



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7775/2023

1. Ozone Associates through its
Proprietor Shri Santosh Nanaji
Kuchankar, aged 45 yrs., Occ. Business,
at Civil Lines, near Inspire Coaching Classes,
Chandrapur, Tah. & Dist. Chandrapur.
2. Sai Marketing, through its Proprietor
Sau. Nilima Suresh Bandiwar through
power of attorney Suresh Sitaram Bandiwar,
aged 52 yrs., Occ. Business, at Thakkar
Colony, Road, Vakrakund Chowk, Naginabag,
Chandrapur through Power of Attorney.

.... Petitioners

VERSUS

1. State of Maharashtra,
Department of Medical Education
and Drugs through its Secretary,
Government of Maharashtra,
Mantralaya, Mumbai.
2. Commissioner,
Medical Education and Research,
Maharashtra, 4th Floor, Govt. Dental
Hospital Building, Saint George Hospital
Compound, Mumbai-1.

3. State of Maharashtra, through its Dean,
Chandrapur Government Medical
College and Hospital, TB Hospital,
Ramnagr, Chandrapur.
4. M/s. Energygov Manpower Agency
India Pvt. Ltd. through Authorized
officer, Shop No.1, Ground Floor,
Shreeji Krupa, Ram Mandir Road,
near Bank of Baroda, Bhayander
West, Thane-401101.

....RESPONDENTS

Mr. A.S. Mardikar, Sr. Advocate with Mr. Anil Dhawas, Advocate for
petitioners.
Mr. D.V. Chavhan, Government Pleader for respondent Nos. 1 to 3.
Mr. P.A. Abhyankar, Advocate for respondent No.4.

CORAM : VINAY JOSHI AND
SMT.M.S. JAWALKAR, JJ.

DATE : 27.09.2024

ORAL JUDGMENT : (PER VINAY JOSHI, J.)

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

2. This petition is under Article 226 of the Constitution of India seeking to set aside the Work Contract, assigned to respondent no. 4 and to set aside the Communication dated 14.03.2024 whereby the earlier Tender Process was cancelled.

3. The facts in brief are that both petitioners are proprietary concern providing services of supplying man power/human resources. Respondent no. 3 is a Government Medical College and Hospital run by the State Government. It is the Government Body controlled by the Department of Medical Education and Drugs. Respondent nos. 1 and 2 are having administrative and financial control over respondent no.3 College. Respondent no.4 is a private agency doing business of supplying services like the petitioner.

4. The State Government has decided to establish Government Medical College and hospital at Chandrapur. Government has taken a Policy decision to outsource the employees as regards to respondent no.3 College and Hospital. The Government took a decision vide Government Resolution (GR) dated 09.01.2017 to establish 500 bedded Hospital by creating 571 supernumerary post

and availing their services by outsourcing. Accordingly, respondent no. 3, Medical College has floated a public tender inviting bids for providing outsourcing services. Both petitioners had participated in the tender process and declared to be successful bidders. Work orders have been issued to both petitioners for separate posts and till date they are providing services in terms of various work orders. Time to time extension were given to the petitioners. In pursuance of last extensions dated 31.03.2023, the petitioners are providing services to the establishment of respondent no.3 Medical College by engaging Group “C” and “D” employees.

5. On 16.09.2022, respondent no.3 College has issued fresh tenders for providing man power services. In pursuance of said tender notices, the petitioners had participated in the tender process. Both petitioners were qualified in providing services and they were selected as lowest bidders. Respondent no. 3 Medical College has forwarded a proposal dated 19.11.2022 to respondent no.2 for final sanction and issuance of work order for 36 months to the petitioners.

6. It is the petitioner's case that on 06.12.2022 the State Government has passed a Resolution providing guidelines and

certain procedure to be followed while availing man power by outsourcing services of Group “C” and “D” employees. In pursuance of said GR dated 06.12.2022, fresh tenders have been issued for providing services to the Government Hospital and Medical Colleges all over the State of Maharashtra. By floating tender process, nine agencies have been empowered for allocating man power services to the Government Hospitals in the State of Maharashtra vide GR dated 14.03.2023. There was no clarity about charges/reminders, hence by issuing another GR dated 06.09.2023, clarification was issued. It was followed by GR dated 27.09.2023 selecting one agency i.e. Sainik Intelligence Security Private Company for providing man power to Group C and D services by outsourcing to 27 Government Medical Colleges in the State of Maharashtra.

7. It is the petitioner’s contention that tender process was already completed in pursuance of tender floated on 16.09.2022. The petitioners were selected as “L1” bidders and already proposal for approval was forwarded on 19.11.2022. In the wake of such position another GR dated 31.10.2023 has been issued by which earlier GR dated 06.09.2023 was recalled. In effect, services of all the panel

agencies came to be cancelled and it is directed that if their services are availed in terms of GR dated 06.09.2023 they should be continued for 9 months only with effect from 21.10.2023.

8. It is contended that in the midway work order was issued to respondent no. 4 by respondent no.2 on 13.10.2023 though the GR dated 27.09.2023 enlisting impaneled agencies does not reflect the name of respondent no. 4. According to the petitioners, in view of GR dated 31.10.2023 the impanelment of 9 agencies has been cancelled. Moreover, the respondent no. 4 was not an impanelled agency, therefore allotment of work to the respondent no. 4 is illegal and arbitrary. It is contended that till date no agreement was executed in favour of respondent no. 4 but the petitioners have continued in providing the services.

9. It is the petitioner's contention that respondent did not communicate to the petitioners about lapsing of tender process initiated vide tender notice dated 16.09.2022. The petitioners were already selected and proposal was pending for administrative sanction. However without giving an opportunity, vide impugned

communication date 14.03.2024 the tender process was abandoned, which is arbitrary illegal and unsustainable in law. In such a background, the petitioner seeks for cancellation of work order dated 13.10.2023 issued in favour of respondent no. 4, and declaration that abandonment of tender process vide communication dated 14.03.2024 is illegal, arbitrary and unsustainable.

10. The respondent No.3, Dean Government Medical College and Hospital, Chandrapur put the resistance to the petition vide reply-affidavit dated 29.01.2024. It is contended that though Work work was assigned to the petitioners and time to time extensions have been granted, the last extension was with a rider that it shall remain uptill the consolidated process for filling up the Supernumerary posts would be completed. It is submitted that in earlier tender process though the petitioners have emerged as lowest bidders, it does not give an absolute right to award the contract, i.e., tenderer has no legal right or prerogative to seek contract. The respondents would submit that in terms of subsequent policy decision taken by the Government, they have revoked the earlier tender process which does not give any right to the petitioners.

11. The Labour Department of Government of Maharashtra has issued a Request for Proposal (“RFP”) and through open competitive bidding process, invited proposal from organizations. Respondent No.4 which is a Special Purpose Vehicle a consortium of M/s. Sainik Intelligence Security Pvt. Ltd. and M/Sutiksha India Security Pvt. Ltd. turned to be successful bidder in the said process. Both tenderer are consortium members of the empanelled agency. In turn, agreement dated 30.08.2023 was executed in between the Labour Department and empanelled agency. It was followed by issuance of work order to respondent No.4 dated 13.10.2023 i.e. before filing of the present petition.

12. It is respondents’ stand that State Level Tender Process was undertaken by the Labour Department of the Government of Maharashtra as a part of Policy decision. Accordingly, Tender Process was initiated on 02.09.2021 for entire Maharashtra which resulted into allotment of work to respondent No.4. It is policy decision of the State Government and in accordance with the decision, several Government Medical Colleges and Hospitals across the State have already entered into agreement with the respondent No.4 as directed by the respondent No.2. It is contended that

petitioners have not challenged the Tender Process by which empanelment of nine agencies have been made as per policy decision.

13. According to the respondents, though GR dated 31.10.2023 terminates the earlier GR dated 06.09.2023, it is clarified that services availed in terms of earlier GR would be continued for nine months. It is emphasized that the petitioners have not challenged the GR dated 27.09.2023, by which agencies have been empaneled. Moreover, without challenging the process initiated vide RFP dated 02.09.2021, the petitioners cannot raise further challenges. Moreover, the petitioners have not participated in the RFP dated 02.09.2021 since they were technically disqualified. It is clarified that the Work Order was issued to respondent No.4 being successful bidder as a part of Tender Process conducted by adopting uniform process.

14. Respondent No.4 also resisted the petition by justifying allotment made by the respondent No.3 in his favour. It is contended that the Government has taken a policy decision of appointing employees by outsourcing through human resource providers. In pursuance of GR dated 18.06.2014, policy of

outsourcing was adopted. The petitioners were initially appointed through various contracts and time to time extension was accorded till finalising uniform Tender Process. Though in earlier Tender Process undertaken by respondent No.3 Medical College, the petitioners were found "L1" and proposal was forwarded, however, in the meantime, due to change of policy vide GR dated 14.03.2023, nine agencies have been empanelled. The said panel includes an agency namely M/s. Sainik Intelligence Security Pvt. Ltd of which respondent No.4 is consortium member. It is contended that the empanelled agency has submitted the name of its Special Purpose Vehicle i.e. respondent No.4, on which agreement was executed between respondent No.4 and the Commissioner of Labour on 30.08.2023. According to respondent No.4 though vide GR dated 31.10.2023, Labour Department has cancelled the earlier GR dated 06.09.2023, however it was with a rider to continue services of the empanelled agencies appointed prior to 21.10.2023 and therefore, the services shall be continued till 20.07.2024.

15. It is contended that the action taken by respondent Nos. 1 and 2 is in pursuence with various GR, the Labour Department has undertaken a legitimate procedure for empanelment of human

resource. The petitioners cannot claim right merely on account of participating in the District Level Tender Process initiated on 16.09.2022. By change in policy, State Level empanelment was made and vide GR dated 14.03.2023, the State Government made it compulsory for all Departments. In turn, the earlier Tender Process initiated on 16.09.2022 was scrapped.

16. The principal challenge is to the Work Order dated 13.10.2023 issued by respondent No.2 in favour of respondent No.4 and consequent communication dated 08.11.2023. The petitioners also sought declaration that action of respondent inducting respondent No.4 for providing services to respondent No. 3 is illegal, arbitrary and against GR dated 31.10.2023. By way of amendment, the petitioners raised additional challenge to the communication dated 14.03.2024, whereby the earlier Tender Process was cancelled.

17. Undoubtedly, the Government has taken a policy decision of appointing employees in Group “C” and “D” by way of outsourcing through human resource providers. Respondent No.3 Medical College was established by creating imaginary post of Class “III” and “IV” cadre vide GR dated 09.01.2017, which also permits

availing private services by outsourcing. Different Work Orders have been issued to both petitioners on 26.04.2021 for allotment of work by way of outsourcing. Time to time, the period was extended and the last extension was dated 31.03.2023 with a rider till implementing consolidated Tender Process for availing outsourcing services. It is not in dispute that respondent No.3 has initiated the District Level Tender Process and on opening technical bids, the petitioners were found eligible. The fresh Tender Process was initiated on 21.09.2022 availing outsourcing services for the period of three years. The petitioners relied on the communication dated 20.10.2022 to show that the petitioners have been qualified and accordingly on 19.11.2022, a proposal was forwarded to the State for sanction. The petitioners emphasized that though proposal was forwarded long back, decision was not taken with ulterior motive. During pendency, vide impugned communication dated 14.03.2024, the petitioners were informed that the said Tender Process was abandoned for lapse of period of one year. According to the petitioners, the said termination of Tender Process was arbitrary, malafide and without hearing the petitioners and thus, needs to be quashed.

18. In the meantime, the Government vide GR dated 06.12.2022 took a decision to follow certain procedure for availing the services of manpower of Group “C” and “D” employees. In pursuance of policy decision, on 06.12.2022 fresh tenders were issued for availing private services to the Government Hospital and Medical Colleges throughout the State of Maharashtra. It was followed by issuing GR dated 14.03.2023 by the Ministry of Industries, Energy and Labour, Government of Maharashtra selecting nine agencies to be empanelled for allocating manpower services throughout the State. It is petitioners’ contention that vide subsequent resolution dated 31.10.2023, the earlier resolution dated 06.09.2023 has been recalled and thus, the decision taken by the Government for allocating work to the respondent No.4 vide GR dated 27.09.2023 is arbitrary and illegal.

19. We have examined the GR dated 31.10.2023 which was issued in suppression of earlier GR dated 06.09.2023, whereby it has been clarified that the agencies which were appointed vide GR dated 06.09.2023 shall be continued for the period of nine months from 21.10.2023. It is the respondents’ stand that though in earlier Tender Process, the petitioners were selected as “L1”, however due

to change in Government Policy of making the empanelment on State Level, the earlier Tender Process was abandoned. Though vide impugned order dated 14.03.2024, the reason for abandonment was of lapsing of period of one year, however it is argued by the respondents that besides that, it is a policy decision of Government to maintain uniformity throughout the State, empanelment was made. The respondents also attracted our attention to earlier tender document which specifies that 120 days period was fixed for completing the process and thus, for want of following time-line, it was cancelled.

20. It is evident that vide GR dated 06.12.2022, guidelines have been issued for providing services to all the Government Hospitals and Medical Colleges in the State of Maharashtra by making empanelment. In order to have uniformity, nine agencies have been appointed through tender process at State Level. In so far the contention regarding malafides is concerned, besides bald averment, there are no pleadings not even a suggestion as to how the decision to change the policy and cancel the earlier Tender Process was actuated with malafides. Entire emphasis was that since there was a concluded contract between the parties, the cancellation

of contract amounts arbitrariness. In-fact, the proposal forwarded for approval was not finalized and thus, there was no concluded contract. For the sake of argument, eve if it is assumed that there was a concluded contract, mere termination of process cannot be construed as arbitrary. A contract, if terminated may follow certain consequences. However, on the touchstone of parameters of administrative action to hold it arbitrary when such decision is found to be bonafide and not actuated with arbitrariness, such contention about malafides cannot be entertained.

21. Notably, by Public Tender Process, State Level empanelment was made, the petitioners did not participate nor the said process has been challenged. The petitioners were declared as “L1” in the District Level Process adopted by respondent No.3 though inconsistently with State policy, however that would not give any right to the petitioners unless it is actuated with malafides. The State has taken a policy decision for appointing panel agency for entire State. The Government is guardian of State finance and expected to protect financial interest. Such decisions are not amenable to judicial review unless they are actuated with arbitrariness or favouritism. Basically, the right to chose of the

Government cannot be considered as arbitrary so long as it is complying with the principles of fairness and equality. By way of Tender Process, empanelment was made and respondent No.4 is consortium member of the empanelled agency.

22. Though extensions were given to the petitioners, however it was limited to the extent of till completion of consolidated Tender Process. By way of change of policy empanelment was made to adopt uniform process. Selection of respondent No.4 through consortium agency by Tender Process was not challenged. The State has complete freedom to adopt the policy in the interest of the State. Writ Courts are not justified in interfering with the policy decision taken by the State. As stated above, the petitioners have no inherent right to get allocation through Tender Process which was cancelled. The petitioners have not established that the action of cancellation was malafide. Though the petitioners have placed on record an order passed by the Co-ordinate Bench in Writ No. 10646/2023 (Krupa Services Private Ltd. and others Vs. Labour of Commissioner and others) along with others dated 10.11.2023 that would not assist as on the basis of the statement made by the Government Pleader, the matter was disposed of.

23. The learned Government Pleader placed reliance on the decisions of the Supreme Court in cases of *N.G. Project Limited Vs. Vinod Kumar Jain and others*, (2022) 6 SCC 127 and *State of Jharkhand and others Vs. CWE-SOMA Consortium*, (2016) 14 SCC 172 to impress about the general principles regarding the limitation on the powers of judicial review in administrative action. The law is fairly well settled in that regard that the judicial review of administrative action is only with an intent to prevent arbitrariness, irregularity, unreasonableness, bias and malafides. The objective is not to make the Court an Appellate Authority for scrutinizing the Tender Process or a policy decision taken by the State. In the light of said parameters, we have examined the material.

24. In conclusion, the petitioners have failed to establish inherent right to seek allocation on the basis of Tender Process which was abandoned due to change in policy decision. The allocation to respondent No.4 Agency is for a specific period through a Tender Process which is not under challenge. Already an agreement has been executed with respondent No.4 Agency for specific period. In absence of malafides, arbitrariness, the said

allocation cannot be questioned. In substance, we see no merit in the petition, hence dismissed.

Later on:-

At this stage, after pronouncement of the order, the petitioner seeks for continue the interim order dated 14.02.2024 to approach the Higher Forum. By way of interim order, the petitioners' termination order dated 08.02.2024 has been stayed. Already the petitioners temporary appointment was terminated but petitioners enjoyed the benefits till date. In the circumstances we are not inclined to extend the interim order.

(SMT.M.S. JAWALKAR, J.)

(VINAY JOSHI, J.)