

*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

+ WRIT APPEAL No.185 of 2023

% 28.04.2023

Between:

Nomula Poultry Farm,
Rep. by its Proprietor,
Nomula Ashok S/o. Mallaiah,
Aged about 47 years,
R/o. H.No.5-41/1, Govindpet,
Nizamabad, Telangana - 503224 & 7 others

Appellants

VERSUS

The State of Telangana,
Rep. by its Principal Secretary,
Women Development and Child Welfare Department,
Secretariat Buildings,
Secretariat, Hyderabad & 2 others

Respondents

! Counsel for Appellants : Mr. R.N.Henendranath
Reddy, learned Senior
Counsel for the appellants.

^ Counsel for the respondents: Mr. A.Sanjeev Kumar,
learned Special Government
Pleader attached to the
office of learned Advocate
General for the State of
Telangana representing
respondent Nos.1 and 2.

Mr. A.Sudarshan Reddy,
Mr. B.Narasimha Sarma
and
Mr. P.Sri Raghu Ram,
learned Senior Counsel for
the applicants seeking
impleadment.

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> HEAD NOTE:

? Cases referred

¹ (2019) 3 S.C.R. 485

² (2022) 0 Supreme (SC) 1170

³ (1994) 6 Supreme Court Cases 651

⁴ (2012) 8 Supreme Court Cases 216

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT APPEAL No.185 of 2023

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. R.N.Hemendranath Reddy, learned Senior Counsel for the appellants and Mr. A.Sanjeev Kumar, learned Special Government Pleader attached to the office of learned Advocate General for the State of Telangana representing respondent Nos.1 and 2. We have also heard Mr. A.Sudarshan Reddy, Mr. B.Narasimha Sarma and Mr. P.Sri Raghu Ram, learned Senior Counsel for the applicants seeking impleadment.

2. This appeal is directed against the judgment and order dated 31.01.2023 passed by the learned Single Judge dismissing Writ Petition No.43886 of 2022 and two other writ petitions.

3. Appellants as the petitioners had filed the related writ petition being W.P.No.43886 of 2022 assailing the tender reference No.3347/SNP/2022 dated 21.11.2022 floated by the 2nd respondent and sought for quashing of the same. Appellants further sought for a direction to respondent Nos.1 and 2 to revert back to the earlier procedure of inviting tender on Integrated Child Development Scheme (ICDS) project wise basis.

4. Before adverting to the writ affidavit, relevant facts may be noted. Government of Telangana in the Department for Women, Children, Disabled and Senior Citizens had issued memo dated 09.12.2014 following G.O.Ms.No.12 dated 26.11.2014 for implementing revised and new feeding norms of One Full Meal Programme for all pregnant and lactating mothers with 200 milli liter of milk and one egg for 30 days in all ICDS projects, etc. The said memo laid down the method of procurement. Insofar eggs with which this litigation is concerned, the same was directed to be procured through the District Procurement Committee (DPC) from National Egg Co-

ordination Committee (NECC) registered poultry farmers without third party involvement. It provided that each egg should measure 50 grams. In the event of supplying poor quality or lesser number of eggs, steps should be taken for stoppage of payment to the supplier. It also provided that the tenders should be called in such a way that no poultry farmer would be able to supply to more than two projects; besides the supplier (farmer) should be located close to one of the projects. The poultry farmer was required to produce solvency certificate to enable participation in the tender process. If complaints were received for three consecutive months, the Project Director would take steps to terminate the contract and call for fresh tenders.

5. Commissioner of Women and Child Welfare Department submitted proposal to the Government of Telangana on 03.09.2022 to make slight deviation from the procurement policy of eggs as per procedure laid down in memo dated 09.12.2014. Commissioner mentioned that over the last eight years, it was observed through various sources

that there had been instances of supply of poor quality of eggs etc., to Anganwadi Centres by poultry farmers. That apart, poultry farmers do not undertake any processing/varying practices while cleaning, weighing, labeling, etc. No proper safety and quality standards were found to have been maintained. Despite the same being brought to the notice of the suppliers (poultry farmers), no visible improvement was noticeable. Commissioner mentioned that a team was constituted to visit and study the best practices in some other States like Tamil Nadu, Karnataka, Kerala, etc., in the procurement and supply of eggs to ICDS projects. As per report of the team, they noticed many best practices being implemented in ICDS projects in Tamil Nadu. After noticing the same and also after mentioning the challenges in the procurement and supply of eggs provided to the Anganwadi Centres under ICDS projects in Telangana, Commissioner mentioned that each district goes for a separate tender, which inevitably leads to differential standards in different districts. Vendors do not follow any standard weighment of eggs. Several instances of spoilage of eggs due to supply of old

stocks and delays in supply and storage were noticed. This was because the suppliers (poultry farmers) did not follow proper processing and grading practices and also did not have proper storage facilities.

5.1. In the above backdrop, the following proposal was submitted to the Government:

“8. There are also issues of delayed and improper transportation.

Considering the above issues and to improve the quality of eggs supply to Anganwadi Centres, it is hereby proposed for centralized procurement of eggs, cluster-wise, doing away with the existing district-wise procurement by DPCs, so as to bring in quality improvements in the supply of eggs provided under the Arogya Lakshmi program to children, pregnant and lactating women.

The Women Development & Child Welfare Dept. shall

- a. Invite centralized tender for procurement of eggs, cluster-wise as per erstwhile districts of the state, at the state level, towards bringing uniformity in egg procurement cycle and setting uniform quality standards.
- b. Allow egg traders, aggregators with sufficient experience in eggs business to participate in the centralized cluster-wise tender in addition to the poultry farmers, such that the

trader/aggregators tie-up with poultry farmers to procure eggs at competitive prices so that both have a win-win situation.

c. Insist for specific egg processing, grading activities and safety and quality standards including AGMARK in the procurement of eggs in the new centralized tender.”

6. It may be mentioned that the proposal was submitted for a new centralized procurement system of eggs under the Arogya Lakshmi scheme of the State Government and other related programmes.

7. Special Secretary to the Government of Telangana in the Department of Women, Children, Disabled and Senior Citizens issued a memo dated 13.10.2022 stating that the Government after careful consideration of the matter has accorded permission to the Commissioner of Women Development and Child Welfare Department, Hyderabad for procurement system of eggs under Arogya Lakshmi and Supplementary Nutrition Programme in the following manner:

“a. Floating zone wise tenders to all zones at a time at State level.

- b. Allowing poultry farmers of the State as per existing system.
- c. Insisting for specific egg processing, grading activities and safety and quality standards including AGMARK in the procurement of eggs in the tender.”

8. At this stage, we may mention that in the course of the hearing, we noticed that the aforesaid proposal was submitted to the Government by the Commissioner Smt. D.Divya whereas the memo dated 13.10.2022 conveying approval of the Government was conveyed by the same D.Divya as the Special Secretary to the Government of Telangana.

9. This was explained by Mr. A.Sudarshan Reddy, learned Senior Counsel representing one of the implead applicants stating that as per the business rules, the Government decision is conveyed by the Secretary. The decision of the Minister approving the proposal was conveyed by the Special Secretary who happened to be the same person as the Commissioner. Though there may not be any illegality in the aforesaid exercise, nonetheless the same could have

been avoided by the Special Secretary as the decision of the Government could have been conveyed by any other Secretary or Joint Secretary or Deputy Secretary.

10. Be that as it may, after a thorough consideration, we feel that nothing much hinges on this proposal and acceptance by the same authority, as in fact acceptance is not by the same authority but by the Government which was in turn conveyed by the Special Secretary who happened to be the same person as the Commissioner.

11. Proceeding further, following the approval of the Government of Telangana on 13.10.2022, respondent No.2 issued State Level Zonal Tender for procurement of eggs (hen) as per AGMARK and other specifications for a period of two years for supply to the beneficiaries under the Arogya Lakshmi Programme and Supplementary Nutrition Programme. The tender reference was issued on 21.11.2022 for a period of two years i.e., from January, 2023 to December, 2024. The entire State was divided into seven zones for the purpose of the tender. As per the tender

reference, the bid documents could be downloaded from 11:00 AM of 22.11.2022 till 4.00 P.M. of 08.12.2022. A pre-bid meeting was scheduled in the chamber of the Commissioner on 24.11.2022 at 11.30 A.M. Last date and time for submission of online bids was 08.12.2022 at 5.00 P.M. It was mentioned that technical bids would be opened on 12.12.2022 at 11.30 A.M. whereafter the price bid would be opened on 14.12.2022 at 11.30 A.M.

12. The following qualifying conditions were prescribed for the intending tenderers:

“2. Qualifying Conditions for the Tenderer:

1. The tenderer should be a poultry farmer with their farm located within the geographical limits of Telangana in the production of eggs (hen) for the past 3 years (i.e. 2019-20,2020-2021, 2021-22). The tenderer should submit a proof of owning a poultry farm for production of eggs (hen) certified by local bodies (Gram panchayat/Municipal authorities). Leased farmers, that is, individuals not having their own poultry farm but having other poultry farms on lease are not eligible to participate.
2. The tenderer should supply eggs (hen) as per AGMARK specifications as specified in Annexure - 1 of the tender

document. The tenderer should possess AGMARK Certificate of Authorization for eggs (hen). AGMARK Certificate valid as on date should be enclosed with the bid.

3. The tenderer can bid for a maximum of only two (2) zones. Bidders have to submit Annexure-II separately for each zone applied.
4. The tenderer should have the capacity to produce minimum of 40 % of the tendered quantity for the zone for which they are bidding. For the rest of the capacity upto 100%, the tenderer shall submit proof of agreements entered with other poultry farmers. In proof of this, a certificate has to be obtained from the respective District Veterinary and Animal Husbandry Officer, Animal Husbandry Dept. of the respective district - certifying the per day production capacity of eggs (hen) of their own poultry farm and other poultry farms with whom tenderer has entered into agreement and submitted along with bid.
 - a. Any or all of these poultry farms will be inspected by officials / third party nominated by the Commissioner, Women Development & Child Welfare Dept. to verify the production capacity.
 - b. The tenderer should not show their production capacity over and above their actual production capacity. If found otherwise, the bid is liable to be rejected.
5. The Tenderer should have satisfactorily executed a single contract for having supplied Eggs (hen) for a

value not less than Rs.5 crore in any one year of last 3 preceding years.

6. The annual turnover of the tenderer should not be less than Rs.5 crores per annum during each of the last 3 (three) completed financial years i.e. 2019-20, 2020-2021, 2021-22, irrespective of the number of zones the tenderer is bidding.
7. In order to ensure the proven processing/grading and hazard analysis competency, the tenderer should possess a valid ISO 22000:2005 certificate for their egg storage and processing godown, as on date, which should be enclosed with the bid.
8. The Tenderer should submit Earnest Money Deposit of Rs.10 lakhs per zone. In case, the tenderer is applying for 2 zones, they have to submit separate EMD amount of Rs.10 lakhs for each zone.
9. The tenderer should possess a valid license under Food Safety and Standard Act - 2006 (FSSAI license) and rules and regulations of 2011 and same certificate should be valid on the date of opening of tender. In proof of this, a valid certificate should be submitted along with the Bid. If the tenderer has applied for revalidation, the proof of the same should be submitted with the bid.
10. The tenderer should quote price for one egg for the entire period of two-year duration for the zone which they are bidding including all overhead charges and transportation charges upto anganwadi centres, inclusive of taxes if any, etc.

11. The tenderer should have the capability for delivering eggs upto anganwadi centre level and should have experience in supply of eggs to anganwadi centres or other govt. institutions.
12. The tenderer should have technical capabilities for supply of eggs of atleast 40% of tendered quantity in the particular zone as per AGMARK specification and marking. In proof of this, the tenderer should submit of copy of certificate of grading issued by Director of Marketing and Inspection as per Agriculture Produce (Grading & Marketing) Act and Rules or authorized person of Marketing and Inspection (District Agricultural Marketing Officer).”

13. Thus, we find that amongst various eligibility criteria stipulated, it was mentioned that the tenderer should be a poultry farmer with the farm located within the geographical limits of Telangana engaged in the production of eggs (hen) for the last three years. For this, the tenderer was required to submit proof of owning a poultry farm. Leased farmers i.e., those not having their own poultry farm were declared not eligible to participate in the tender. AGMARK specifications were made mandatory. Further, a tenderer was made eligible to bid for a maximum of two zones. Another

requirement was that a tenderer should have the capacity to produce minimum of 40% of the tendered quantity for the zone for which he was bidding. For the rest of the capacity i.e., remaining 60%, the tenderer was required to submit proof of agreement(s) entered into with other poultry farmers. Another contentious eligibility criteria was that the tenderer should have satisfactorily executed a single contract for having supplied eggs (hen) for a value not less than Rs.5 crores in any one year of the last three preceding years. Further, annual turnover of the tenderer should not be less than Rs.5 crores per annum during each of the last three completed financial years. Besides, the tenderer should possess a valid license under the Food Safety and Standard Act, 2006 (FSSAI).

14. Amongst the documents required to be submitted along with the tender, proof of owning a poultry farm for production of eggs (hen) from the local bodies for the preceding three years should be submitted; a valid AGMARK certificate of authorization for eggs (hen); in respect of

executing a single contract of Rs.5 crores, a certificate from the competent authority of the organisation should be submitted; besides annual turnover certificate of Rs.5 crores issued by a chartered accountant for the last three financial years.

15. Appellants instituted the related writ petition assailing the legality and validity of the aforesaid tender reference dated 21.11.2022 and sought for a direction to the respondents to revert back to the earlier system of egg procurement i.e., on ICDS project wise basis instead of zone wise basis.

16. From a perusal of the averments made in the writ affidavit, it is seen that basic grievance of the appellants was that the present tender conditions are adversely affecting the appellants i.e., the poultry farmers who have been supplying eggs to the ICDS projects having registered with NECC. All of a sudden, the terms and conditions of bidding have been changed and now a poultry farmer was required to have AGMARK certification as well as FSSAI licence which would

require minimum 3 to 6 months time for obtaining the same. Therefore, it was contended that imposition of such condition obstructed fair competition besides giving undue advantage to certain people. Appellants also objected to disqualifying poultry farmers carrying on their business on leased farms. Another contentious condition was to have turnover of not less than Rs. 5 crores per annum during each of the last three years i.e., 2019-20, 2020-21 and 2021-22 and the condition that the tenderer should have executed a single contract of having supplied eggs (hen) for a value of not less than Rs.5 crores in any one of the last three previous years. It was contended that such a condition is not only onerous but is also unknown to the field. In no previous bid such a condition was insisted upon. It was contended that such conditions were not possible to be complied with within such a short period for submission of tender. Another objection raised was that no preliminary meeting was conducted with the poultry farmers.

17. The writ petition was opposed by respondent No.2 by filing counter affidavit. After giving a detailed background relating to the ICDS projects and the Arogya Lakshmi scheme, respondent No.2 pointed out that there were shortcomings in the supply of eggs to the targeted groups under the ICDS projects. After studying the implementation of ICDS project schemes in other States, proposal was submitted by the Commissioner on 03.09.2022 for centralized procurement of eggs besides emphasizing upon quality by insisting upon the bidders to have AGMARK certification. State Government *vide* memo dated 13.10.2022 accorded permission to respondent No.2 to procure eggs by floating zonal tenders and also to insist on specific safety and quality standards. It was thereafter that the tender reference dated 21.11.2022 was floated. While denying all the contentions of the appellants, it was contended that the intention behind the new system is to revamp implementation of the ICDS projects in a transparent manner ensuring uniformity in quality and also to fix responsibility in the event of inadequacies. Consequently, it was contended that the conditions imposed in the tender

reference were fully justified. It was further contended that the entire issue is required to be looked at from the larger perspective of welfare of children, nursing and lactating mothers and not from the conspectus of a few bidders. In paragraph 34 of the counter affidavit, it was pleaded that upon opening of the technical bids on 21.12.2022, it was found that 37 bids from 24 unique bidders were received.

18. Learned Single Judge on due consideration *vide* the judgment and order dated 31.01.2023 came to the conclusion that there was no merit in the challenge to the tender conditions or to the tender reference as a whole and dismissed all the writ petitions.

19. While petitioners of the other two writ petitions have not preferred writ appeals, petitioners of Writ Petition No.43886 of 2022 have preferred the present writ appeal.

20. In the course of the hearing on 10.02.2023, this Court passed an interim direction to the effect that the

existing system should continue so that there is no disruption in the supply of eggs to the targeted groups.

21. Thereafter as the hearing progressed, various orders came to be passed including direction for perusal of the record. In the last hearing on 26.04.2023, Mr. A.Sanjeev Kumar, learned Special Government Pleader had produced the record which we have perused.

22. Mr. R.N.Hemendranath Reddy, learned Senior Counsel for the appellants has assailed the judgment and order of the learned Single Judge and submits that when the tender conditions imposed by respondent No.2 were on the face of it so arbitrary and unreasonable, learned Single Judge failed to consider the same. He has particularly assailed the condition where a tenderer was required to satisfactorily execute a single contract for having supplied eggs (hen) for a value not less than Rs.5 crores in any one year of the last three preceding years. This condition he submits has been incorporated in the tender only to eliminate poultry farmers from the bidding process and to give undue benefit to the

traders. He submits that it is well nigh impossible for a poultry farmer of the State to have specifically executed a single contract of supplying eggs (hen) for a value not less than Rs.5 crores in any one year. Such a condition cannot be said to be in the public interest. He further submits that while insistence on AGMARK specifications may be justified, some time should have been granted to the poultry farmers not having AGMARK specifications to apply for the same. In the course of the hearing, he has also pointed out to certain certificates of tenderers as to their financial solvency being very proximate to each other, most of the certificates being of the month of November, 2022.

23. In support of his submission, Mr. Reddy has placed reliance on the decision of the Supreme Court in **Vaishnorani Mahila Bachat Gat v. State of Maharashtra**¹ and **M.P.Power Management Company Limited v. Sky Power Southeast Solar India Private Limited**². He also submits that as this Court had noted that the proposing and

¹ (2019) 3 S.C.R. 485

² (2022) 0 Supreme (SC) 1170

the accepting authority being one and the same person, clearly there is something amiss in the decision making process which should be interfered with by this Court under Article 226 of the Constitution of India. He therefore submits that the impugned judgment and order of the learned Single Judge should be set aside whereafter respondent No.2 may be directed to cancel the tender reference dated 21.11.2022 and to revert back to the erstwhile system of procurement of eggs (hen).

24. Mr. A.Sanjeev Kumar, learned Special Government Pleader has elaborately referred to the tender conditions and submits that those are fully justified. It is for the employer to decide what terms and conditions should be included and insisted upon in a tender document. Insistence on AGMARK specification or on financial solvency cannot be questioned on the ground that it is difficult for the petitioners or appellants when there are other players in the field who had already submitted tenders pursuant to the tender reference complying with the conditions. While submitting the record, he submits

that the financial solvency certificates are backed by certificates of chartered accountants and income tax returns of the respective bidders for the last three years. Tendering authority is alive to the requirements of the poultry farmers. As a matter of fact, it is the poultry farmer alone who was eligible to submit tender though he was required to have sufficient solvency to execute such tender. For that, according to the estimation of the employer, Rs.5 crores have been quantified. He further submits that as per the tender process, while a tenderer should have the capability to supply minimum 40% of the tendered quantity in the particular zone, the tenderer would have the liberty to enter into agreements with other poultry farmers for supplying the remaining 60% of the tendered quantity of eggs. Therefore, enough flexibility had been provided for in the tender conditions. He therefore submits that learned Single Judge was fully justified in dismissing the writ petition. Before concluding his submissions, Mr. Sanjeev Kumar has pointed out that appellant Nos.1, 2 and 4 had entered into agreement with one

of the bidders Lolam Poultry but this fact was neither mentioned in the writ affidavit nor in the memo of appeal.

25. Mr. A.Sudarshan Reddy, Mr. B.Narasimha Sarma and Mr. P.Sri Raghu Ram, learned Senior Counsel for the implead applicants have pointed out that terms and conditions imposed in the tender reference is within the realm of contract. It is for the employer to decide what terms and conditions should be imposed. Sufficient play in the joints should be given to the employer.

26. Mr. Sudarshan Reddy, learned Senior Counsel pointed out that only challenge made in the writ affidavit was to the tender conditions. There is no pleading alleging bias by the tendering authority.

27. On the other hand, Mr. B.Narasimha Sarma, learned Senior Counsel pointed out that appellants have suppressed the fact that they had entered into supplementary agreements with Lolam Poultry. For such suppression of material facts, the appeal should be dismissed. That apart,

allegations made by the appellants are vague and baseless and on the basis of such vague and baseless allegations, the tender reference may not be interfered with by the Court. Appellants having participated in the tender as minor partners, they cannot now turn around and challenge the very tender process.

28. Mr. P.Sri Raghu Ram, learned Senior Counsel has pointed out that what the appellants have projected is that the conditions are tailor-made for a particular group of tenderers but no *mala fides* have been attributed. There is not a single averment in the writ affidavit alleging *mala fide* or for whom the conditions are tailor-made.

29. In his reply, Mr. Reddy submits that the tender conditions are *per se* illegal and therefore, those should be interfered with. ICDS projects are meant for children, women in general and lactating mothers in particular. It is essential therefore that transparency should be maintained in such tendering process. Supreme Court had insisted in **Vaishnorani Mahila Bachat Gat** (supra 1) that supply should

be de-centralized as much as possible and should follow the spirit of the ICDS project. On the contrary, instead of de-centralizing, respondent No.2 has centralized the entire procurement of eggs which is contrary to the letter and spirit of the ICDS project.

30. Submissions made by learned counsel for the parties have received the due consideration of the Court.

31. At the outset, let us see as to how learned Single Judge has dealt with the challenge made by the appellants and others.

32. After considering the rival pleadings and submissions, learned Single Judge framed two issues for consideration. The issues were framed as under:

“(i) Whether the tender reference issued by the respondent No.2 dated 21.11.2022 is valid under law and/or in violation of Article 14 of the Constitution of India?

(ii) Whether the respondents have violated ICDS Scheme issued by the State Government under G.O.Ms.No.12, dated 26.11.2014 and violated the operational guidelines for

implementation of One Full Meal Programme vide Memo.No.3462/Schemes.A1, dated 05.12.2014?”

33. Thus, learned Single Judge posed the question as to whether the tender reference dated 21.11.2022 was in violation of Article 14 of the Constitution of India and whether respondents have violated the scheme of ICDS project more particularly the memo dated 09.12.2014. Learned Single Judge noted that the poultry farmers had earlier filed a writ petition before this Court being W.P.No.24599 of 2016 questioning the rationale of the respondents in restricting the eligibility to poultry farmers having any NECC certification and eliminating other suppliers and traders. Learned Single Judge had initially passed an interim order, against which respondents preferred writ appeal being Writ Appeal No.751 of 2016. A Division Bench of this Court heard both Writ Appeal No.751 of 2016 as well as Writ Petition No.24599 of 2016. By the common judgment and order dated 26.09.2016 while the writ petition was dismissed, writ appeal was allowed. The Division Bench held that a writ court would not make a comparative evaluation of the merits and de-merits of

a policy decision of the Government or examine whether interest of the beneficiaries under the ICDS project would have been better served by permitting traders to participate in the tender process. Upholding the condition of having NECC certification, the Division Bench declined to interfere with the tender process. Taking a view from the aforesaid decision of the Division Bench dated 26.09.2016, learned Single Judge observed that insistence on AGMARK certification is justified in as much as the same would bind the suppliers to maintain a minimum standard while supplying the eggs. AGMARK is a quality certificate and insistence on the same is in the larger public interest including that of the children, pregnant women and lactating mothers. No fault could be found with the insistence on such certification.

34. We are in agreement with the contention of Mr. P.Sri Raghu Ram, learned Senior Counsel that terms of the tender are within the realm of contract and it is not for the courts to lay down what should be the terms and conditions of a contract. This position has been well settled

by the Supreme Court in **TATA Cellular v. Union of India**³ as well as in **Michigan Rubber (India) Limited v. State of Karnataka**⁴ wherein Supreme Court has specifically held that court should not interfere with the terms of the tender prescribed by the Government because it feels that some other terms would have been better. Learned Single Judge also noted that sufficient number of bids were received pursuant to the tender reference. Therefore, it was not that certain impossible conditions were insisted upon by the tendering authority. Merely because the conditions were perceived to be harsh on the appellants would not render the conditions to be arbitrary or unreasonable. Following the earlier decision of the Division Bench, learned Single Judge came to the conclusion that it is not open for the appellants to question the terms and conditions of the tender. Therefore, he dismissed the writ petition. Though learned Single Judge did not specifically render a finding as to the second issue, we find that from paragraph 13 onwards of the judgment of the learned Single Judge, both the issues were simultaneously

³ (1994) 6 Supreme Court Cases 651

deliberated upon by the learned Single Judge. It is not that respondent No.2 had made a deliberate deviation from the Government memo dated 09.12.2014 which laid down guidelines for procurement of eggs under Arogya Lakshmi and other programmes. Respondent No.2 had examined the procedure followed during the last eight years in terms of the memo dated 09.12.2014 and after examining the same and the report of the team which had studied the best practices in other States submitted proposal to the State Government for a centralized tender system for procurement of eggs to ensure uniformity in quality. Respondent No.2 had also proposed to allow egg traders to participate in the tendering, besides insisting upon quality certification like AGMARK. From the Government approval dated 13.10.2022, it is seen that the State Government did not accept the centralized tendering proposal. Instead the State Government directed that tender should be floated zone wise dividing the State into over all seven zones. Thus, instead of calling for tenders project wise, the decision was taken to float the tenders zone wise.

⁴ (2012) 8 Supreme Court Cases 216

Further, Government did not accept the recommendation of respondent No.2 to allow egg traders to participate in the tender by limiting the tenderers only to poultry farmers of the State as per existing system. However, Government agreed that there should be quality specification of the supplied eggs including AGMARK certification.

35. We see no arbitrariness or unreasonableness in the tender conditions insisted upon by respondent No.2 in the tender reference dated 21.11.2022 to warrant interference.

36. Insofar the decision of the Supreme Court in **Vaishnorani Mahila Bachat Gat** (supra 1) is concerned, we find that the appeal concerned tenders for multi-level contracts and for supply of ready to cook food to Anganwadi centres. Question raised in the appeal was that local self-help groups were sought to be ousted by the money power of large corporate houses with the help of the State. Imposition of unrealistic conditions made it impossible for mahila mandals to compete. Principle issue raised was whether contracts for supply of such food for Angawadis should be given through

local mahila mandals run along democratic lines with local women participating or whether such contracts ought to be given by the State to large corporates/contractors under the guise of the conditions of the tender. It was in the above backdrop that Supreme Court noted that the notice inviting tender issued by the Government of Maharashtra was not in the spirit of the orders of the Supreme Court. Therefore, the State was directed to invite tenders afresh and while doing so, it was observed that the supply should be de-centralized as much as possible.

37. The said decision, in our opinion, would not be applicable to the facts of the present case in as much as in the present tender, the bidders have been restricted only to poultry farmers and not made open to corporates. While insisting on financial solvency of the bidders i.e., having Rs.5 crores turnover including in any one year, exemption has been granted to the bidders to tie up with other poultry farmers for supplying 60% of the tendered quantity; thus having to supply only 40% by himself. The successful bidders

are poultry farmers of the State. It is not the allegation that the unsuccessful bidders are traders or contractors or corporates. It is unfortunate that appellants do not have annual turnover of Rs.5 crores for the last three years but that does not mean that the condition imposed by the State is unreasonable and arbitrary.

38. Insofar the decision in **M.P.Power Management Company Limited** (supra 2) is concerned, that was in relation to terminating a decision of the State to terminate a power purchase agreement entered into by the appellant with the 1st respondent. Obviously, the facts are completely different. Nonetheless in paragraph 54 of the said decision, Supreme Court has culled out the principles of law relating to tenders and contracts developed over the years. There can be no dispute to such principles of law. The question is of applicability in the facts and circumstances of each case.

39. Thus, on a thorough consideration of all aspects of the matter, we are of the view that learned Single Judge was justified in declining to interfere with the terms and

conditions of tender imposed by the State in the tender reference dated 21.11.2022.

40. We find no merit in the appeal.

41. Writ Appeal is accordingly dismissed. However, there shall be no order as to costs.

42. As a sequel, miscellaneous applications pending, if any, in this Writ Appeal, shall stand closed.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 28.04.2023

Note: LR copy to be marked.

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