



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10556 OF 2024

Shri Balaji Traders,
Jadhavwadi Market Yard, Aurangabad
Through its Representative,
Ramvilas Shriram Darak,
Age – 64 years, Occu – Business,
R/o House No. B-7, Gokul Apartment,
Aurangabad 431 001

.. Petitioner

Versus

1] The State of Maharashtra Through,
The Secretary,
The Department of Home,
Mantralaya, Mumbai

2] Additional Director General of Police
& Inspector General of Prison and Correctional
Services, Maharashtra State,
Pune – 400 001.

.. Respondents

...
Advocate for petitioner : Mr. D.P. Palodkar h/f. Mr. S.S. Khoche
AGP for the respondent – State : Mr. S.P. Joshi
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 26 SEPTEMBER 2024

ORDER (MANGESH S. PATIL, J.) :

Heard learned advocate Mr. Palodkar.

2. The petitioner is challenging the tender process being undertaken by respondent no. 2, with following prayers :-

“(B) The Hon’ble High Court may be pleased to issue any appropriate writ, order or direction in the nature of writ, and thereby quash and set aside the impugned Notice

Inviting Tender issued on 20.09.2024 by Additional Director General of Police and Inspector General of Prison and Correctional Services i.e. respondent No. 2 for supply of Canteen items in the prisons in Maharashtra State.

(C) The Hon'ble High Court may be pleased to issue any appropriate writ, order or direction in the nature of writ, and thereby direct the respondent No. 2 to issue and complete fresh tender for supply of Canteen items in the prisons in Maharashtra State strictly adhering to the Circular dated 04.10.2024 issued by the respondent No.2"

3. Learned advocate Mr. Palodkar would submit that by government resolution dated 01-12-2016, respondent – State government in the Home Department has laid down the guidelines and the modalities to be followed while making procurements by various government departments. In tune with that respondent no. 2 issued circulars dated 09-05-2018 and 04-10-2018 prescribing the modalities for issuing tenders for supply of various items of daily procurements for the prison canteens across the State and particularly prescribing such procurements to be for three months at a time, in view of volatile nature of the prices of the goods to be procured.

4. He further submits that the tender floated by respondent no. 2 is contrary to its own circulars. He would submit that giving a complete go-bye to all these modalities, respondent no. 2 has published the impugned tender notice styled as rate contract for supply of various items of prison canteen by way of a centralized and single tender process, when till this time, separate tenders were being floated

qua each prison. There are 45 such prisons in the State. He would submit that by resorting to such centralized tender process, apart from the deviation in the policy, the conditions are tailor-made to suit a specific establishment. When the policy of the government contemplated de-centralization of the procurement process, the impugned tender is exactly opposite to it. The whole exercise has been undertaken to favour National Cooperative Consumers Federation of India Ltd., Mumbai (**NCCF**). Smaller traders would be deprived of, going by the cumbersome terms and conditions of the tender notice. Even no pre-bid meeting as is required by the policy was arranged. Only a short period of about 7 days was prescribed for submitting the bids and all this exercise has been undertaken to the prejudice of the small traders and to favour big players.

5. Mr. Palodkar would further submit that the petitioner had filed writ petition no. 3115 of 2024 objecting to the tender process that was being undertaken for the same purpose. Respondent no. 2 had filed affidavit in reply and had informed this Court that the tender process that was in question would be cancelled and a fresh tender would be floated and, by referring to the specific paragraph no. 4 of the affidavit in reply, this Court had disposed of the writ petition vide order dated 23-08-2024. Deviating from the stand, a centralized and

comprehensive tender process for supply to all the prisons throughout the State, has been undertaken.

6. We have considered the submissions of the learned advocate Mr. Palodkar and perused the papers.

7. As can be gathered, the petitioner is questioning the tender process primarily on the ground that instead of making public procurement by de-centralization, the impugned tender process has been undertaken for procurement across the entire State covering all the prisons, when earlier such procurement was made in a de-centralized manner in respect of each prison separately. It is in this context, it is pertinent to reproduce the order dated 23-08-2024 passed in writ petition no. 3115 of 2024 which is expressly referred to in the memo of the writ petition and forms a substantial part of the arguments of Mr. Palodkar. The order reads as under :

“ The learned advocate for the petitioners submits that the petitioners were aggrieved by the fact that the tender process initiated was being abandoned in an arbitrary and illegal manner. A writ of mandamus was solicited directing the respondent – Authorities to complete the tender process which was for supply of essential goods and food products to various jails in the State.

2. Learned advocate for the petitioners submits that in the light of paragraph No.4 of the affidavit-in-reply filed on behalf of respondent Nos.2 and 7 it has been expressed that fresh centralized tender process would be initiated, however, it would take some time, the petitioners' grievance would be redressed, however, let there be certain stipulation of time for these respondents to commence the fresh tender process.

3. *We have heard the learned AGP as also the learned advocate for respondent Nos.25 – Federation, which, for the time being, is undertaking the work of supply as an ad hoc arrangement.*

4. *The paragraph No.4 of the affidavit-in-reply reads as under :*

“4. I say and submit that, as per the communication received from ADG Pune, the grievance of Petitioner is redressed. However, the tender process which was initiated by E-tender process dated 20.02.2024 will not be carried further and as new centralized tender process will be initiated. Therefore, the grievance of the petitioners would be redressed; however, it will take some time. In that view of the matter the deponent most respectfully submits and urge this Hon’ble Court to dispose of the writ petition.”

5. *In the light of the above, we dispose of the writ petition directing respondent No.2 to commence the fresh tender process, as expeditiously as possible and in any case within two months.*

6. *Pending civil application is disposed of. “*

8. Admittedly, the petitioner was a party to the writ petition as a petitioner and was aggrieved by the decision of respondent no. 2 to suspend similar tender process undertaken for procurement in respect of the prison in Chhatrapati Sambhajnagar. The afore-mentioned stand of respondent no. 2 in paragraph no. 4 of his affidavit in reply filed in that petition would make it abundantly clear that the tender process that was in question would not be carried forward and a centralized tender process will be initiated.

9. It is pertinent to note that irrespective of the wording of paragraph no. 4 and irrespective of its true connotation, the petitioner

was satisfied with the decision and on a statement being made by his learned advocate that in the light of paragraph no. 4, his grievance would be redressed, on his request, the writ petition was disposed of. More importantly, a request was made on his behalf to prescribe a stipulated time for respondent no. 2 to undertake the fresh tender process.

10. If such is the state-of-affairs, in our considered view, when the petitioner had the knowledge that new tender process would be in the form of a centralized process, the submission of Mr. Palodkar to resort to semantic jugglery for salvaging some ground that what paragraph no. 4 conveyed was only the process to be undertaken at the head office of respondent no. 2 but separately for each of the prisons in a de-centralized manner, cannot be countenanced.

11. What was in contemplation of the petitioner while requesting for disposal of the writ petition would be of no consequence. Having allowed the petition to be disposed of in the light of the statements being made in paragraph no. 4, he cannot be allowed to turn around and question the impugned tender process in the present matter as if it is being undertaken contrary to what was committed to this Court. On this ground alone, we are not inclined to entertain this petition.

12. Apart from the above state-of-affairs, even if the petition is to be considered on its own merits, respondent no. 2 being the employer, it would be exclusively within its domain to decide as to how the procurements are to be made. Though there are some declared policies, and there is deviation therefrom in respect of de-centralization, tenure of the supplies to be made and the short period for responding to the notice inviting offers, it would not be in the domain of the powers of this Court under Article 226 of the Constitution of India to venture into and interfere in the discretion of respondent no. 2 as an employer. One need not delve deep and it would suffice to refer to the decisions in the matters of i) ***M/s Galaxy Transport Agencies Vs. M/s. New J.K. Roadways; 2020 SCC OnLine SC 1035*** and ii) ***Airport Authority of India Vs. Centre for Aviation Policy, Safety and Research; 2022 SCC OnLine SC 1334***.

13. Though the petitioner is banking upon and is trying to attribute arbitrariness and even *mala fides* and bias and is stating in the petition memo that the terms and conditions are tailor-made to suit NCCF, it has not been made a party. Besides it would be merely a hypothesis inasmuch as the tender process is still to culminate into award of contract. Therefore, the stand of the petitioner and the submission of his learned advocate that the terms and conditions are tailor-made to suit NCCF, is not sustainable.

14. The upshot, having allowed writ petition no. 3115 of 2024 to be disposed of with an open eye and with an understanding that by abandoning the earlier tender process, a fresh centralized tender process would be undertaken by respondent no. 2, the petitioner is not entitled to now raise any objection to the current tender process on the ground that it is inconsistent with the State's policy of procurements to be made by the government departments in a de-centralized manner. Even it would not lie in his mouth to resort to the argument that the impugned tender process would keep away the smaller businessmen.

15. Writ petition is dismissed in *limine*.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/