

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO. 12240 OF 2021
WITH
INTERIM APPLICATION (L) NO. 18192 OF 2021
WITH
INTERIM APPLICATION NO. 1676 OF 2021
WITH
INTERIM APPLICATION NO. 1643 OF 2021
IN
WRIT PETITION (L) NO. 12240 OF 2021**

Shramik Mahila Industrial Production
Co-operative Society Limited & Anr.

...Petitioners

Versus

Municipal Corporation of Greater Mumbai & Anr. ...Respondents

Mr. Nilesh Pandey a/w. Mr. Gajanan Sangle i/b. Mr. Gajanan Sangle
for the Petitioners.

Adv. Kranti L. C. for proposed Intervenor in IA/1676/2021

Adv. K. Bahadur for the proposed intervenor in IA/1643/2021

Ms. P. H.Kantharia, Govt. Pleader for the Respondent -State.

Mr. Anoop U. Patil a/w. Adv. Pooja Yadav i/b. Ms. Aruna Savla for
Respondent-MGCM

**CORAM : A. A. SAYED &
 S. G. DIGE, JJ**

DATED : 20th August, 2021

P.C.:

The Writ Petition has been filed by the Petitioners seeking
the following reliefs:

(a) This Hon'ble Court be pleased to issue a Writ in the
Nature of Certiorari or any other Writ for quashing and
setting aside the tenders floated by the Respondent

No. 1 as more particularly mentioned above in the table in relation to the mid-day meal scheme on the ground that the entire tender process has been vitiated by bias, malafied, favouritism, arbitrariness and a gross misuse of statutory powers by the Respondent No. 1.

(b) This Hon'ble Court be pleased to issue a Writ in the nature of Mandamus directing the Respondent No. 1 to disclose before this Hon'ble Court the contracts awarded by it in pursuance of the tenders floated by it in relation to the Mid-day meal scheme and further be pleased to issue a Writ in the Nature of Certiorari for quashing and setting aside the contracts allotted by the Respondent No. 1.

(c) This Hon'ble Court be pleased to issue a Writ in the nature of mandamus or any other Writ directing the Respondent No. 1 not to award the contracts in relation to the tenders of mid-day meal scheme, which was floated by the Respondent No. 1 or if in the event the said contracts are awarded then to quash, set aside the same and to direct the Respondent No. 1 to float new tenders at an appropriate time;

2. The Petitioner No. 1 is a registered Society and was one of the bidders in the Tenders floated by the Respondent-Corporation. The Petitioner No. 2 is a Federation of Societies of women self-help group in Mumbai and Kokan District.

3. The National Programme for nutritional support to Primary Education, commonly known as the Mid-Day Meal Scheme, is sponsored by Central Government, which covers aided, partly

aided schools, Vastishala, Mahatma Phule Education Guarantee Scheme Centers of Central Government, State Government, Local Self Government respectively. The Mid-day Meal Scheme is extended by Government of Maharashtra to cover children in primary classes (standard I-VIII) and is being implemented all over the State of Maharashtra from the year 2008.

4. The Respondent-Corporation had floated Tenders/Expression of Interest in respect of 12 areas for supply of Mid-day Meal to various schools. The particulars of the Tenders are stated in the paragraph No.5 of the Petition.

5. The Tenders were floated in July, 2019. It is an admitted position that far back as on February, 2020 the Petitioner No. 1 was declared ineligible in the Tender process. The present Petition, however, has been filed only on 1st June, 2021. The Petition essentially proceeds on the basis that pursuant to the publication of the Tenders, the contracts are being awarded to the successful bidders in midst of pandemic and lock down imposed by the State of Maharashtra, when the schools are not working and are not functional.

6. The grounds on which the Petition is filed appear in paragraph No.20 of the Petition, which read thus:

(A) The tenders were floated in July 2019 for a period of 3 years which was contemplated for normal times, circumstances, however the same were not allotted till recently and the Respondent No. 1 is now seeking to award the contracts in midst of pandemic when lockdown has been imposed by the State of Maharashtra and Schools are not working/are not functional.

(B) As the tenders were floated in the year 2019 it did not take into account the present restrictions, Covid 19 related issues as such the same have become stale/obsolete. Accordingly the action of the Respondent No. 1 to now award the tenders is illegal, malafied and bad in law and liable to set aside by this Hon'ble Court.

(C) The action of the Respondent No. 1 is now seeking to allot the contracts under the tenders is such an action which no reasonable or prudent authority would take and accordingly the same is hit by the principle of Wednesbury principle as such the same is liable to be interfered by this Hon'ble Court and the Respondents ought to be directed not to proceed with the allotting of the tenders as sought to be done by the Respondents.

(D) The action of the Respondent No. 1 of allotting contracts after a period of nearly 24 months is against the guidelines issued by Central Vigilance Commission for allotment of tenders.

(E) The action of the Respondent No. 1 in awarding more tenders to M/s Annamrita Foundation than it has actually bided for shows the smacks of malafied action of the Respondent No. 1, it favoritism and completely defeats the purpose of tenders.

(F) The Respondent No. 1 is seeking to award contracts of high value to M/s Jyoti Mahila Industrial Production Co-operative Society Limited and M/s Mahila Ekta Industrial Production Co-operative Society Limited whose performance in the past has not been satisfactory and they have been called upon to pay various amounts for their defaults by the Respondent No. 1.

(G) The Respondent No. 1 has failed to pay an amount of Rs.21,00,00,000/- (Rupees Twenty One Cores only) which is to be paid to various contractors/bidders who have participated in the tenders from 2008-2009 to 2019-2020 but now is hurriedly trying to award contracts worth Rs.221,54,70,312 (Rs. Two Hundred Twenty One Cores Fifty Four Lakhs Three Hundred Twelve Only.)

7. We find that the Petitioner No.1 is merely a disgruntled bidder. The Petitioner No.1 had bid for only one of the 12 areas under the Tenders and was held ineligible. The Petitioner No.1, however, has not challenged its disqualification. The Tender process was complete in February, 2020. It is only after the entire Tender process is complete, the Petitioner No.1 has now come forward challenging the Tenders, on the ground that the action of the Respondent-Corporation is malafide and frivolous.

8. In the Affidavit-in-Reply filed by the Respondent-Corporation it is brought on record that the Petitioner No. 1 was held ineligible

as it held lesser marks as compared to other Sansthas who had bid for EOI No.18/7100150064. It is further stated that in the Affidavit-in-Reply that work orders have already been issued and the contract agreements have already been signed with successful bidders, however, the work would commence against the work order issued for supply of Mid-day meal, only when the schools will reopen.

9. Learned Counsel for the Respondent-Corporation has produced a copy of the judgment dated 15th December, 2020 in Writ Petition (Stamp) No.94239 of 2020, which was filed by Petitioner No.2. In paragraph no. 33 and 34, the following observations are made by the Division Bench while disposing of the said Writ Petition:

33. The petitioner in the additional affidavit dated 9th December, 2020 has specifically stated that 41 members of the petitioner has participated in the Take Home Ration (THR) Tender and has a list of such members thereof. Comparison of the said list with the list produced by the learned AGP area-wise clearly shows that the said petitioner's members who have participated in the tender process are located in different parts of Mumbai including Andheri-3, Bandra, Bhandup, Borivali, Chembur, Ghatkopar, Goregaon, Jogehwari, Khar, Santacruz, Malvani etc. It is strange that the petitioner who claims to be the Federation of about 217 societies of women who are Self-Help

Groups/Mahila Mandals operating in various parts of Mumbai are not aggrieved by any of the terms and conditions of similar tenders in other part of City of Mumbai but only aggrieved by the terms and conditions as regards Andheri-1 area. The said conduct of the petitioner raises very serious doubt about the genuineness of the challenge raised by the petitioner in this petition and whether the challenge of the petitioner is at all in the interest of Mahila Bachat Gats or was infact to safeguard the vested interest of some other person/s. However, we refrain ourselves from going into that aspect in larger detail.

34. The said scheme of supplementary nutrition is basically for the benefit of children from 6 months to 6 years and for the benefit of several under weight children, pregnant women and lactating mothers. It is equally true that the said scheme is also for the benefit of local organization of women and self help groups. However, the State has to frame various terms and conditions in such a manner that the interest of beneficiaries as well as the interest of Mahila Bachat Gats are protected. In our view the factual position on record clearly shows that the State Government has acted in fair and reasonable manner in drafting the terms and conditions of the tender and during tender process. Therefore, taking into consideration over all aspects, we see no reason to interfere with the impugned tender. The Writ Petition is accordingly dismissed. No order as to costs.

10. It needs to be emphasized that the tenders are in respect of Mid-day Meal Scheme, which is implemented all over Maharashtra and the schools are likely to re-open physically in near future. The work involved under the Tender is in public interest and for the benefit of children of primary classes.

11. In the facts and circumstances, we are of the view that this is not a fit case to exercise the extra ordinary writ jurisdiction of this Court and grant reliefs which would stall the supply of Mid-day Meals to the primary school children, as and when the schools reopen.

12. We find that the Petition has been filed only to somehow stall the award of Tenders in respect of Mid-day Meal scheme without disclosing in what manner the Tenders can be said to be malafide.

13. Hence, we dismiss the Petition with costs of Rs.10,000/- i.e. Rs.5,000/- each, to be paid by the Petitioner Nos. 1 & 2 to the High Court Legal Service Committee within a period of two weeks from the date of this order is uploaded.

14. All interim Applications to stand disposed of.

(S. G. DIGE, J.)

(A. A. SAYED, J.)