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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 6671 OF 2022
WITH
INTERIM APPLICATION NO. 10403 OF 2022**

Khatoon-E-Hind Mahila Swayam
Sahayyata Bachat Gat .. Petitioner
Vs.
Malegaon Municipal Corporation
& Ors. .. Respondents

**WITH
WRIT PETITION NO. 6650 OF 2022**

Shravan Mahila Mandal, Thru. Its
President .. Petitioner
Vs.
Kolhapur Municipal Corporation
Thr. Municipal Commissioner & Ors. .. Respondents

**WITH
WRIT PETITION NO. 7531 OF 2022**

Pasayadan Mahila Vikas Sansthan
thr. President Smt. Uma Nandakumar
Angadi .. Petitioner
Vs.
Sangli Miraj and Kupwad
Municipal Corporation & Ors. .. Respondents

**WITH
WRIT PETITION NO. 6649 OF 2022
WITH
INTERIM APPLICATION NO. 10404 OF 2022**

Vishvashanti Yuva and Mahila
Sanstha, Thr. Its President .. Petitioner

Vs.

Pune Municipal Corporation

Thr. Municipal Commissioner & Ors.

.. Respondents

Ms. Gayatri Singh, Senior Advocate i/by Kartikeya Bahadur and Kranti L.C. for petitioner in WP/6671/2022.

Mr. Kranti L. C. a/w Mr. Kaustubh Gidh for petitioners in WP/6649/2022, WP/6650/2022 and WP/7531/2022.

Mr. P. P. Kakade, Government Pleader a/w Mr. Akshay Shinde, "B" Panel Counsel a/w Mr. M. M. Pabale for State.

Mr. Rui A. Rodrigues a/w Mr. A. R. Gole for respondent no.4/UoI.

Ms. Manisha S. Jagtap a/w Ms. Padmaja Malgaonkar for respondent no.1 in WP/6649/2022.

Mr. Rahul S. Kate for respondent no.1 in WP/6671/2022.

Mr. G. H. Keluskar for respondent no.1 in WP/7531/2022.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: JULY 12, 2022

PC:

WRIT PETITION NO.6671 OF 2022:

1. The petitioner is a 'Mahila Bachat Gat'. A work order was issued to it for supply of mid-day meals through Central Kitchens for children studying in government and government aided schools. We are informed that the work order required the petitioner to supply such mid-day meals for the period between 13th August 2019 and 15th April 2022. However,

because of the unprecedented national lock down imposed by the Central Government from 24th March 2020, the government and government aided schools had to be closed and for such reason out of the aforesaid period the petitioner was disabled from providing mid-day meals for a total of 436 days. According to the petitioner, the loss of work of 436 days is not at all attributable to it and that the State Government ought to have granted suitable extension based on the recommendations made by the Director of Education (Primary) vide his letters dated 10th March 2021 (Exhibit-U) and 22nd June 2021 (Exhibit-V).

2. It is the grievance of the petitioner that despite such recommendations, a communication dated 13th May 2022 has been issued by the Director of Education (Primary) informing all the Commissioners of Mahanagarपालikas and the Chief Executive Officers of Zilla Parishads/Nagarparishads/Nagarpanchayats of the Government's decision not to grant extension to the Bachat Gats/Organisations selected previously after expiry of the three years' term.

3. Aggrieved thereby, the petitioner has prayed for the following relief: -

- (a) To set aside clause 2 of the letter dated 13th May 2022;
- (b) To extend the work contract of the petitioner for a commensurate period bearing in mind the period for which the petitioner was disabled to render services due to the closure of the schools as a response to combat the COVID 19 pandemic;

The interim prayers in the writ petition are for stay of clause 2 of the letter dated 13th May 2022 and for direction upon the respondents to allow the petitioner to supply mid-day meals in terms of the work order.

4. At the outset, Mr. Shinde, learned counsel appearing for the State, has objected to the maintainability of the writ petition by placing reliance on the decision of the Supreme Court in **Mani Subrat Jain & Ors. vs. State of Haryana & Ors.**, reported in (1977) 1 SCC 486. According to him, the Supreme Court thought it fit to restate the law that no one can ask for a mandamus without a legal right; there must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus; and that a person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something.

5. There can be no doubt that the principles laid down by the Supreme Court in **Mani Subrat Jain** (supra) are binding on all High Courts while such courts consider entertaining a writ petition of the present nature. Extension of a contract which, according to its terms, is to remain valid for a particular period can be claimed either in terms of any particular term contained therein permitting extension or when, on a prayer made by one of the contracting parties, the other party extends the contract. Neither is there a term in the contract which permits an extension nor has the

Government agreed to an extension. Applying the principles which ought to be borne in mind while entertaining a writ petition, dismissal would have been the normal rule.

6. The virus which brought the whole world to a standstill in the last couple of years was completely unknown. No one, in his wildest dreams, could ever imagine that the country would suffer a lock down of the nature that all countrymen experienced right from 24th March 2020. Bearing in mind that crowded correctional homes are a potential source of danger for the under-trial prisoners and/or convicts lodged thereat, the Supreme Court had to intervene and direct the States to release the inmates of correctional homes which otherwise would have been frowned upon. Not only that, the Supreme Court showed its humane face and passed orders extending the period of limitation for instituting proceedings before the appropriate fora. Moreover, orders were passed by the Supreme Court as well as the High Courts across the country to contain the pandemic on the one hand as well as to keep the population safe and secure. It has also not been disputed by Mr. Shinde that in several matters, this Court has been indulgent towards the State because of its failure to discharge its public obligations arising out of the restrictions that were imposed because of the pandemic. No wonder, the petitioner could not have been expected to perform its obligations under the contract during those dark days.

7. It is in such circumstances, we feel that the petitioner's claim for extension commensurate with the period of loss

should have been considered with empathy, and not mechanically, by the Government.

8. In the special facts and circumstances, we are of the view that a *prima facie* case has been set up for entertaining the writ petition; hence, we reject Mr. Shinde's objection to the maintainability of the writ petition.

9. Issue notice to the respondents, returnable on 12th August 2022. Mr. Kate, learned advocate for the respondent no.1, Mr. Akshay Shinde for the respondent nos.2 and 3/State and Mr. Rodrigues, learned advocate for the respondent no.4/Union of India waive service of notice.

10. We are also of the *prima facie* view that the petitioner ought to be granted interim protection based on the principle that mandamus would issue to reach wherever injustice is found. Hence, for a period of two months or until further orders, whichever is earlier, we direct that there shall be interim orders in terms of prayer clauses (c) and (e) of the writ petition.

11. It is made clear that the interim order shall be limited in its operation *qua* the petitioner in this writ petition.

WRIT PETITION NOS. 6650 & 7531 OF 2022:

1. The order passed in Writ Petition No. 6671 of 2022 shall be operative in these writ petitions too.

2. Mr. Keluskar, learned advocate for respondent no.1 in Writ Petition No.7531 of 2022 waives notice.

WRIT PETITION NO. 6649 OF 2022:

- 1.** Mr. Kranti, learned advocate for the petitioner, seeks leave to withdraw this writ petition.
- 2.** Leave, as prayed for, is granted.
- 3.** The writ petition is dismissed as withdrawn. No costs.
- 4.** Interim Application No. 10404 of 2022 does not survive and stands disposed of.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

PRAVIN
DASHARATH
PANDIT

Digitally signed by
PRAVIN DASHARATH
PANDIT
Date: 2022.07.12
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