



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

WRIT PETITION NO.9372 OF 2024

1. Renuka Mata Mahila Bachat Gat, Dharashiv,
Through its President,
Jaya Masu Pethe,
Age : 43 years, Occ. Housewife,
r/o. Marwad Galli, Dharashiv,
Dist. Dharashiv
2. Kalparaj Mahila Bachat Gat, Naldurg,
Through its president,
Smt. Rakhi Sakharam Gaikwad,
Age : 30 years, Occ. Housewife,
r/o. Indira Nagar, Naldurg,
Tq. Tuljapur, Dist. Osmanabad
3. Bharati Mahila Bachat Gat, Dharashiv,
Through its President,
Smt. Rajiya Yasin Kureshi,
Age : 46 years, Occ. Housewife,
r/o. Raja Colony, Vairag Road, Dharashiv,
Tq. and Dist. Dharashiv
4. Bhagyashree Mahila Bachat Gat, Dharashiv,
Through its President,
Gitanjali w/o. Prashant Todkar,
Age : 41 years, Occ. Housewife,
r/o. Ramnagar, Laxmi Colony, Dharashiv,
Tq. and Dist. Dharashiv
5. Mahalaxmi Mahila Bachat Gat, Kalamb,
Through its president,
Jayshree Nitin Mahajan,
Age : 39 years, Occ. Housewife,
r/o. Kalamb, Tq. Kalamb,
Dist. Dharashiv
6. Ashtbhuja Mahila Bachat Gat, Tuljapur,
Through its President,
Rupali Pramod Ghadge,

Age : 36 years, Occ. Housewife,
r/o. Tuljapur, Tq. Tuljapur,
Dist. Osmanabad

..Petitioners

Vs.

1. The State of Maharashtra,
Through Secretary for Women and
Child Development, Mantralaya,
Mumbai - 32
2. The Commissioner for Women and
Child Development, Maharashtra State,
Commissioners Office for Integrated Child
Development Service Scheme,
Raigad Bhawan, Rear wing, first floor,
C.B.D. Belapur, New Mumbai
3. The District Collector, Osmanabad
4. The Zilla Parishad, Osmanabad,
Through its Dy. Chief Executive Officer,
(Child Development Department)
5. Just Kitchen Private Ltd., Nagpur,
r/o. K.H. No.101/1, 101/2, 102/107,
Kapsi Budruk, Tq. Kamptee,
Tq. Nagpur

..Respondents

Mr.B.R.Kedar, Advocate for petitioners
Dr.Kalpalata Patil - Bharaswadkar, AGP for respondent nos.1 to 3
Mr.V.V.Gujar, Advocate for respondent no.4
Mr.P.V.Barde, Advocate for respondent no.5

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : OCTOBER 11, 2024
PRONOUNCED ON : OCTOBER 15, 2024

JUDGMENT (Per R.G.Avachat, J.):-

Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

2. The petitioners are Women's self-help groups. They have filed present Writ Petition with the following main prayers:-

A]

B] By issuing writ of mandamus or any other appropriate writ the respondents may kindly be directed to continue to issue supply orders of processed food under THR scheme in favour of the petitioners, in respective areas which are already allotted to the petitioner Bachat Gats, as per the tender notice dated 28/12/2021.

C] By issuing writ of prohibition or any other appropriate writ the respondents may kindly be restrained from issuing any interim supply order of processed food under THR scheme of the units already allotted in favour of petitioner Bachat Gats in Dharashiv district, in favour of any other agencies.

D]

E]

F]

3. Learned counsel for the petitioners would submit that the self-help groups of women (petitioners), which are also known as Mahila Bachat Gats, have been working in Dharashiv district for last few years. The petitioners were allotted a contract by the

respondents for supply of micro-nutrient fortified blended food (for short, "Take Home Ration - THR Scheme") to the children and pregnant women under the policy of Central and State Government, in urban and rural areas. Respondent no.2 is Commissioner for Women and Child Development, State of Maharashtra. Respondent no.4 is Zilla Parishad, Dharashiv; while respondent no.5 is the company in whose favour a contract/tender has been allotted for supply of THR to the *Anganwadis* in the area of Dharashiv district, to which the petitioners have presently been providing THR, pursuant to the contract entered into with them. Initially, a contract was entered into for a period of one year with a clause for extension of further one year, on condition of satisfactory performance of the petitioners' self-help groups.

4. Learned counsel for the petitioners would further submit that respondent nos.1 to 4, State instrumentalities, issued a consolidated tender in the year 2023 by making six divisions. Tenders were allotted to six persons only, for supply of THR to 1,10,446 *Anganwadis* in the State of Maharashtra, inclusive of 21,152 *Anganwadis* in Aurangabad Division. One of the conditions of the tender notice was to deposit the amount equivalent to 2% of the tender-value as earnest money along with the application for

allotment of tender. The petitioners being financially poor members of the self-help groups were made to be out in participating in the tender process in view of the said clause. The tenders have been allotted to six persons with issuing supply orders including various clauses. Clause 4 of the supply order is the subject-matter of interpretation in this Writ Petition. According to learned counsel, as per the said clause, the only works allotted to the institutions as per the tender process in view of the letter dated 09.08.2019, having completed two years tenure, were only comprised in the supply order dated 03.01.2024. According to him, the *Anganwadis* in respect of which, the period of contract had not come to an end, a fresh tender process was expected to be initiated post completion of two years' contract period. Learned counsel meant to say that the period of two years of contract for supply order issued in petitioners' favour was yet to be completed and therefore, the *Anganwadis* to which the petitioners have been supplying THR, still, holds the field. He would further submit that in respect of these *Anganwadis*, respondent nos.1 to 4 are bound to issue fresh tender notice and until allotment of the fresh contract to the successful bidder, the petitioners' self-help groups are entitled to continue to supply THR. The tenders allotted to the petitioners were dated 28.12.2021. The further submissions of learned counsel for the petitioners pertain to

emotional ground that the petitioners being poor women and have invested their money by selling their ornaments/*Stridhan*, etc. We, therefore, do not propose to refer to his further submissions, which find place in the respective paragraphs of the writ petition.

5. Affidavit-in-reply has been filed on behalf of respondent nos.1 and 2. We have perused the same along with the documents placed on record by the petitioners and the respondents as well. The contentions raised in the affidavit-in-reply and the documents filed in its support, may form part of our reasons to reach the conclusion in deciding the Writ Petition and therefore, we do not propose to reiterate the same here at. A bit reference to some of the averments is, however, unavoidable.

6. Integrated Child Development Services Scheme (ICDS) was said to be a specialised department of women and child development in the State of Maharashtra. It has been submitted on affidavit that the judgment dated 11.07.2016 passed by the Division Bench of this Court in Writ Petition No.3359 of 2016 was challenged before the Apex Court. Pursuant to the judgment delivered by the Apex Court on 26.02.2019, a new policy was formulated by the State in 2019. The tenders were said to have been invited in consonance

with the directions issued by the Apex Court in the said judgment and in accordance with the State policy dated 09.08.2019. The State policy of 2019 envisaged a decentralised selection process and despite relaxing various tender conditions, the process did not result expected result. The petitioners were selected in 2021 for supply of THR to five *Anganwadis* for a period of one year extendable by another year. Respondent nos.1 to 4 claim that repeated attempts made for selection of self-help groups for supply of THR from 2019 to 2022 achieved bare minimum success in the State. There was entire shift in the policy of the Central Government. On 13.01.2021, the Central Government issued streamlined guidelines which defined quality assurance, roles and responsibility of duty holders, procedure for procurement, supply chain management, etc. Those guidelines have been placed on record. The Central Government, thus, de-notified the Supplementary Nutrition Rules, 2017, in June, 2021. On 01.08.2022, the Central Government forwarded a scheme titled as “Saksham Anganwadi and Poshan (2.0) Scheme” to all the States. These guidelines did not include any condition for engagement of self-help groups for supply of THR. The State Government, therefore, decided to invite fresh tenders for supply of THR. The tender process was initiated in 2023, to select the new contractors for supply of THR consequent upon the policy changes and considering the past

experience as well as the requirements of the new policy, rules, guidelines, GFR provisions, etc. Accordingly, the tender was published on 31.03.2023 in various English and Marathi dailies. The terms and conditions were challenged before this Court in Writ Petition No.5942 of 2023. Said Writ Petition along with the connected Writ Petitions were decided by the Division Bench of this Court at the Principle Seat, on 06.12.2023. The main claim of the petitioners therein was that self-help groups have preferential right to participate in the distribution of THR based on decentralised distribution policy being a fundamental principle. Those Writ Petitions were dismissed on merits vide judgment and order dated 06.12.2023. A Special Leave Petition preferred against the same also failed on 14.12.2023. Till then, the tender process was put on hold by the State authorities. Admittedly, the petitioners did not participate in the said tender process.

7. The tender document/notice inviting tender in terms of the new policy is on record. Clause 2 thereof indicate 1,10,446 *Anganwadi* centres were to be provided with THR. It has been specifically stated on affidavit by the respondents/authorities that the tender notice pertained to *Anganwadis* covering all the areas across the State, including *Anganwadis* to which the petitioners were

granted contract to supply THR for two years. Admittedly, the period thereof came to an end on the last day of August, 2023. It appears that by virtue of the interim order passed in this Writ Petition dated 03.09.2024, the petitioners have been permitted to supply THR until 15.10.2024, meaning thereby the period of contract whereunder the petitioners were allowed to supply THR, has already come to an end and even pursuant to the new tender notice and further process thereof, the tender to supply THR to *Anganwadis*, to which the petitioners have been presently supplying the same, has been granted to respondent no.5 herein. Needless to mention, the petitioners did not have any statutory or contractual right to claim grant of contract or supply order in their favour. Learned counsel for the petitioners does not dispute the same. As stated above, he harps upon clause 4 of the supply order issued on 03.01.2024. For better appreciation, said clause is reproduced below:-

४) यापूर्वी दि. ९/८/२०१९ रोजीच्या पत्रान्वये राबविण्यात आलेल्या निविदे प्रक्रियेअंती पुरवठा आदेशाच्या दिनांकापासून ज्या संस्थांच्या कामकाजाची दोन वर्षांची मुदत संपुष्टात आलेली आहे अशा संस्थांचे काम या आदेशान्वये रद्द करण्यात येत आहे. सदर रद्द झालेल्या अंगणवाडी केंद्राचे काम नव्याने निवड झालेल्या पुरवठादाराकडे वर्ग करण्यात यावेत.

Interpretation of the aforesaid clause would suggest that the order of supply to these *Anganwadis* was to be made after the

contract period of two years was over. Said clause is not susceptible to more than one interpretation.

8. The petitioners were well aware that their contract was to come to an end on 31.08.2023. The State Government, pursuant to the revised policy and guidelines, issued fresh tender process in respect of all *Anganwadis* including the *Anganwadies* to which the petitioners are presently supplying THR. The petitioners did not participate in the said tender process.

9. In short, the bunch of Writ Petitions, challenging the process of inviting tender for supply of THR across the State of Maharashtra, was dismissed on merits. The self-help groups have been held to have no preferential right to claim grant of contract to supply THR. In the fresh tender process, the petitioners did not participate. The *Anganwadis* to which the petitioners were supplying THR were also covered by the fresh tender process. The petitioners' contract for supply of THR to those *Anganwadis* came to an end on 31.08.2023. Pursuant to the interim order passed in this Writ Petition dated 03.09.2024, the petitioners continued to supply THR. Since the contract to supply THR to the *Anganwadis* to which the petitioners were supplying the same, has come to an end and has,

now, been allotted to respondent no.5, the petition is devoid of merit. The Writ Petition, therefore, stands dismissed with no order as to costs. Rule is discharged.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP