



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

WRIT PETITION NO. 8200 OF 2023

<u>PETITIONERS :</u>	1.	Maa Ganga Hamal Sahakari Sanstha Maryadit, Mirchitola, Tq. Ramtek, District Nagpur. A Registered Co-operative Society having Registration No.NGP/RTK/ ERD /L/1360/2009 through its Secretary – Manishkumar Wasudeo Mate, Aged about 41 years, Occupation : Labourer, R/o Sant Gyaneshwar Mandir Ward, Bhandara.
	2.	Manishkumar Wasudeo Mate, Aged about 41 years, Occupation : Labourer, R/o Sant Gyaneshwar Mandir Ward, Bhandara.
<u>...VERSUS...</u>		
<u>RESPONDENTS :</u>	1.	The Collector, Gondia
	2.	District Supply Officer, Gondia
	3.	Shriram Hamal Kamgar Sahakari Sanstha, Bhandara, through its President R/o-Ram Mandir Ward, Near Lahari Ashram, Tq. & Dist. Bhandara.

 Mr. S. V. Manohar, Sr.Adv. i/b Mr. A. V. Band, counsel for the petitioners.

Mrs. K. R. Deshpande, AGP for the respondent Nos.1 and 2.

Mr. S. K. Bhandarkar, counsel for the respondent No.3.

**CORAM : AVINASH G. GHAROTE &
SMT. M. S. JAWALKAR, JJ.**

Date of reserving the judgment : 01/03/2024

Date of pronouncing the judgment : 24/04/2024

JUDGMENT (Per : Avinash G. Gharote, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsels for the parties.
3. The petitioner is a Society engaged in the business of providing manual labour (Hamals) for the purpose of handling of food grains in the Government Godowns.
4. The respondent no.3 is also a society engaged in the same business. The work of handling food grains in the Government Godowns is tendered by the respondent authorities and the offer of the lowest tenderer is accepted as is the norm being followed. In addition to the Government Godowns, the respondent authorities, also have to take on hire additional private Godowns for the purpose of storage of the Food grains.
5. The petition questions the decision taken by the respondent no.1/ Collector Gondia to allot the work of handling

of Custom Milled Rice (CMR) in the food grain godowns in Gondia district to the respondent no.3.

6. The following list of dates are not disputed between the parties:

Date	Particulars
8.04.2020	The Petitioner society was appointed as Hamal contractor for handling food grain at government godown at Goregaon and Sadak Arjuni being the lowest bidder. (2020-2023).
1.06.2020	The respondent no-3 was appointed as Hamal Contractor for handling food grain at Government Gowndown at Amgaon . Being lowest bidder (2020-2023). Condition No.17 of the work order cast obligation upon the hamal contractor to supply hamals at private godowns under the scheme of government in relation to decentralize paddy purchase centers as per the requirement
15.12.2020	The petitioner, respondent No.3 and 1 other Hamal Contractors had performed the work of CMR handling for marketing season 2019-2020 at the rates fixed by Government.
03.07.2019	Communication issued by Section officer M.S. to R-2 in respect of rates of CMR Handling under the scheme of decentralizes purchase of paddy
09.03.2021	Communication issued by District Supply Officer (R-2) to petitioner and R-3 asking as to whether they are ready to supply hamals at private godowns for the work of CMR Handling for marketing season 2020-2021
17.05.2021	The Collector had given work of CMR handing to respondent no.3 of entire District for season 2020-2021

27.12.2021	Communication issued by District Supply Officer (R-2) to petitioner and R-3 asking as to whether they are ready to supply hamals at private godowns for the work of CMR Handling for marketing season 2021-2022 at fixed rates (B6-5.92/- per Quintal) and B2-7.20/- per Quintal) and 0% commission.
27.12.2022	The petitioner had shown his readiness to work at rates fixed by government and at 0% commission. R-3 was also ready to work at the same rates
9.03.2022	Writ Petition filed by petitioner questioning the decision dated 17/5/2001, giving work of CMR handing to respondent no.3 of entire District for season 2020-2021, was disposed off as having become infructuous as season 2020-2021 was over.
31.03.2022	The Collector had submitted proposal to Secretary for ordering the work of CMR Handling 2021-2022 at private godown equally amongst all the 3 working Hamal contractors at same rate without commission (0%) i.e. petitioner and R-3.
31-3-2022	Work order of CMR handling 2021-2022 in favour of Petitioner for 2021-22 season in respect of Goregaon and Sadak Arjuni Taluka (pg.55). Respondent no.3 work order of CMR handling 2021-2022 in favour of Petitioner for 2021-22 season in respect of Amgaon, Arjuni Mor, Deori, Sadak Arjuni, Goregaon Taluka (pg.230).
22.12.2022	Communication issued by District Supply Officer (R-2) to petitioner and R-3 asking as to whether they were ready to supply hamals at private godowns for the work of CMR Handling for marketing season 2022-2023 at fixed rates (B6-5.92/- per Quintal) and B2-7.20/- per Quintal) and 0% commission.

26.12.2022	The petitioner had given consent to work at rates by Government and for 0% Commission to perform CMR work R-3 was also ready to work at rates fixed by government and 0% commission.
30.01.2023	Work order of CMR Handling for season 2022-2023 in favor of petitioner (pg.61-66) Work order of CMR Handling for season 2022-2023 favor of Respondent no.3 (pg.236-238)
	No Communication was issued by respondent no-2 calling the petitioner or R-3 asking as to whether they were ready to perform the work of CMR handling for marketing session 2023-2024 as District Supply Officer did for earlier Season 2021-2022, 2021-22, 2022-2023
	Representation by petitioner Representation by Respondent no.3
28.11.2023	Minutes of meeting of District Co-Ordination Committee Subject No.6 decided to give work of CMR handling whose bids rates were lowest and has Commission.
29.11.2023	The Collector has passed impugned order whereby a work order was issued in favor of R-3 for CMR Handling work for entire Gondia District for span of 3 years. (2023-26)
06.03.2023	Government Resolution for PDS work
24.11.2023	Government Resolution for Procurement of Paddy and Rice Fortification for season 2023-2024
29.11.2023	Renewal of work order of R-3 and petitioner as Hamal Contractor for 2023-2026

7. Mr. Sunil Manohar, learned Sr. Counsel for the petitioners contends as under :

(a) That the said allotment is in violation to the directions of the State Government dated 3/7/2019 and therefore is required to be set aside.

(b) That the petitioner no.1 has been undertaking the work of Labour contract for handling the food grains in the Government food grain godowns, from 2020 –23 (1/4/20 to 31-3-2023) by the tender process, the bid of the petitioner being accepted being the lowest as a result of which the work order dated 8/4/20 was issued in favour of the petitioner no.1 and therefore there was no reason whatsoever for carving out a separate category of CMR when the same could be included in the already existing setup.

(c) That the carving of the CMR category was for the purpose of allotting the work without tender which was not permissible.

(d) That the State by the direction dated 3/7/2019, directed all the District Supply Officers to give the work of handling CMR food grains in private godowns in the State by giving preference to the existing Government Godown contractor in the respective Tahsils by requesting such contractor to handle the CMR godown work at the same rate for which they were already working.

(e) That the respondent no.2 had accordingly by the communication dated 10/3/2021 and 9/3/2021 called upon the petitioner to give its consent as to whether it was ready

to handle the work of CMR food grains in private godowns on the same rate for which it was working in the government godowns.

(f) That the Petitioner no.1 by the communication dated 15/03/2021 had replied, expressing its readiness and willingness to work in the private godowns for handling the CMR food grains at the same rate for with the Petitioner no.1 was working in government godowns, in spite of which the Respondent no.2 by the order dated 17/5/2021 had directed the work in that regard to be given to the Respondent no. 3.

(g) This was challenged by the petitioner by filing WP no. 1878 of 2021 before this Court which came to disposed off as the season was already over.

(h) However during the pendency of the above Writ Petition the respondent no.2, by the communication dated 27/12/2021 issued to all the existing 3 Labour Supply contractors had asked their willingness to work at the CMR grain godowns at the same rate at which they were working at the Government Godowns. The Petitioner no.1 is said to have given its consent for the same that too without commission on 01/11/2023.

(i) The respondents 1 & 2 therefore were obligated to ask for the offer of the petitioner no.1, so as to gve it an opportunity to compete.

8. Mr Chavan learned Counsel for the respondent no.3, submits as under :

(a) The distribution of work of CMR handling, was being allotted since beginning, in which since the petitioner no.1, had participated and was also allotted the work for some periods, it was estopped from contending that the work could be only given by the tender process.

(b) Tender process, its norm, however, that does not deprive the state from adopting the process of allotment in case exigencies so arise, which has been followed in the instant matter. For this he places reliance upon *Indian Medicines Pharmaceuticals Corporation Ltd. v. Kerala Ayurvedic Cooperative Society Ltd. and others, 2023 SCC OnLine SC 5*.

(c) The work of CMR handling, according to him, is not distribution of public largesse and therefore private contractors were rightly invited for giving services to the Government.

(d) The communication dated 03/07/2019 (Pg.39) according to him, does not create any right.

(e) The instructions dated 30/03/2020, by the Collector, Gondia, according to him, already indicates, vide Clause 23.5 (pg.210), that the successful bidder, for the Government godowns would also be liable to undertake the work of handling of goods at any other place, which the State indicates at the same rate, as fixed by the Mathadi

Board, which according to him, is an indication that the work of handling goods, at the private godowns would also be given to private contractors, who had already successful the tender for the same. He, therefore, submits that since the respondent No.3, was already granted work of handling goods at the government godowns for award of the work of CMR handling has rightly been awarded to the respondent No.3.

9. In Indian Medicine Pharmaceuticals Corporation Ltd. (supra), it has been held that inviting tenders and conducting public auctions are considered to be preferred method of allocation for two reasons: firstly procurement can be made at the best price; and secondly, allocation is through a transparent process, however, if the purpose of allocation by the State is not revenue maximization, the State could award contracts through other methods, provided it is non arbitrary and meets the requirement of Article 14. In the instant case, by virtue of allotting the work, for handling of the goods at the CMR godowns, the State is not distributing any public largesse, but is only ensuring, that the goods, are stored in a proper place and manner. This therefore cannot be termed as a case of revenue maximization, in view of which, allocation, as is being done, cannot be faulted with, unless allocation is shown to be arbitrary, as no statutory right arises for such allocation.

10. In so far as the plea that the State was not entitled to carve out a separate category of CMR when the same could be included in the already existing setup and that it was for the purpose of allotting the work without tender which was not permissible, it would be necessary to note that the work tendered in which the petitioner had succeeded, was clearly specified, being aware of which the petitioner no.1 had given its offer and was allotted the work on its offer being accepted. The petitioner no.1, therefore cannot raise any grievance in this regard, as it is the sole domain of the tendering authority to determine, the nature and specifications of the work, for which tenders were to be called and it would be impermissible for the Courts to interfere in this regard.

11. It is also necessary to note that it is not disputed that on earlier occasions the petitioner no.1 as well as the respondent no.3 and one other entity, had performed the work of CMR handling for the marketing season 2019-2020 at rates fixed by the Government, which would indicate that the petitioners were duly aware that the work of handling CMR, was being separately allotted and for this reason also the plea in this regard cannot be accepted.

12. It is also not disputed that for the marketing season 2020-2021, the work of CMR handling was allotted to the respondent no.3 for the entire district. Work of CMR handling for the season 2020-2021 was given to the petitioner (pg.55) as well as the respondent no.3 (pg.230). For the season 2021-2022, the Collector had submitted proposal for distributing the work of CMR handling at private Godown, the record however does not indicate as to what actually transpired, but it would be safe to presume that it was distributed equally. For the season 2022-2023, the work of CMR handling was distributed between the petitioner (pg. no.61) and the respondent no.3 (pg.236).

13. If the work of CMR handling is regularly available for every season, there does not appear to be any reason whatsoever as to why the work ought not to be tendered. That however is not the procedure which is being followed, as is indicated from the factual position as availing on record. The work of CMR handling has been awarded at times to the lowest bidder or distributed equally amongst the contractors, as is indicated from the agreed list of events jointly submitted by the petitioner no.1 and the respondent no.3. The State is also not in a position to demonstrate as to why the work of CMR handling cannot be tendered. The minutes of the meeting dated

28/11/2023 of the Paddy Procurement Committee, vide item no.6, indicate that the Committee had decided that the work of CMR handling for the ensuing season and further two years, i.e. total 3 years, be given to the contractor who had quoted the lowest rate and Commission (pg.72), without tender process, for which the GR dated 08/05/2018 has been relied upon, and considering the consent granted by the respondent no.3, vide its communication dated 10/04/2023, it has been permitted to continue with the work of CMR handling for 3 years (pg.73). It is thus material to note that the policy of awarding the CMR handling work to the contractor who has quoted the lowest price for paddy handling and has further reduced his quote, stems from the G.R. dated 08/05/2018. A perusal of the reliefs claimed in the petition would indicate that there is no challenge to the G.R. dated 08/05/2018 by the petitioner. The petition is merely aggrieved by the decision of allotment of the CMR handling work to the respondent for the period 2023-2026. In our considered opinion when the decision to allot the CMR handling work, is relatable to a policy decision traceable to the GR dated 08/05/2018, of which policy the petitioner no.1, itself has been a beneficiary in the past, the petitioners cannot be permitted to approbate and reprobate regarding the said policy, that too,

without challenging the said policy. The communication dated 15/12/2020 (pg.38-A) also fortifies this policy.

14. It is however material to note that even the work of CMR handling as per the policy of the State, has to be even handed. For this purpose, the Paddy Procurement Committee would be required to ensure that all the contractors, are required to be given an opportunity, to quote their rate, as it is possible that a contractor may go even lower than the lowest rate for the paddy procurement already quoted by it. In any case, asking all the contractors, to express their willing and rates would ensure an even handed approach to the matter and avoid complications. However the Paddy Procurement Committee, instead to doing this, in its meeting dated 28/11/2023 decided that the work of CMR handling for the ensuing season and further two years, i.e. total 3 years, be given to the contractor who had quoted the lowest rate and Commission (pg.72). This clearly deprived the other contractors of a level playing field in the arena. The petitioner no.1, in the petition has made a categorical averment that the petitioner no.1 was expecting to receive a communication from the respondents 1 & 2 asking the existing three hamal contractors as to whether they were ready to work for CMR handling at zero competitive rate as they had done

earlier, however no such communication was received (para 17 of the petition). In fact it is averred that two communications in this regard were written by the petitioner no.1, one on 2/11/2023 and the other on 8/11/2023. The communication dated 1/11/2023, addressed by the petitioner no.1, to the Collector Gondia (pg.148), in fact indicates its willingness to work at zero rate and commission. Though it is contended by Mr. Chavan learned Counsel for the respondent no.3, that this communication was never issued by the petitioner no.1, on account of absence of its mention in the petition and therefore is an after thought, even if we ignore this communication, distribution of the CMR handling work amongst the existing contractors, at least for the areas/ Godowns for which they had been awarded the work of paddy handling in Government Godowns, should have been granted as per the policy as spelt out even from the work commencement order dated 08/04/2020 by the respondent no.1.

15. The record however does not indicate that any such opportunity was giving to the existing contractors even to this extent, rather on the contrary, the respondent no.3, has straightaway been allotted the work for the seasons 2023-2026. This in our considered opinion, is contrary to the policy of the

State that the existing contractor for the Government Godowns, be asked for supplying manual labour for the CMR godowns at the same rate for which they were being supplied at Government godowns. The fact that this has not been done, clearly indicates, that equal opportunity, to all the persons, who were entitled for such allocation has not been afforded, which is necessary, as the respondent No.3, cannot claim any special equity in its favour.

16. We therefore, cannot sustain the impugned order dated 29/11/2023 (Annexure-20), and do hereby quash the same and remit the matter to the respondent no.1, to take appropriate steps in consonance with the accepted policy of the State in this regard as is reflected from the Communication dated 03/07/2019 (pg.39).

17. The petition is accordingly partly allowed in the above terms. Considering the circumstances there shall be no order as to costs.

(SMT. M.S.JAWALKAR, J)

(AVINASH G. GHAROTE, J)