

# National Federation Of Farmers ... vs The State Of Maharashtra And on 13 January, 2022

**Author: Madhav J. Jamdar**

**Bench: G.S. Patel, Madhav J. Jamdar**

904-ASWP-246-2

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 246 OF 2022

National Federation of Farmers Procurement and  
Retailing Co-operative of India Ltd

...Pe

Versus

The State of Maharashtra & Ors

...Respo

Mr Prasad Dhakephalkar, Senior Advocate, with Pradeep J  
Thorat, i/b Aditi S Naikare, for the Petitioner.  
Mr PP Kakade, GP, with SS Panchpor, AGP, for the  
State/Respondent.

CORAM

G.S. Patel &  
Madhav J. Jamdar, JJ.

DATED:

13th January 2022

PC: -

1. There is an Additional Affidavit filed by the Petitioner. A copy Digitally signed by is given to Mr Kakade. He seeks time to file a proper Affidavit. ASHWINI ASHWINI HULGOJI HULGOJI GAJAKOSH GAJAKOSH Date:

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2. While we will grant that time, we believe that an order of +0530 interim protection is necessary.

The Petition relates to an e-tender issued under a notice dated 18th March 2021 by the State of Maharashtra for transportation of rice from Food Corporation of India godowns and for the supply of other food grains, pulses, oil, spices and condiments to schools under the mid-day meal scheme in 13th January 2022 904-ASWP-246-2022.DOC Nashik District. The tender was for one year and was to cover 3983 schools. The estimated cost was Rs.36.92 crores.

3. The contest today is between the Petitioners and the 3rd Respondent. That Respondent has been served and given notice. None is present on its behalf today.

4. Mr Kakade confirms that as of today no tender has yet been issued. The statement is noted.

5. Technical bids were opened on 30th September 2021. Commercial or financial bids were opened on 22nd November 2021. The Petitioner itself says in paragraph 10 that it obtained the documents submitted by the 3rd Respondent from the online portal. It noticed several discrepancies that allegedly rendered 3rd Respondent ineligible. While Mr Dhakephalkar raises at least three points of ineligibility, he emphasizes that one of these is fundamental. That is the requirement that, as on the date of opening of the technical bids, 30th September 2021, every tenderer must have had a valid license under the Food Safety and Standard Act ("FSSAI license"). In a pre-bid meeting, in response to queries raised by bidders, the tendering authority clarified that since the process of obtaining FSSAI licenses was time-consuming, and since there were lockdowns in various districts, a receipt or a challan evidencing an application for registration should be submitted and would suffice.

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6. It appears that the 3rd Respondent did not have a license till as late as 25th November 2021. This means that certainly on the date of opening of the technical bid on 30th September 2021 (and, in fact, even at the date of opening of financial bids on 22nd November 2021), the 3rd Respondent did not hold a valid FSSAI license.

7. Paragraph 10 of the Petition avers that the challan submitted by the 3rd Respondent was dated 16th June 2021 for registration under the FSSAI Act. But the online status of the challan showed that the 3rd Respondent's application had been rejected. If this is in fact so, then prima facie it appears to us that the 3rd Respondent could not have been held to be technically qualified.

8. Having regard to these circumstances, we are of the view that Respondents Nos. 1 and 2/tendering authority should not proceed with the award of the tender until a further order of this Court.

9. Mr Kakade submits that he will take instructions and file a proper Affidavit in response on all points but including this point in particular.

10. Mr Kakade states that the Affidavit of the tendering authority will be filed and served on or before 31st January 2022. We will decide whether a Rejoinder is required on the next date.

11. We list the matter on 2nd February 2022 high on board. We request Mr Dhakephalkar's Advocate on record to give fresh notice to the 3rd Respondent including by an email.

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12. The Petitioner's Additional Affidavit is taken on file.

13. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)

13th January 2022