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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11724 OF 2024

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Maharashtra State Contractors'
Association, through President
Mr. Suresh Haribhau Kadu ... Petitioner

V/s.

The Hon'ble Chief Minister to the
State of Maharashtra & Ors. ... Respondents

Mr. Ashok B. Tajane for the petitioner.

Mr. P.P. Kakade, Government Pleader, with Mr. O.A.
Chandurkar, Additional Government Pleader, and
Mrs. G.R. Raghuwanshi, AGP for respondent Nos.1
to 6 & 9 – State.

Ms. Sarika S. Desai, Executive Engineer, PGMSY,
MRRDA, Raigad is present.

Mr. Shashikant S. Kulkarni, Executive Engineer,
PNGSY, MRRDA, Pune is present.

Mr. Prashant Patil, Under Secretary, Rural
Development Department, Mumbai, is present.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ &
AMIT BORKAR, J.**

DATED : AUGUST 22, 2024

ORAL ORDER: (Per Amit Borkar, J.)

1. By invoking the writ jurisdiction under Article 226 of the
Constitution of India, the petitioner, an Association of
Contractors whose members are engaged in the business of
road construction, has challenged e-tender notice No.24 for

the year 2024-2025, e-tender notice No.25 for the year 2024-2025 issued by respondent No.6, press notice e-tender No.04/2024 dated 25 July 2024, notice inviting tender No.16 for the year 2024-2025 issued by respondent No.7, notice inviting tender No.14 for the year 2024-2025 issued by respondent No.8, and tender notice No.B-1/04 for the year 2024-2025 issued by respondent No.9.

2. The petitioner asserts that respondent No.3 issued a Government Resolution dated 16 August 2017, bearing No.CAT1096/P.K.172/EM-2, establishing a classification of contractors, namely registered contractors up to Rs.1.5 crore and unregistered contractors. On 19 September 2017, respondent No.3 issued a circular clarifying the effect of GST on works contracts and addressing the demands raised by the contractors' association concerning the process and conditions of contracts. However, according to the petitioner, clause 3.4 of the aforementioned circular deprives the members of the petitioner of the right to secure contracts up to Rs.1.5 crore, as nearly 90% of the work would be allocated to large contractors by invoking clause 3.4. The stated rationale for this condition was the achievement of superior road quality.

3. Consequently, the petitioner filed Writ Petition No.10334 of 2018 before this Court, challenging clause 3.4 in the circular dated 19 September 2017. This Court, by an order dated 21 September 2019, granted the petitioner the liberty to present their grievances to the Chief Secretary of the concerned ministry and directed that the grievances be considered after providing an opportunity for a hearing.

4. On 21 September 2018, the Desk Officer of respondent No.3 issued a clarification regarding the Government Resolution dated 17 December 2016, stating that in the case of the construction of a contiguous road, the separate allotment of road construction should be combined, and that in all other cases, the clubbing of tenders should not be employed. However, according to the petitioner, respondent Nos.6 to 9 have issued various tenders for road construction in violation of the rights conferred upon the members of the petitioner-Association by the Government Resolution dated 16 August 2017. The petitioner has therefore filed the present writ petition challenging the aforementioned tender notices.

5. At the outset, Mr. Chandurkar, learned Additional Government Pleader, upon instructions, states that in respect

of e-tender notice No.24 and e-tender notice No.25, by notice dated 8 August 2024, the subject work has been re-tendered, and the process of clubbing of work has not been resorted to. The statement made on behalf of respondent No.3 is accepted.

6. The law concerning challenges to tender conditions is well-settled in light of the Supreme Court judgment in *Tata Cellular v. Union of India* (1994) 6 SCC 651. It is pertinent to note the principles outlined in paragraph 94 as follows:

"94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles, we shall examine the facts of this case, as they commend themselves to us as correct principles."

7. The tender notices in question, i.e., No.4/2024, 16/2024, and 14/2024/2025, invite bids for new connectivity/upgradation of roads in the Pune district under the Mukhyamantri Gram Sadak Yojana (MGSY). Upon perusal of the description of the work, it is apparent that the work involves roads of short lengths, less than 5 to 6 kilometers. It is therefore evident that respondent No.3 has undertaken integrated road development under MGSY rather than fragmented development. The policy of integrated road development, being a fundamental infrastructural policy, cannot, by any stretch of the imagination, be deemed arbitrary, discriminatory, or unreasonable. Clubbing, in the

present case, is for the purpose of implementing MGSY as a single package, wherein various road segments in the area are grouped together for development or repairs as a unified package.

8. Furthermore, it is pertinent to note that the Maharashtra State Contractors' Association had filed Writ Petition No.3583 of 2022, challenging similar tenders on the grounds of clubbing of work being contrary to government policy. This Court, while dismissing the writ petition, observed in paragraph 9 as follows:

"9. It would not be out of place to note that one of the considerations that evidently weighs with the Government is cost efficiency. Clubbing work is obviously most cost-efficient than issuing multiple tenders with a differentiation for different classes of bidders. The Petitioners seem unable to understand this. For a single project, the costs of coordinating tenders and tender works between different agencies is likely to be very difficult apart from leading to operational problems and hugely inflated costs at the public expense."

9. In light of the aforementioned scope of judicial review, we do not find that the tender process challenged in this writ petition suffers from arbitrariness, unreasonableness, or is in violation of the Wednesbury principle.

10. There is no merit in the writ petition. The writ petition accordingly stands dismissed. No costs.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)