

# National Co-Op Consumers Federation Of ... vs The State Of Maharashtra Thr. Secretary ... on 22 June, 2021

**Author: M.S. Karnik**

**Bench: S.C. Gupte, M.S. Karnik**

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.10211 OF 2021

National Co-Op. Consumer Federation of India Ltd... Petitioner  
v/s.  
The State of Maharashtra Through Secretary  
Tribal Development Dept. And Ors. .. Respondents

....  
Mr. Pradeep J. Thorat, a/w. Mr. Aniesh Jadhav, for the Petitioner.

Mr. B.V. Samant, AGP, a/w. Mr. Y.D. Patil-AGP, for Respondent-State.

Mr. Aspi Chinoy, Senior Advocate, a/w. Mr. Amit Jajoo, Mr. Nirav Parmar  
and Mr. Aayu Saxena, i/b. Indus Law, for Respondent No.2.

Dr. Birendra Saraf, Senior Advocate, a/w. Mr. Vishal Kanade, i/b. Prashant  
P. Patil, for Respondent No.4.

....

CORAM: S.C. GUPTA &  
M.S. KARNIK, JJ.

DATE : 22 JUNE, 2021.

P.C:-

. Heard learned Counsel for the Petitioner and learned Counsel for Respondent No.2  
- Maharashtra State Co-operative Tribal Department Corporation Ltd. and also  
learned Counsel for Respondent No.4 (the successful tenderer).

2. The subject matter of challenge in the present petition is the disqualification of the Petitioner for not having complied with the terms of 1 of 5 sg 2/5 19. wpst10211-21.doc the notice inviting tenders and qualification of Respondent No.3 as a responsive tenderer, as also awarding of contract to Respondent No.4. Since amongst the eligible tenderers, as between Respondent Nos. 3 and 4, it was

Respondent No.4, the L1 tenderer, who was awarded the contract, we need not consider the Petitioner's objections concerning the Respondents' decision to declare Respondent No.3 as the qualified tenderer. So far as the Petitioner is concerned, his tender was declared non-responsive on account of breach of three conditions in the notice inviting tenders. The first condition was that the tenderers must have at least Rs.100 crores single order experience (of a similar supply contract). The contract was to be for supply of food grains. The extent of the contract envisaged delivery of food packets, including food grains, edible oil to half lakh tribals. The second condition, which according to Respondent No.2 the Petitioner did not fulfill, was submission of certificate issued by chartered accountant or government auditor concerning the years 2016-17, 2017-18 and 2018-19. The third condition, which according to Respondent No.2 the Petitioner did not fulfill, was submission of undertaking of truck owner or transporter or vehicles supplied for transportation of goods as part of the tender.

3. Learned Counsel for the Petitioner referred to averments of the Petitioner and documents submitted by the Petitioner in support of such averments concerning the Petitioner's purported compliance with all three conditions. It is, firstly, submitted that the Petitioner has, in fact, submitted a completion certificate issued by Puducherry Agro Products, Food and Civil Supplies Corporation Ltd. on 1 February 2018. This certificate does not indicate that the supply, for which the certificate was 2 of 5 sg 3/5 19. wpst10211-21.doc issued, was of Rs.100 crores and above. In fact, it does not refer to any figure in terms of the value of the supply articles. As for the requirement of chartered accountant's certificate or government auditor's report for the three financial years, learned Counsel for the Petitioner relies on the balance sheet and profit and loss account of the Petitioner for the relevant years. It is submitted that these accounts have been signed by chartered accountants. The requirement of Respondent No.2 in the notice inviting tenders was of a chartered accountant's certificate or government auditor's report, neither finds place in the Petitioner's tender. Merely because a balance sheet and profit and loss account, purportedly signed by chartered accountants was produced with the tender, it cannot be said that the requirement of a chartered accountant's certificate or government auditor's report has been fulfilled by the Petitioner. After all, a chartered accountant's certificate or a government auditor's report are invited to authenticate the financials submitted by parties. Coming now to the undertaking of the truck owners in respect of trucks offered as part of the tender, it is submitted by learned Counsel for the Petitioner that the tenderers had an option of either submitting registration of certificates of trucks from RTO together with registration/licence under Food Safety and Standards Act for transport of food articles, or, in the alternative, self- declaration certificate for transportation arrangements and undertaking from truck owners/transporters that they would provide necessary trucks/ offered in the tender (for transportation of food grains when required), such trucks having registration/licence under the Food Safety and Standards Act for transporting of food articles. It is submitted that the Petitioner had submitted a registration certificate and licence in support of the trucks offered for supply of articles. It is offered in the terms and 3 of 5 sg 4/5 19. wpst10211-21.doc conditions in the notice inviting tender (in item No.5) of clause 6.5.3 entitle "documentary proof", that the requirement of registration certificate and registration/licence under the Food Safety and Standards Act was called for in respect of those trucks offered by the tenderers, which were of his ownership. As for trucks for which there were transportation arrangements made with others, it was imperative that undertakings from those owners/transporters that they would provide trucks for transportation of

food grains as and when required had to be produced. On the Petitioner's own showing the trucks that were offered (5 nos.), which are listed in their communication dated 23 December 2020, were under arrangements with the truck owner Sayyad Khairu. Since this was under an arrangement with a third party, it was, as we have observed imperative to submit undertaking from the owner for supply of these trucks. Such undertaking was not submitted by the Petitioner.

4. In the premises, the decision of Respondent No.2 of holding the Petitioner's bid as technically non-responsive on account of breach of the three conditions referred to above, cannot be faulted. The decision is based on a reasonable and fair assessment of the material on record. It does not take into account any irrelevant material or circumstance and does not disregard any relevant or germane material or circumstance. There is no case of any malafide or colourable exercise of power. There is, accordingly, no merit in the challenge to the decision of the Respondents. Accordingly, the petition is dismissed.

Note:

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5. We are informed that the contract in response to the tendering process has been entered into by Respondent No.2 with Respondent No.4 on 5 May 2021 and the contract is being performed over the last about a month and 10 days.

(M.S. KARNIK, J.)

(S.C. GUPTE, J.)