
 Dist. Osmanabad

... Petitioners

VERSUS

1. The State of Maharashtra
 Through the Secretary for Women and
 Child Development,
 Mantralaya,
 Mumbai – 52

2. The Commissioner for Women and Child
 Development, Maharashtra State,
 Commissioners office for Integrated
 Child Development Service Scheme,
 Raigad Bhawan,
 Rear Wing, first floor, C.B.D. Belapur,
 New Mumbai

3. The District Collector,
 Osmanabad

4. The Zilla Parishad, Osmanabad
 Through its Dy. Chief Executive Officer
 (Child Development Department)

5. Maharashtra State Cooperative Consumer
 Federation Ltd., Mumbai,
 A semi Government Society
 Through its Executive Director
 87-A, Raj chambers, 5th floor,
 Deoji Ratanshi road, Danabandar,
 Mumbai – 400009

... Respondents

Mr. B.R. Kedar, Advocate for petitioners;
 Mr. P.R. Katneshwarkar, Special Counsel along with Mr. S.G. Sangle, AGP for
 respondent Nos. 1 to 3
 Mr. A.S. Reddy, Advocate for respondent no. 4

**CORAM : RAVINDRA V. GHUGE
AND
S.G. MEHARE, JJ**

**(Date of reserving the order: 13.07.2021
Date of pronouncing the order: 13.08.2021)**

ORDER (Per S.G. Mehare, J.)

1. The petitioners, by this petition under Article 226 of the Constitution of India, have impugned the decisions of the respondents to provide Take Home Ration (THR for short) instead of Hot Cooked meal (HCM for short) by breaking their contract to supply HCM. They have also prayed to quash the letter dated 25.8.2020 whereby practice to supply food under THR through respondent no. 5 is continued.

2. The fact that the petitioners have a preference in implementing the schemes under The National Food Security Act 2013 (NFS Act for short) and, in pursuance of the tenders invited to supply the HCM, they were selected for their respective areas, is not disputed. It is also not disputed by the respondents that the supply of HCM through the petitioners is stopped. The petitioners have submitted that the impugned decisions of the respondents are in defiance of the directions issued by the Hon'ble Apex as well as by this court. Under the garb of covid 19 pandemic, the respondents have deprived the petitioners from implementing the scheme in letters and spirit.

3. Respondents no. 1 to 3 have taken the stand that due to the extraordinary situation of Covid 19 pandemic, they had to decide to supply the food through THR scheme instead of HCM. It is their further stand that it is an alternative interregnum arrangement to protect the interest of beneficiaries.

They never have the intention to favour respondent no.5 continually, depriving the preferential rights of the petitioners in implementing the schemes under the NFS Act. They have acted as per the directions and guidelines of Govt to combat the Covid 19 pandemic. They have assured the petitioners to give them the extended period of their contracts soon after normalcy is restored.

4. The object of the NFS Act is to provide food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live life with dignity. To achieve the objectives of the Act the central Govt has introduced various schemes for different classes of the people. Article 47 of the Constitution, inter alia, provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The State Govt shall implement the schemes following the guidelines issued by Central Govt. Supply of micronutrient fortified blended food under THR and HCM is the scheme introduced in the State of Maharashtra. Under such scheme, nutrient food is to be supplied to the children between the age group of 6 months to 6 years, pregnant women and lactating mothers were also the beneficiaries under the said scheme. At different levels, the Government has to implement the scheme through the Mahila Bachat Gats, self-help groups, and such other organizations. The Integrated Child Development Scheme (ICDS) is implemented through The Women and Child Development Department. Respondent no.2 is the authority for administration and making decisions for effective implementation of the scheme. At District levels, respondent no.4 – Zilla Parishad, has to implement the scheme.

5. The petitioners have raised the question that the local self-help groups are sought to be ousted by large corporates like respondent no. 5 with the help of respondent nos. 1 to 4.

6. We have heard the respective counsels at length.

7. Shri. Kedar, the learned Counsel appearing on behalf of the petitioners, would argue that disrupting the contract allotted to the petitioners suddenly without any communication by respondent no. 2, frustrates the directions issued by this Court in Writ Petition No. 3359 of 2016, dated 11.07.2016. He would further argue that the alternative arrangement to implement the scheme through big corporate bodies like respondent no.5, continued for years together, is contrary to the judgment of the Hon'ble Apex Court rendered in **the case of Vaishnorani Mahila Bachat Gat vs State of Maharashtra and others, reported 2019 SCC Online SC 353**. Though the petitioners' interest should be statutorily protected in supplying the food, through HCM and THR schemes, to the beneficiaries, they have been factually ousted by giving the contract to respondent no. 5. Respondent nos. 1 to 4, therefore, by making temporary alternative arrangements for the supply of food-grains through Respondent No. 5 at a higher rate, are not only continuing the same but also acting contrary to the intention of the scheme and interest of the beneficiaries. The petitioners are suffering a financial loss since their extrusion technology project is now lying idle. The alternative temporary arrangement to provide the food under the schemes is with an ulterior motive to allow respondent no. 5 to make money and prosper.

8. To buttress his arguments, learned counsel appearing on behalf of the petitioners has placed reliance on **People's Union for Civil Liberties vs. Union of India and others, (2007) 1 SCC 719**, the judgment of the Division Bench of this Court passed in **Writ Petition No. 3359 of 2016 -Shriram Mahila Bachat Gat and others vs. The State of Maharashtra and others and companion writ petitions dated 11.07.2016 and Dipika Jagatram Sahani vs. Union of India and others, 2021 SCC Online SC 22.**

9. Per contra, the learned Counsel Shri. P.R. Katneshwarkar appearing on behalf of respondent nos. 1 to 3 under his notes of submissions, would submit that the petition is not maintainable as there is no fundamental, constitutional or statutory right vested in the petitioners to claim that they should be allotted work of THR more particularly when the decision of the Government is taken because of extraordinary situation of the spread of COVID-19 pandemic. The temporary arrangement of THR has been made because of COVID-19 and the respondents have followed the directions of the Hon'ble Apex Court that there should be uninterrupted nutrition supplies for 300 days in a year for beneficiaries of ICDS. The decision is taken because of restrictions imposed by Disaster Management Department. All the petitioners shall be compensated for the duration of their breaks in supplies by extending their contract period after normalcy.

10. Shri. Katneshwarkar would further submit that an identical situation had been dealt with by the Division Bench of this Court and for this purpose, he invites our attention to the decision in **Writ Petition No. 1589 of 2021 (Indira Mahila Sahakari Gruh Udyog and Jivanavashyak Vastu Purvatha Bhandar Ltd. vs. The State of Maharashtra]**, delivered on 16.02.2021

wherein the tender notice for supply of food grains to the school attached to Central Kitchen under the Mid-day Meal Scheme in various Districts of Maharashtra was under challenge. The petitioners therein had sought directions to issue fresh decentralized tender at District Level as was done in rural areas. He quoted relevant observations made by the Division Bench in paragraph no. 9 of the aforesaid judgment. In sum and substance, he has advanced the arguments that the decision of alternative temporary arrangement to supply the food to the beneficiaries had to be taken due to the panic situation because of the COVID-19 pandemic. He would submit that the State has no mala fide intention to deprive the petitioners of participation in the implementation of the schemes.

11. The learned AGP also relied upon the impugned decisions and argued that peculiar circumstances compelled the Govt to take appropriate decisions in the interest of a particular class of public. He prayed to dismiss the petition as devoid of being merit.

11. The COVID-19 pandemic changed human life all over the world. The primary duty of the Government was to prevent the spread of COVID – 19. Lock-down was one of the best methods adopted by the Government to bring the spread under control. To control the spread, various institutions had been closed for long periods. Many Government and private agencies had come to a standstill. Many citizens have lost their jobs and sources of income. In the pandemic situation, the Government had resorted to various measures to control its spread. The Hon'ble Apex Court, and various High Courts have also intervened to bring the life of the citizens to normalcy. The schools and Anganwadis were also closed.

12. The Hon'ble Apex Court took *suo motu* cognizance of the situation to protect the lives of the people from various strata. The beneficiaries of the HCM and THR schemes are mostly the people from the economically weaker sections. The food was provided to them free of cost or at affordable prices. Since the distribution system of food was greatly affected and suffered due to the COVID-19 pandemic, the alternative remedy was required to restore normalcy. At the State level, Disaster Management Committee was the authority to make appropriate decisions for controlling the spread of COVID-19 considering the local situations. Bearing in mind such a situation, various SOPs were issued by the said authority from time to time. The Government of Maharashtra was also taking various measures to control the spread of COVID-19.

13. The State of Maharashtra, by its letter dated 18.03.2020 (Exhibit E) directed Respondent no. 2 to close down the Anganwadis in rural and urban areas of the State. By way of alternative arrangements to provide HCM, it was directed that the supply of food under THR scheme shall be made at the doorsteps of the beneficiaries, and supplying the food at doorsteps shall be continued. In pursuance of the said letter, Respondent no. 2 by letter dated 20.03.2020 issued cautionary directions to all the implementing authorities throughout the State, that the gathering of children in Anganwadis may spread COVID-19. Therefore, to control the spread of COVID-19, instead of HCM, the children shall be provided food supply under THR scheme from 20.03.2020 to 15.05.2020. The THR shall be distributed through Maharashtra State Cooperative Consumer Federation Limited i. e. respondent no. 5 for the said period. Undisputedly since the pandemic situation was not under control, the

lock-down was extended from time to time. In the said situation, Respondent nos. 1 to 3 were required to extend supply orders in favour of Respondent no. 5.

14. The learned Counsel for the petitioners is right in arguing that the petitioners shall be prioritized in implementing the scheme under the NFS Act. In the Writ Petition moved by Shriram Mahila Bachat Gat (*supra*), the issue before the Division Bench of this court was as regards the tender notice conditions affecting the rights of petitioners, was against the decentralization policy wherein instead of 533 blocks the same was reduced to 70 blocks. Having regard to the factual and legal aspects, the Division Bench of this Court was pleased to partly allow the said Writ Petition and set aside the tender notice to the extent of reducing the projects to 70 blocks. The said Judgment was assailed in Civil Appeal before the Hon'ble Apex court in the case of Vaishnorani cited *supra*. The Hon'ble Apex court was pleased to observe in para no. 50 that the tender conditions cannot be held to be valid as they were arbitrarily fixed and lastly directed to invite tenders afresh. It was the judgment delivered before the lockdown due to the spread of Covid-19. Herein, the grievance of the petitioners is that respondents no 1 to 4 have illegally disrupted their contract to supply HCM. The case of the petitioners is distinguishable on facts.

15. The scheme of The National Food Security Act 2013 confers a right of nutritional support for the pregnant and lactating mothers as well as children free of cost and for the realization of such objective, State Govt has to implement the schemes. Besides this, as per sect 24 of the Act, the State Govt is responsible to implement and monitor the schemes of various

ministries of the Central Govt following the guidelines issued by the Central Govt and its schemes for ensuring food security to the targeted beneficiaries in their State. Sec 44 provides for the liability of the state for the claim by the person entitled under the said Act except in the case of war, flood, drought, fire, cyclone, or earthquake affecting the regular supply of food grains or meals to the persons entitled under the said act. The provisions make it clear that only in case of 'force majeure' the regular supply of food grains may be disrupted by the Govt that too in consultation with Planning Committee whether such situation affecting supply has arisen or exists. Sec 8 of the Act further provides that in case the supply of required quantities of food grain could not be supplied, such persons are entitled to receive food security allowance from the State Govt. Given the scheme of the Act Govt has to keep the food grain supply flowing to the entitled beneficiaries. However novel Covid 19 pandemic disturbed each stratum of the society and compelled the Govt to focus on preventing its spread and provide medical support at a large scale. To prevent the spread of covid-19 the respondent no.2 by its letter dated 20.3.2020 decided that pre-primary education to the children in the age group of 3 to 6 shall not be imparted and instead of providing them HCM they shall be provided THR. The District project officers were directed to place demand of THR to respondent no.5. As per the say of respondents nos. 1 to 3, the doorstep delivery of THR was started, whereby the packets of THR were distributed to District and Taluka levels for distribution through concerned Anganwadis in the state. The beneficiaries had to collect the packets from nearest Anganwadis, and doorstep delivery of ration was given to the persons unable to collect packets from Anganwadis. In such a way the supply of HCM through the

petitioners was stopped. Since the spread of covid-19 was not controlled the said practice was extended from time to time till 25.8.2020.

16. The learned counsel for the petitioners heavily relied on the case of Dipika Jagatram Sahani vs Union of India 2021 SCC on line SC 22 and submitted that respondent nos. 1 to 3 are allotting the food distribution work to respondent no.5 violating the directions issued in the said case by Hon'ble Supreme Court. In the said case the question before the Hon'ble Apex court was the closure of the Anganwadis across the country. The Hon'ble Apex court observed in the said case that, it is not in dispute that the Anganwadis are the means through which the schemes of nutrient supply to beneficiaries are to be implemented. The Hon'ble Apex court, directed that as per guidance note dated 11.11.2020 issued by Govt of India, Ministry of Women and Child Development, all states/UTs who have decided not to open Anganwadis, shall take a decision to open Anganwadi centers on or before 31.1.2021 situated outside the containment zone. It is also directed that the decision for not opening Anganwadi centers in any state/ UTs or any part of state/UTs shall be taken only after the State Disaster Management Authority of the state directs against opening Anganwadi centers in the state /particular area of the state situated within containment zone. It was also directed that Anganwadi Centers situated in the containment zone shall not be opened till the containment continues.

17. It is clear from the above directions that the Anganwadis shall be opened after the directions and decision of the Disaster Management Authority. The Disaster Management Authority in the State of Maharashtra was an independent authority taking the decisions on the situation of the severity of the covid 19 spread. In the said judgment, the Hon'ble Apex Court has not issued a mandate to all the State/UTs to open the Anganwadis, but left discretion with the State subject to the prevailing situation in each area. The impugned letter dated 25.8.2020 has a reference of State Govt letter dated 25.8.2020 indicating that the situation of the pandemic covid 19 was not under control in the state, hence THR was extended till 15 Nov 2020. In the light of these facts, we believe that the respondents are not deliberately extending THR or not restoring the HCM Scheme. The situation was beyond the control of respondents no. 1 to 3 and they have abided by the orders of Govt.

18. The petitioners have also claimed directions against respondent no 1 to 4 to issue orders of alternative arrangement, either in the form of grain or in the form of processed food grain under THR in their favour at least in their respective allotted units and not to issue further orders to respondents no. 5. In the covid 19 pandemic situation, the Govt., to control the spread of covid 19, decided to shift THR from HCM. It was purely a situational decision. The contracts of petitioners to supply HCM are not taken away deliberately by shifting to THR from HCM. The Govt has assured the petitioner to restore their contract period from the day

they have undertaken to execute the contracts. It's a policy decision, the Govt had to take in novel coronavirus to save the lives of the citizens.

19. The High court exercising extraordinary powers under article 226 of the Constitution, tests the legality of action by the Govt. Such action must affect either the statutory or the constitutional rights of the concerned and the impugned decision must take away the statutory rights of a person arbitrarily. The fact situation of this case indicates that the purpose of alternative arrangements to supply THR instead of HCM, is to implement the objectives of the NFS Act. The impugned decision was taken by the respondents in the extraordinary situation of covid-19 pandemic. If such a decision would have been taken in the normal situation, it could have been said that the rights and interests of the petitioners have been affected and statutory rights are violated. The fact situation does not reflect that the respondents are intending to introduce THR forever instead of HCM. The situation demanded an effective uniform system to provide food to disadvantaged children and women. The impugned decision is apparently in the interest of large beneficiaries.

20. Evaluating the facts and circumstances there appears no mala fide on the part of respondents in taking the impugned decision with any intention to oust the self -help group introducing large corporates like respondent no.5. Therefore we are of the considered view that stalling a system providing food to the needy in an extraordinary

situation shall not only deprive the real beneficiaries but also affect the very object of the NFS Act.

21. In the light of the above, we do not find any merit in the petition. The writ petition stands dismissed with no orders as to costs.

[S.G. MEHARE, J.]

[RAVINDRA V. GHUGE, J.]

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