

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2972 OF 2024

Zenith Corporation

....*Petitioner*

: *Versus* :

The State of Maharashtra & Ors.

....*Respondents*

Mr. Nikhil Patil *with Mr. Prabhakar M. Jadharo, for the Petitioner.*

Mr. Milind More, Additional Government Pleader, *for Respondent No. 1-State.*

Mr. Pratik Irpatgire, *for Respondent No.3-Union of India.*

**CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

DATED : 22 AUGUST 2025.

JUDGMENT *(Per Sandeep V. Marne, J.) :*

1) The petition is filed challenging Government Resolution (GR) dated 23 July 2021 and the tender condition restricting the tender process only for Micro, Small and Medium Enterprises (MSMEs) registered in Maharashtra State or Maharashtra States Small Industries Development Corporation.

2) Respondent No.2 published tender notice dated 12 December 2023 for procurement of 103 items. Tender conditions prescribed that the bidding was reserved only for MSMEs registered in

Maharashtra State. By Corrigendum-I dated 24 March 2024, Respondent No.2 reserved 16 of 103 items for Micro and Small Enterprises established/manufactured in Maharashtra. The said Corrigendum was issued based on GR dated 23 July 2021 by which 185 items have been reserved for being purchased only from MSMEs manufacturing in the State of Maharashtra.

3) Petitioner challenged Corrigendum dated 24 March 2024 and GR dated 23 July 2021 by filing Writ Petition No. 511 of 2024 in this Court. However, on 13 February 2024, the Petition was disposed of on account of statement made on behalf of the tendering authority intending to cancel the subject tender.

4) After cancellation of earlier tender process, Respondent No. 2 has published fresh tender on 21 May 2024 for procurement of 18 medical items in which again all the 18 items were reserved for MSME registered in Maharashtra State or Maharashtra States Small Industries Development Corporation (**MSSIDC**). Petitioner is aggrieved by the tender notice dated 21 May 2024 and has filed the present petition challenging the tender condition as well as GR dated 23 July 2021.

5) Mr. Patil, the learned counsel appearing for the Petitioner, would submit that the impugned tender conditions are restrictive and deny the right of participation in the tender process to the Petitioner. That GR dated 1 December 2016 merely reserves the items for procurement from MSMEs. However, the subsequent GR dated 23 July 2021 illegally prescribes reservation to MSMEs registered in

Maharashtra, thereby preventing the other eligible bidders from participating in the tender process. That the impugned GR is violative of provisions of Section 11 of the Micro, Small and Medium Enterprises Development Act, 2006 (**MSME Act**) as the same does not provide for level playing field. He would submit that when similar reservation was prescribed in previous tender process, the tender notice was required to be withdrawn after noticing that the same was unlikely to be sustained in challenge raised in Writ Petition No. 511 of 2024. That the impugned GR and the impugned tender conditions violate fundamental right of the Petitioner under Article 19(1)(g) of the Constitution of India. He would accordingly pray for setting aside the GR dated 23 July 2021 as well as the impugned tender notice dated 21 May 2024.

6) Mr. More, learned Additional Government Pleader appearing for Respondent No.1-State, would oppose the petition and justify the impugned GR dated 23 July 2021 as well as the impugned tender conditions. He would submit that the GR dated 23 July 2021 has been issued reserving the stipulated items for being purchases only through MSME registered in Maharashtra with a view to support them on account of losses suffered during Covid-19 pandemic. That several other States in India have also stipulated similar restrictive conditions. That Petitioner does not have fundamental right to do business with the State as held in Michigan Rubber (India) Limited Versus. State of Karnataka and Others¹. That this Court cannot sit in appeal over the wisdom of the tendering authority in prescribing the tender conditions. In support, he would rely on judgment in Uflex Limited Versus. Government of Tamil Nadu and Others². He would pray for dismissal of the petition.

1 (2012) 8 SCC 216

2 (2022) 1 SCC 165

7) Having considered this submissions canvassed by the learned counsel appearing for the parties, it is seen that the Request for Proposal (**RFP**) has been issued for supply of Surgical Non Drug items reserved for procurement for MSMEs registered in Maharashtra State. Under the RFP dated 21 May 2024, Respondent No.2 has proposed to acquire 18 items listed in Annexure-IV to the RFP. The tender process is restricted to MSMEs registered in the State of Maharashtra or MSSIDC.

8) The relevant tender conditions imposing the above restrictions read thus :-

Scope of work	Procurement is for Supply of Surgical Non Drug Items for use of various public health institution in Maharashtra reserved for procurement from registered Micro Small & Medium Enterprises registered in Maharashtra State or Maharashtra State Small Industries Development Corporation
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1.8 The Orders/Circulars issued by Govt. of Maharashtra from time to time will be applicable to this bid. Industries Department Stores Purchase Rules GR dated 01.12.2016 and 23.07.2021, General Financial Rules 2017 and CVC Guidelines. Any disputes raised by the bidder, shall be resolved within the framework of these rules and clauses."

9) Thus, the above restrictive tender condition is imposed in the light of provisions of GR dated 23 July 2021. The GR dated 23 July 2021 is a sequel to the earlier GR dated 1 December 2016 by which the Department of Industry, Energy and Labour, Government of Maharashtra, published a revised Manual of Office Procedures for procurement by Government departments.

10) Under paragraph 5.14 of GR dated 1 December 2016, it was provided as under :-

“5.14 Reservations and facilities for products manufactured from Micro, Small & Medium Enterprises

As per facilities given with order dated 23.03.2012 by Ministry of Micro, Small & Medium Enterprises, of Central Government, the 241 number of products are reserved for procurement from registered Micro, Small & Medium Enterprises, (Appendix-17). The tender process should be accorded for the purchase of these items. In such tenders, only Micro, Small & Medium Enterprises or Maharashtra State Small Industries Development Corporation can participate. If the Procurement office invites composite tender for the items mentioned in Appendix-17, and there are chances that Micro, & Small Industries unable to participate in the tender, the reserved items can be grouped and separate tenders should be published for every group.

Accordingly, while procuring 100% procurement of reserved items from Micro & Small Scale Industries, 20% of purchases should be reserved for the manufacturers belonging to scheduled caste & scheduled tribes. Maharashtra State Small Industries Development Corporation can also participate in the said tender proceedings.

The said reservation will be limited for a specific time period and review of the same will be made in accordance with competent monitoring procedures.

With reference to the Honorable Prime Minister's Task force Committee for promoting MSME industries, in scenarios where this MSME's participate in the tender process and if the subject matter of procurement is not reserved, it is advise to give 20% quantity reservation to MSME for only the products manufactured by them in the total order at L-1 price and out of 20%, 4% should be reserved for procurement from scheduled caste and scheduled tribes entrepreneurs.”

11) Thus, 241 items stipulated in the GR dated 1 December 2016 are reserved to be procured only through MSMEs.

12) On account of Covid-19 pandemic, several MSMEs had suffered losses and the Government considered making provisions to support MSMEs. Accordingly, a High Power Committee was appointed under the Chairmanship of Chief Secretary which recommended reserving some of the items enumerated in GR dated 1 December 2016 for being procured only through MSME manufacturing products in the

State of Maharashtra. Accordingly, following provision is made in the GR dated 23 July 2021 :-

"1. Reservation for micro and small scale industries in the state-

The list of products which are produced by and are to be procured from the micro and small scale industry established in the state list is mentioned in Annexure 17 (B). According to this, 185 item have been reserved for the purchased from micro and small-scale industries producing in the state. (Form B)

2. Reservation for micro and small scale industries in India

The list of products which are produced by and are to be procured from the micro and small scale industries of the established in the country is mentioned in Annexure 17 (A). According to this, 56 item have been reserved for the purchase from micro and small scale industries established in the country. (Form A)

If a micro and small scale industry established in the state participates in a tender for list of items mentioned in Annexure 17 (A) and if the L-1 bid is by a the micro and small scale industries of the established in the outside the state then an order of 50% of the quantity is mentioned. Is to be placed in the micro and small scale industry established in the state at the same rate as L-1. And if there is any doubt about this, the opinion of the Department of Industry, Ministry is taken."

13) In accordance with the GR dated 23 July 2021, the tendering authority reserved all the 18 items for being procured through MSMEs registered in the State of Maharashtra. There is no dispute to the position that all the 18 items in respect of which impugned tender notice are covered by the GR dated 23 July 2021.

14) It is a settled position of law that no person has a fundamental right to do business with the Government. The Government has necessary freedom of contract. In the matter of formulating condition of tender document and awarding a contract, greater latitude is required to be considered to the State authorities. So long as State and its instrumentalities act fairly and in public interest,

interference by Courts is very restrictive. [*SEE Michigan Rubber (India) Limited* (supra)]. In the instant case, the State Government has decided to undertake supportive measures for MSMEs undertaking manufacturing activities in Maharashtra State, who have suffered losses during Covid-19 pandemic. The State Government has adopted a policy to promote state local entities within the State and to ensure that the MSMEs in the State of Maharashtra sustain their business and the workmen employed therein are not rendered jobless. Thus, the policy of reservation adopted vide GR dated 23 July 2021 has a reasonable nexus with the objective that is sought to be achieved. There is no question of violation of provisions of Article 19(1)(g) of the Constitution of India, as the Petitioner does not have any fundamental right to do business with the State. Upon being questioned, Mr. Patil would fairly admit that various other States have also provided for similar reservation for MSMEs registered in the respective states. Petitioner is an MSME registered in the State of Uttar Pradesh. Upon being questioned, Mr. Patil was unable to confirm the absence of such a reservation policy for MSMEs registered in the State of Uttar Pradesh. Be that as it may. We do not find any element of arbitrariness or irrationality in the issuance of the GR dated 23 July 2021. The GR merely encourages local participation by industries and requiring units set up in the State. The impugned GR satisfies the test of reasonableness and intelligible differentia. It supplements the objective of permitting Micro Small-Scale Industries and startups. Therefore, there is no question of violation of fundamental right of the Petitioner under Article 14 or Article 19 (1)(g) of the Constitution of India.

15) Reliance placed by the Petitioner on the provisions of Section 11 of the MSME Act does not cut any ice. Section 11 is merely an enabling provision under which certain goods and services can be reserved for procurement from MSMEs. Section 11 does not impose any

restriction on the State in providing for reservation of certain items for being procured through State MSMEs. It is not that all the items are reserved exclusively for State MSMEs. In respect of 56 items enumerated in Schedule 17A of the GR dated 1 December 2016, MSMEs registered outside the State can also participate in the tender process.

16) We, therefore, do not find any valid reason to interfere in the impugned GR dated 23 July 2021 or the impugned tender conditions. Petition is devoid of merit. It is accordingly dismissed.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

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