

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8334 OF 2023

1. Annapurna Caterers,
Through its proprietor,
Nagnath Bhimappa Kasture,
Age: 56 years, Occu: Catering Business,
R/o: N-4, N-3, Plot No. 13,
CIDCO, Aurangabad.
2. Saraswati Caterers,
Through its Proprietor,
Kashinath Vishwanathappa Gaurshette,
Age: 67 years, Occu: Catering Business,
R/o: Bhumi Apartment, Flat No.5,
Bansilal Nagar, Aurangabad.
3. Sai Bhojanalaya,
Through its Proprietor,
Sau. Prabhavatibai Shankarappa Gaurshette,
Age: 65 years, Occu: Catering Business,
R/o: Flat No. C-6, Navkaryash Apartment,
Police Colony, Padegaon, Aurangabad.
4. Gajanan Bhojanalaya,
Through its Proprietor,
Nagnath Vishwanathappa Gaurshette,
Age: 69 years, Occu: Catering Business,
R/o: RH No. 2, Yash Lotus Park,
Bhagyoday Nagar, Satara Parisar, Aurangabad.
5. Om Sai Bhojanalaya,
Through its Proprietor,
R/o: Plot No. A-1, Galli No. 1, Pundlik Nagar,
Sunita Kaniram Rathod, Age: 55 years,
Occu: Catering Business, Aurangabad.
6. Sai Bhojanalaya,
Through its Proprietor

Santosh Pandurang Rasal,
Age: 44 years, Occu: Catering Business,
R/o: Plot No. 41, Gut No. 62,
Baktul Nagar, In front of Ramgopal Nagar,
Padegaon, Aurangabad.

... PETITIONERS

V/s.

1. The State of Maharashtra,
Through its Principal Secretary,
Social Welfare Department, Mantralaya,
Mumbai-32.
2. The Commissioner,
Social Welfare Department,
Maharashtra State, Pune.
3. The Regional Deputy Commissioner,
Social Welfare Department, Aurangabad.
4. The Divisional Social Welfare Officer,
Region, Aurangabad.
5. The Assistant Commissioner,
Social Welfare Department,
Dr. Babasaheb Ambedkar Samajik
Nyaybhavan, Near Shivaji High School,
Khokadpura, Aurangabad.

... RESPONDENTS

...
Mr. V.D. Sapkal, Sr. Advocate i/b. S.R. Sapkal, Advocate for the Petitioners
Mr. S.G. Karlekar, AGP for Respondent-State
...

**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**

RESERVED ON : 3rd October, 2023

PRONOUNCED ON : 25th October, 2023

JUDGMENT (Per: Y.G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties. Heard at length the learned advocate appearing for the Petitioners and the learned AGP for the Respondent Nos.1 to 5. The Petitioners and the Respondent-State have filed written notes of arguments.

2. The Petitioners have put-forth prayer clause-B, C, D and E as under:

"B) The writ of mandamus or any other appropriate writ, order, or directions may kindly be issued directing the respondents to grant the benefits arising out of GR dated 10.09.2018 and 21.10.2021.

C) To decide the representations dated 11.01.2016, 20.01.2016, 25.01.2016, 03.07.2017, 10.09.2018, 16.01.2023, 27.02.2023 and the favorable proposals submitted by Respondent No. 5 to Respondent No. 3.

D) To declare the discriminatory practice of charging varying rates for catering services as violative of the petitioners fundamental right to equality under Article 14 of Constitution of India.

E) To direct the Respondent No. 1 to extend the similar benefits in respect of rates which are given to Bahun food manufacturers and suppliers backward class Industrial Co-operative Society Ltd. Parbhani on the basis of GR dated 10.09.2018 and 21.10.2021, pending hearing and final disposal of this Writ Petition."

3. Having regard to the submissions canvassed on behalf of both the sides we have gone through the record. The Petitioner Nos.1 to 6 are engaged in catering business. All the Petitioners obtained required license under the Shops and Establishment Act from the Competent Authorities. The Petitioners

received tenders manually for the year 2011-2012 in pursuance of GR dated 26.07.2011 for a period of six months. Since then the Petitioners are supplying food items at the same rate of contract under the said tenders till date. In the year 2012-2013, the Respondent No.1-State Government invited online tenders. However, in the online process, Aurangabad Division was excluded from participation in the tender process because of stay granted by this Court on 15.03.2016 in Writ Petition No.9124/2013.

4. The learned Senior counsel appearing for the Petitioners submits that on 02.04.2012 the Petitioners received the contract from the State Government for the year 2012-2013 @ Rs.3400/- per month and Rs.3600/- per month per student, respectively. All the Petitioners are granted individual contracts time to time by the Respondent Authorities. On 06.03.2019, the State level administrative committee scrutinized and selected the food suppliers with low rate under the re-tender process and under the similar situation a contract was granted to one Bahujanhitay Bhojan Utpadak Magasvargiya Audyogik Sahakari Sanstha, Parbhani L-1 for the period w.e.f. March-2019 to February-2020 @ Rs.4495/- per student per month, whereas, the Petitioners are providing food to the students who are admitted in Government Hostels @ Rs.3400/- and Rs.3600/- per month per student.

5. On 10.09.2018 and 21.10.2021, the Respondent-Authorities issued GRs and increased 10% rate for supply of food items, however, such benefits have not been granted to the Petitioners. Therefore, action on part of the Respondent-Authorities amounts to discrimination. The Petitioners have submitted representation dated 02.04.2012 and prayed for increase in rate of supply of food but the Respondents failed to take action. Therefore, the Petitioners prayed for issuance of directions against the Respondents for grant of benefits of 10% hike of rate as per GRs dated 10.09.2018 and 21.10.2021.

6. The learned advocate appearing for the Petitioners submits that on 11.08.2022, this Court [**Coram: Ravindra V. Ghuge & Arun R. Pednekar, JJ.**] passed an order in Writ Petition No.7170/2022 and bunch of petitions wherein it has been held that, if these Petitioners agree to continue to supply the food / material, the State authorities shall ensure that they are paid the rates commensurate to those suppliers, who have been granted the tenders recently.

7. The learned AGP submits that the Petitioners filed Writ Petition No.7170/2022 and had claimed similar relief which has been disposed off on 11.08.2022. Though prayer made in the earlier Writ Petition verbatim may not be the same but the relief prayed was in the similar nature which was subject matter of the earlier petition. Therefore, principle of constructive *res judicata* would apply. It is further canvassed that the claims as made in this Writ

Petition relate to a period which is a period prior to filing of earlier Writ Petition i.e. Writ Petition No.7170/2022; and as such, considering the law laid down by the Hon'ble Supreme Court in **M. Nagabhushana Vs. State of Karnataka & Ors.; 2011 (2) All MR 423 SC** and **Forward Construction Co. & Ors. V/s. Prabhat Mandal (Regd.), Andheri & Ors.; (1986) 1 SCC 100**, issues which could have been raised, having not been raised, are held to be concluded/adjudicated.

8. Needless to say that the Petitioners are supplying food material to the students who are admitted in Govt. Hostels @ Rs.3400/- and Rs.3600/- per student per month in pursuance of the tender published in 2011-2012 as per GR dated 26.11.2011. In the year 2012-2013, though tenders were invited by the State for supply of food items to the students who are admitted in Govt. Hostels, the Aurangabad division was excluded from participating in the said tender process because of operation of interim order dated 15.03.2016 passed by this Court in Writ Petition No.9124/2013.

9. On the face of the record, it is evident that the Bahunhitay Bhojan Utpadak Magasvargiya Audyogik Sahakari Sanstha, Parbhani was granted tender to supply food items under E-Tender process w.e.f. March 2019 to February, 2020 @ Rs.4495/- per student per month, whereas the Petitioners are providing food items to the boys in hostel @ Rs.3400/- and Rs.3600/- per

student per month, at very old rates. The State Government issued GRs dated 10.09.2018 and 21.10.2021, wherein 10% rates were increased for supply of food items due to increase in prices of essential commodities.

10. Though the learned AGP canvassed about adjudication of issues involved in the present petition, in an earlier Writ Petition No.7170/2022 and bunch of petitions, however, on perusal of the order dated 11.08.2022, it does not appear that the issue of increase of 10% of price of food items has been considered while deciding the said petition. Therefore, in our conscious view, the principle of constructive *res judicata* would not be applicable.

11. On 22.01.2021, this Court [**Coram: Dipankar Datta, C.J. (as His Lordship then was) and Ravindra V. Ghuge, JJ.**] in Writ Petition No.9219/2011 (Dr. Shriram s/o Bapurao Pisal V/s. State of Maharashtra and Others) considered the case of **M. Nagabhushana Vs. State of Karnataka & Ors.; 2011 (2) All MR 423 SC and Forward Construction Co. & Ors. V/s. Prabhat Mandal (Regd.), Andheri & Ors.; (1986) 1 SCC 100** and held as under:

“6. Government Resolution dated 22nd November, 1994 was in existence when the petitioner had approached this Court in the first round of litigation by presenting Writ Petition No. 2605 of 2007 and the benefit, if any, flowing from such Government Resolution could have been made a ground of attack by the petitioner. Not having made the said Government Resolution a ground for attacking the action of the respondents in such writ petition, and in the absence of any direction being made regarding grant of interest

by the aforesaid order dated 17th June, 2008, the petitioner is precluded in law, namely Explanation IV to Section 11 of the Code of Civil Procedure, from claiming the same relief which he could have claimed in the earlier round of litigation but did not actually claim.”

12. In the case in hand, the Petitioners claim about an increase of 10% amount on supply of food items under the contract awarded to them in the year 2011-2012 as per GRs dated 10.09.2018 and 21.10.2021. The Respondent-Authorities granted tender for supply of food items to another tenderer namely Bahujanhitay Bhojan Utpadak Magasvargiya Audyogik Sahakari Sanstha, Parbhani by increasing rate by 10%. The GRs dated 10.09.2018 and 21.10.2021 does not provide applicability with retrospective effect. Therefore, the Petitioners who are also similarly situated are entitled for increase in rate by 10% from the date of GRs dated 10.09.2018 and 21.10.2021.

13. The Respondents have not denied the fact of 10% increase in rate for supply of food items granted to the another tenderer Bahujanhitay Bhojan Utpadak Magasvargiya Audyogik Sahakari Sanstha, Parbhani as per the GRs dated 10.09.2018 and 21.10.2021. However, though the Petitioners are supplying the food items to the boys and girls at various Government Hostels in Aurangabad region under tenders of 2012-2013, the old rates were increased. Further, no increased rates are granted to the Petitioners under GRs dated

10.09.2018 and 21.10.2021. It needs to borne in mind that the subject of the tender work is supplying quality food to students. If the rates paid to the Petitioners are as old as of 2012-2013, it cannot be expected that the Petitioners would be able to maintain the quality of the food items. Therefore, in our conscious view, the act on the part of the Respondents is discriminatory in nature, which is violative of the principle of equality under Article 14 of the Constitution of India.

14. In view of the above **the Writ Petition is partly allowed**. The Respondents are hereby directed to give 10% increase in rates for supply of food items per student per month to the Petitioners /Tenderers, by virtue of the GRs dated 10.09.2018 and 21.10.2021, effective from their respective dates.

15. Rule is made partly absolute in the above terms.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]