



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO.955 OF 2024

Dattatray Hamal & Mapadi
Sahakari Sanstha Maryadit, Jalgaon
Through its
Bala Parshuram Jadhav,
Age 45 yrs., Occ. Worker,
R/o Shop No.8, Gita Shankar Apartment,
Ganesh Colony Chowk, Jalgaon.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through Food Civil Supply,
Consumer Protection Department,
Mantralaya, Mumbai.
- 2 The Collector,
Nandurbar, Tq. & Dist. Nandurbar.
- 3 The District Supply Officer,
Collector Office, Nandurbar,
Dist. Nandurbar.
- 4 The Adivasi Hamal Mapadi
and Malvahtuk Sahakari Sanstha
Maryadit, Molagi, Tq. Akalkuwa,
Dist. Nandurbar.
- 5 Falai Durbal Ghatak Hamal Mapadi
Swaynrozgar Sahakari Sanstha Maryadit,
Shahada, Tq. Shahada, Dist. Nandurbar.
- 6 Yaha Mogi Hamal Mapadi Kamgar
Sanstha Maryadit, Nashik.

... Respondents

...

Mrs. Rashmi S. Kulkarni, Advocate a/w Mr. S.S. Kulkarni, Advocate for
petitioner

Mr. N.S. Tekale, AGP for respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 25th JANUARY, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 The present petitioner challenges the qualification of respondent Nos.4 to 6 for the purpose of tender issued for handling of food grains in Nandurbar district.

2 The petitioner Mathadi Society is working since 2003 in handling and distribution of food grains in the Government godown. The petitioner is registered co-operative society. Terms and conditions in the tender were enumerated in State Government Resolution dated 06.03.2023. Condition No.14.6 expressly stated that the document required to be submitted along with tender will not be accepted after submission of the tender and no fresh documents would be accepted. The petitioner bid came to be rejected as it has tried to submit its documents after the said cut off

date; yet, opportunity was given to respondent Nos.4 to 6 to comply with the documents. Therefore, the acceptance of the technical bid of respondent Nos.4 to 6 by respondent No.2 is illegal and the tender itself needs to be quashed and set aside.

3 Heard learned Advocate Mrs. Rashmi S. Kulkarni for the petitioner and learned AGP Mr. N.S. Tekale for respondent Nos.1 to 3 at the stage of admission.

4 Learned Advocate for the petitioner relied on the decision in **Parashar Hamal Kamgar Co-operative Society Limited, Paradh (Bk) vs. The State of Maharashtra and others** in Writ Petition No.7279 of 2023 with companion matters decided by this Court on 29.11.2023. It is observed that the condition regarding the area of operation of the society taking part in the bid should be of a particular district is unreasonable and arbitrary. Therefore, the bid of the petitioner ought not to have been rejected and further when there is specific term stated that no documents can be allowed to be later on presented; yet, it appears that respondent Nos.4 and 5 placed those documents on record after the finalization of the bid. Therefore, the action taken by respondent Nos.2 and 3 is arbitrary.

5 At the outset, we can see that petitioner's technical bid was not

accepted on the ground that his area of operation is Jalgaon district and not Nandurbar district. With knowing fully well that the tenders are invited from the institutions which have the area of operations over respondent No.2, then the petitioner should have had requisite licence from the competent department. After participating the entire process the petitioner cannot say that the said term is illegal or arbitrary.

6 We would also like to rely on the following observations by Hon'ble Supreme Court in **M/s. N.G. Projects Limited vs. M/s. Vinod Kumar Jain and others** [2022 LiveLaw (SC) 302], wherein it has been held that -

“23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying

escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”

It is required to be seen, as to whether the petitioner ought to have been held eligible; yet, has been unnecessarily discarded and then if the answer to these questions come in affirmative, then only the petitioner would be entitled to challenge the qualification of respondent Nos.4 to 6. Here, the petitioner appears to have accepted its own disqualification. There is no document produced on record which would show that the area of operation of the petitioner was over the period of respondent No.1. In fact, it was a mandatory or inherent condition. The petitioner participated in the entire process fully well about the terms or eligibility criteria. When the petitioner cannot be held entitled to succeed in the qualifying round for the technical bid, he cannot be asked to participate or allow to participate in the financial bid. The situation in Writ Petition No.7279 of 2023 relied by learned Advocate for the petitioner is different. In **Parashar Hamal Kamgar Co-operative Society Limited** (supra) it is rather observed that it cannot be held that the condition for area restriction i.e. registration of the society or operation of the society should be restricted to one district. It is held that it is not arbitrary or unreasonable, it is only considering the interest of the labourer and labour co-operative societies and in the light of having fair distribution of work to

the labourers from different districts, the stipulation restricting only the societies registered from a particular district has been provided.

7 It was also then submitted that objection has been taken by the petitioner in respect of qualification of respondent Nos.4 to 6, however, that has not been decided and the mechanism has been given for grievance redressal; yet, the said grievance has not been redressed and yet financial bid might be opened. We may not be able to appreciate this point for the simple reason that the petitioner himself had not qualified and, therefore, it cannot be said that he can challenge the qualification of any other person as violative of Article 14 or 19 of the Constitution of India. Though the Grievance Redressal Forum appears to have been made available, when the tender submitted by the petitioner lacks inherent defect and that too, with knowledge that the tenders were invited from the society having registration over a particular district; yet, when the bid is submitted, such person cannot seek equality. The petition, therefore, deserves to be dismissed at the threshold. Accordingly, the writ petition stands dismissed.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)