

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

WRIT PETITION NO.1977/2021

Sukhavinder Singh S/o Kashmira Singh

..Vs..

State of Maharashtra, through it's Secretary, Department of Food, Civil
Supplies & Consumer Protection, Mantralaya, Mumbai

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Sandeep D. Chopde, Advocate for the petitioner.
Shri N.R. Patil, A.G.P. for the respondent.

CORAM :- SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED :- 16.6.2021.

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

2. Heard Shri Chopde, learned counsel for the
petitioner and Shri Neeraj Patil, learned A.G.P. who
appears by waiving notice for the respondent.

3. This petition seeks a declaration that clause 5.1 of
government resolution dated 15th January, 2021 issued
by the State of Maharashtra prescribing eligibility criteria
to participate in the tender process of transport of
food-grains and other essential commodities is arbitrary,

unreasonable and bad in law. On these grounds, quashing and setting aside of the relevant clause of government resolution dated 15th January, 2021 has been sought by the petitioner.

4. In order to support his contentions, Shri Chopde, learned counsel for the petitioner has taken us through clause 5.1 of government resolution dated 15th January, 2021 and also similar clause, clause 3.1 of government resolution dated 20th April, 2017. By making comparison between these two clauses, Shri Chopde submits that the new clause, clause 5.1 is arbitrary and has been incorporated only to favour one group of contractor and to disfavour another group of contractor.

5. According to learned counsel for the petitioner, clause 5.1 lays down that a bidder must have one year experience of transportation of food-grains on behalf of government / semi government agencies from out of previous five financial years. Earlier, he submits, this requirement, as per clause 3.1 of government resolution dated 20th April, 2017, was also of only one year. He submits that even though earlier similar experience was prescribed, it was not made essential condition for qualifying for the technical round of the tender process and whereas, presently the condition prescribed in clause 5.1 is one of the qualifying conditions.

6. Shri Chopde, learned counsel for the petitioner further submits that the issue of transportation of

food-grains by awarding contracts to the transporters by the government / semi government agencies was thrown open only in the year 2017 and if this was so, it would not be possible for any private contractor to gather experience of at least one year for transportation of food-grains on the part of government or semi government agencies in any of the previous 5 years. He submits it is precisely for this reason that the criteria laid down under clause 5.1 of government resolution dated 15th January, 2021 could not have been made an essential condition of the bids submitted by the contractors and failure to comply with the same would never serve as a disqualification for any of the bidders.

7. Shri Neeraj Patil, learned A.G.P. points out that the whole premise of this petition is factually incorrect. He submits that it is not the case that the subject of transportation of food-grains by award of contract by the government or semi government agencies directly was thrown open and permitted only from the year 2017 onwards. He submits that even prior to the year 2017 limited transportation of food-grains, up to the stage one of the whole exercise of transportation consisting of two stages i.e. one from the dealer / wholesaler to the government godowns and second from government godowns to the fair price shop was permitted to be carried out by the contractor and for that purpose contracts used to be awarded by the government / semi government agencies. Therefore, according to him, the impugned condition prescribed in government resolution

dated 15th January, 2021 cannot be said to be unworkable or arbitrary or of a nature as would favour only a certain group of contractors to the exclusion of other group of contractors. He also submits that judicial review of a policy matter is ordinarily not permissible unless it is shown that the policy under challenge is arbitrary or against law or wholly illogical or unworkable or discriminatory or is *mala fide* and framed with a view to exclude certain group of contractors and favour some of the select contractors. But, he submits that none of these ingredients has been shown to be present in this case by the petitioner.

8. Upon going through the documents placed on record and the relevant government resolutions, we find that there is great substance in the argument of learned A.G.P. and there is no merit in the submissions of the learned counsel for the petitioner. In fact, as pointed out by the learned A.G.P. in another matter wherein policy conditions governing tender process were challenged, this Court had rejected the contention that the policy impugned therein was arbitrary, discriminatory, illegal or *mala fide*. This was a case bearing Writ Petition No.1879/2021 (Sublime Warehousing Pvt. Ltd., through its Director - Shri Kapil S/o Lalsingh Thakur V/s. State of Maharashtra through its Secretary, Department of Food, Civil Supplies and Consumer Protection, Mantralaya, Mumbai - 32), decided on 8th June, 2021. In this case, we held that unless it is pointed out that there exists some rule, some regulation, some criteria against which

the new conditions go, no interference in such conditions by the Court would be permissible. We also observed that after all prescription of conditions in a tender notice is a matter of policy and while 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 unworkable. Shri Patil, learned A.G.P. points out that the said order of this Court dated 8th June, 2021 was challenged by the petitioner before the Supreme Court and the challenge was rejected by the Apex Court by its order passed on 15th June, 2021 in Petition for Special Leave (C) No.7627/2021.

9. Similar is the fact situation in the present case. Here also it is not demonstrated by the petitioner that the impugned policy conditions are patently and manifestly arbitrary or discriminatory or against any provision of law or rule or regulation framed by the State Government. The government resolution dated 20th April, 2017 shows that at least for the first stage from out of two stages of transportation of food-grains on behalf of government or semi government agencies, transportation by awarding contract by the government or semi government agencies was permissible and it appears that such transportation has been going on since the year 2017. The petitioner also admits this position. If at least for one stage of the transportation of food-grains, transportation by awarding of the contract by the government or semi government agencies has been going

on, we do not see that the criteria of a bidder having possessed experience of at least one year in respect of such transportation from out of previous five financial years can be said to be arbitrary or discriminatory or unworkable or something done to favour a particular group of contractors and exclude another group of contractors. Having considered so, we find that this petition is devoid of merit and we hold so.

10. In the circumstances, the petition stands summarily **dismissed**. No costs.

JUDGE

JUDGE

Tambaskar.