

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1879 OF 2021

Sublime Warehousing Pvt. Ltd., through its Director – Shri Kapil s/o Lalsingh Thakur
Vs.

State of Maharashtra through its Secretary, Department of Food, Civil Supplies and
Consumer Protection, Mantralaya, Mumbai - 32

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M. I. Dhattrak, Advocate for petitioner.
Ms. K. S. Joshi, I/c Government Pleader for respondent.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : 08/06/2021

Hearing is conducted through Video
Conferencing and all the learned Advocates agreed that
the audio and visual quality is proper.

2. Heard Shri Dhattrak, learned counsel for the petitioner. By this petition, the petitioner has challenged some of the conditions of the tender notice dated 19.05.2021 on the ground that these conditions make a departure from the conditions prescribed in earlier G.R. dated 20.04.2017 and also on the ground that such modification of the conditions has been done in order to debar certain parties and favour some other group of

contractors. The conditions to which an exception has been taken are those as contained in Clauses 5.1, 5.2, 5.3, 5.5, 5.6 and 5.9 of the Government Resolution dated 15.01.2021. On these grounds, the petitioner has sought quashing and setting aside of the tender process undertaken pursuant to E-tender notice dated 19.05.2021 issued by Secretary, Food, Civil Supplies and Consumer Protection Department, State of Maharashtra. The petitioner has also sought a further direction to the State to frame a fresh policy informed by the principle of reasonableness so that in future there would be a fair competition in the tender process.

3. The tender notice dated 19.05.2021 contains a Clause QC9 (page 102) which states that the bidder shall be bound by all the terms and conditions set out in the tender notice and the GR dated 15.01.2021.

4. The prayers made in this petition, however, seek only quashing and setting aside of the tender notice dated 19.05.2021 and they do not include any direction for quashing and setting aside of the G.R. dated

15.01.2021. In the absence of any specific challenge having been made to the G.R. dated 15.01.2021, it would not be possible for this Court to make any intervention in the tender process, on the grounds raised by the petitioner.

5. Apart from what is stated above, even if we decide to consider the exception taken to the Clauses 5.1, 5.2, 5.3, 5.5, 5.6 and 5.9 of the G.R. dated 15.01.2021, we find that it is also not possible as nothing has been demonstrated before us by the petitioner to enable us to take a view that these conditions are arbitrary having been prescribed only to favour certain group of contractors and exclude another group of bidders. The objection raised is that these conditions are different from the conditions prescribed in the earlier G.R. dated 20.04.2017. Just because some modifications of the conditions have been made by the said Government and some of the conditions contained in the earlier Government Resolution have been given up, it could be no ground for a prospective bidder like the petitioner to say that the changed conditions are

arbitrary. Something more will have to be shown by such a person. He has to point out some rule, some regulation, some criteria against which the newly prescribed conditions go. But, such is not the case here. The petitioner has not pointed to us any such rule or regulation or criteria based upon which we could say that these conditions could not have been prescribed at all. In fact, if we go through these conditions, we find that apparently there is nothing wrong in them. After all, prescription of conditions in a tender notice is a matter of policy and in undertaking judicial review of any policy matter, the Court has to be fully satisfied that the policy so framed is patently against law or public interest or manifestly arbitrary or is not workable. None of these ingredients of an illegal or arbitrary policy is seen to be present here.

6. Then, the conditions prescribed at one point of time need to be reviewed by a policymaker after passage of certain time due to change in the fact situations and circumstances governing the subject. Depending upon the facts and circumstances of a

situation, policymaker has to follow a course which in his opinion is best suited to deal with the extant situation and therefore, need may arise for a policymaker to give up some or all of the earlier conditions and prescribe a few new or altogether new conditions.

7. Considering such responsibility of the policymaker, it would be necessary for a person who seeks to challenge a new policy to show to the Court as to how the policy goes against the settled principles of law or any provisions contained in any law or regulation or rule or as to how the policy is unworkable or unfairly kills the competition. As stated earlier, such is not the case here.

8. In the circumstances, we find no merit in the petition. Petition stands dismissed. No costs.

JUDGE

JUDGE