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

WRIT PETITION (ST.) NO. 17401 OF 2022

Samadhan Mahila Bachat Gat .. Petitioner
Vs.
Pune Municipal Corporation
Through Municipal Commissioner & Ors. .. Respondents

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

Shravan Mahil Mandal
Through its President .. Petitioner
Vs.
Kolhapur Municipal Corporation
Through Municipal Commissioner & Ors. .. Respondents

**WITH
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
INTERIM APPLICATION (ST.) NO. 23640 OF 2022
IN
WRIT PETITION NO. 6671 OF 2022**

Chirag Mahila Bachat Gat .. Applicant

In the matter between:

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

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

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

Ms. Gayatri Singh, Senior Advocate i/by Mr. Kartikeya Bahadur for petitioner in WPST/17401/2022 & WP/6671/202.

Mr. Kranti L. C. i/by Mr. Kaustubh Gidh for petitioner in WP/6650/2022 & WP/7531/2022.

Mr. P. P. Kakade, Govt. Pleader a/w Mr. Akshay Shinde "B" Panel Counsel a/w Mr. B. V. Samant, AGP for State.

Ms. Manisha Jagtap for respondent no.1/PMC in WPST/17401/2022.

Mr. Kedar Dighe a/w Mr. R. V. Govilkar for respondent no.4-UoI in WPST/17401/2022.

Mr. Rui Rodrigues a/w Mr. A. R. Gole for respondent no.4-UoI in WP/6671/2022, WP/6650/2022 & WP/7531/2022.

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

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

Mr. Abhijit M. Adagule for respondent no.1 in WP/6650/2022.

Mr. Ajit V. Alange i/by Mr. M. N. Sandhyanshiv for applicant/intervener in IAST/23640/2022.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE : SEPTEMBER 26, 2022

ORAL JUDGMENT: [Per the Chief Justice]

1. In view of the commonality of questions of law and facts involved in these four writ petitions, the same have been heard together and shall stand disposed of by this common judgment.

2. Since Writ Petition No. 6671 of 2022 has been argued by the parties, we would note the pleaded case therefrom and the counter thereto from the reply affidavit of the respondents.

3. The petitioner is a 'Mahila Bachat Gat'. A work order was issued to it for supply of mid-day meals for children studying in government and government aided schools through Central Kitchens. In terms of such work order, the petitioner was to supply mid-day meals during 13th August, 2019 to 15th April, 2022. Because of the unprecedented national lock down imposed by the Central Government from 24th March, 2020, the government and government aided schools were obviously shut. This resulted in the petitioner being disabled from providing mid-day meals for a total of 436 days. The petitioner has claimed that 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). It

is also claimed that despite such recommendations, the Director of Education (Primary) by his communication dated 13th May, 2022 informed all the Commissioners of Mahanagarपालikas and the Chief Executive Officers of Zilla Parishads/Nagarparishads/Nagarpanchayats of the decision of the Government not to grant extension to the Bachat Gats/Organisations selected previously after expiry of the contractual period of three years. This communication dated 13th May, 2022 was the trigger for institution of this writ petition wherein it has been prayed as follows: -

“(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;”

4. As and by way of interim relief, the petitioner prayed for stay of clause 2 of the communication 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.

5. The writ petition was taken up for consideration by a coordinate Bench of this Court (cor. Chief Justice and M. S. Karnik, J.) on 12th July, 2022. Paragraphs 4 to 11 of the order being relevant, are quoted below: -

“**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 for a. 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."

6. Such ad-interim relief granted in favour of the petitioner has since been extended from time to time on the prayer of the petitioner.

7. In the meanwhile, the respondents filed reply-affidavit. The petitioner has also filed its rejoinder affidavit.

8. In the reply-affidavit, the State has levelled a serious charge of suppression against the petitioner. It is the counter pleaded case in the reply-affidavit that during the period of the pandemic, the petitioner was allotted a contract for supply of dry ration to the students. All the 379 Bachat Gats/Institutions including the petitioner took benefit of the contract and supplied dry ration to the students in the schools. Insofar as the petitioner is concerned, it was awarded a contract of the value of Rs.42,32,249/- for supply of dry ration to total 3663 students in the area of Malegaon Municipal Corporation. Copy of the agreement dated 27th January, 2022 has been annexed to the reply affidavit (Exhibit-C). It is averred that such contract has been fully executed for the period up to February, 2022 and the petitioner has been paid for the work executed by it. While Rs.42,32,249/- has already been paid for execution of the work during the period June 2021 to February, 2022, bills raised by the petitioner for Rs.9,67,790/- from March, 2022 to April, 2022 are yet to be cleared. According to the respondents, this particular and crucial aspect of awarding of contract for supply of dry ration to the students and payment made to the petitioner therefor has been suppressed by it in the writ petition warranting its outright dismissal.

9. On merits, it is the pleaded case of the respondents that the petitioner has not been singled out for any discriminatory or arbitrary treatment. Outbreak of the pandemic is in the nature of force majeure and all Bachat Gats/Institutions like the petitioner have no legal right to

claim extension of the contractual period of three years, which has come to an end on 15th April, 2022. It is also pleaded that the communication dated 13th May, 2022 does not suffer from any illegality or arbitrariness. It lays down guidelines for selecting institutions for supply of mid-day meals for the next period of three years starting from the academic year 2022-2023 to 2024-2025.

10. The grievance of the respondents is that a fresh process for selection of Bachat Gats/Institutions has since been commenced but because of ad-interim relief granted in favour of the petitioner, such process could not be taken to its logical conclusion.

11. The petitioner has filed a rejoinder affidavit denying and disputing the charge of suppression levelled against it by the respondents.

12. Ms. Gayatri Singh, learned senior advocate representing the petitioner, has referred to ground (s) under paragraph 24 of the writ petition to demolish the charge of suppression. Ground (s), for facility of reference, is quoted below:

“s. That the same is without prejudice to the fact that as an ad-hoc measure in the second year of the pandemic Central Kitchens, under a separate contract altogether were given work for a month to distribute dry rations to Children. The Petitioner craves leave to rely and refer to the said papers as and when required. That even if the State were to argue that the same would be good compensation for the years of lost service it is the case of the Petitioners (this without prejudice to its case that the same was independent contract altogether) that same cannot be said to be equal to the loss of 2 years and 3 months, if at all.”

13. According to Ms. Singh, the contract for supply of dry ration is an entirely separate contract which has no bearing with regard to the contract for supply of mid-day meals and the respondents have been unjustly attempting to malign the petitioner by accusing it of suppression.

14. Mr. Samant, learned AGP appearing for the respondents, however, contends that ground (s) does not appropriately reflect the nature of the contract that was awarded to the petitioner as well as the huge benefits that the petitioner derived from such contract, which even outweighs the benefit that the petitioner could have derived if there were no outbreak of the pandemic. To illustrate this point, Mr. Samant has placed before us a chart to show that the amount paid to the petitioner for supply of dry ration is far in excess of what the petitioner received as payment during the period 2019-2020, i.e., Rs.14,83,132/-.

15. We have heard the learned advocates for the parties.

16. One of us (Chief Justice) was a member of the Bench which passed the order dated 12th July, 2022. A bare reading of such order, extracted supra, would reveal that that the decision in **Mani Subrat Jain** (supra) was considered by the coordinate Bench on 12th July 2022 and it was observed in the order passed on that date that in the normal run of events, dismissal of the writ petition would have been the obvious result. However, considering the fact that during the period of the lock down the Supreme Court had passed several orders which ordinarily would not have been passed, the coordinate Bench proceeded to grant ad-

interim relief to the petitioner. When such order was passed, not once was it brought to the notice of the Court that the petitioner had received almost triple the amount, between June 2021 and February 2022, as compared to the amount received in 2019-2020. Although the charge of suppression levelled by the respondents cannot be upheld in view of reference to the contract for supply of dry ration in ground (s), we have no doubt in our mind that the petitioner should have at least disclosed before the coordinate Bench on 12th July, 2022 of the fact of entering into a fresh contract with the respondents for supply of dry ration which, in fact, resulted in mitigating the hardship that the petitioner had faced because of imposition of the national lock down. Since it was in the special facts and circumstances that the Court came to the rescue of the petitioner by granting ad-interim relief, we need to be strict in our approach now.

17. Having regard to the disclosures presently made by the respondents in their reply affidavit, we are of the considered view that sympathy extended to the petitioner was completely misplaced and that neither should there be any interference on this writ petition nor should the ad-interim relief be extended as prayed for by Ms. Singh. The petitioner has been adequately compensated albeit through a separate contract and if there be any grievance, that cannot be adjudicated in writ proceedings. The petitioner's claim in such a case should sound in damages before the appropriate court.

18. The order granting ad-interim relief stands vacated forthwith. The process of tender that has been initiated will be taken to its logical conclusion in accordance with law. If the petitioner is otherwise eligible and has offered its bid, the same shall be considered along with other bids.

19. Writ Petition No. 6671 of 2022 stands disposed of without order for costs.

20. The aforesaid order would govern the other writ petitions being Writ Petition St. No. 17401 of 2022 and Writ Petition Nos.6650 of 2022 and 7531 of 2022.

21. All pending interim applications stand disposed of.

22. It is made clear that in those cases where the last dates for submitting bids have not lapsed, it shall be open to the petitioners to offer their bids within such last dates. Needless to observe, such bids shall be considered in accordance with law.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
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