REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7104 OF 2011
[Arising out of SLP (Civil) No. 29363 of 2010]

Shagun Mahila Udyogik
Sahakari Sanstha Maryadit .. Appellant

VERSUS

State of Maharashtra & Ors. ..Respondents

J U D G M E N T

SURINDER SINGH NIJJAR, J.

1. Leave granted.

2. The instant appeal is directed against the final judgment and order of the High Court of judicature at Bombay, Nagpur Bench at Nagpur dated 9th September, 2010, in Writ Petition No. 4210 of 2010 vide which the Division Bench of the High Court dismissed the petition of the appellant thereby affirming the decision of awarding the contract to the respondent Nos. 4 to 6.

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3. We may notice here the essential facts, which would have a bearing on the determination of the issues raised in this appeal.

4. The appellant is a society registered under the Maharashtra Co–operative Societies Act, 1960. The appellant has several years of experience in supplying hot cooked meal (ready to eat food) for children and other beneficiaries of Anganwadi Centres (in short 'AWCS') in the State of Maharashtra.

5. In the year 1975, the Central Government floated a scheme termed as "Integrated Child Development Scheme" (in short 'ICDS') in order to improve the health and nutrition status of the children (between the age group of 0-6 years); pregnant and lactating women, by providing them with supplementary food. Under the said Scheme, certain kind of

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specified food was proposed to be supplied through AWCS. Accordingly, around fourteen lakhs Anganwadi Centres were proposed to be set up.

6. It appears that the lack of progress made in the implementation of the aforesaid Scheme prompted the Peoples Union for Civil Liberties (in short 'PUCL) to move this Court by way of a Writ Petition (Civil) No. 196 of 2001 under Article 32 of the Constitution of India, seeking necessary directions for implementation of the Scheme. By a series of orders passed in the aforesaid writ proceedings, this Court issued the necessary directions. On 8th May, 2002, this Court gave detailed directions with regard to implementation of various Schemes, which have been floated for giving relief to the poor, impoverished and the hungry. At the same time, this Court appointed Dr. N.C. Saxena and Shri S.R. Sankaran as Commissioners of the Court, inter-alia, for the purpose of looking into the grievances that

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may persist after the grievance resolution procedure, laid down in the said order was exhausted. Scope of the work of the Commissioners also included monitoring of the implementation of the Court's orders as well as monitoring and reporting to this Court of the implementation by the respondents of various welfare measures and schemes.

7. Again on 29th October, 2002, this Court directed the respective State Governments to appoint Government Officials as Assistants to the Commissioners. The Commissioners submitted a very detailed report to this Court, salient features of which have been noticed by the order dated 7th April, 2004. This Court appreciated the work done by the Commissioners. It was also noticed that although fourteen lakhs AWCS were directed to be established, only six lakhs centres had been sanctioned. It was also noticed that many of the

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sanctioned centres were not operational. In some States, the problem seemed to be more acute than the others. Upon consideration of the entire matter, directions were issued for the sanction of remaining AWCS and for increase of norm for the food value to be supplied to these beneficiaries from rupee one to rupee two per day. This Court also noticed that on an average, forty two paisa as against the norm of rupee one was being allocated per beneficiary per day by the State of Jharkhand. The position in Bihar and Uttar Pradesh was also no better. Therefore, necessary directions were issued to the State Governments to make operational all sanctioned AWCS by 30th November, 2004.

8. Taking into consideration all the facts and circumstances placed on record by the two Court Commissioners and through various affidavits filed by the respondents, this Court issued the following twelve directions:-

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(i) The aspect of sanctioning 14 lakhs AWCS and increase of norm of rupee one to rupees two per child per day would be considered by this Court after two weeks.

(ii) The efforts shall be made that all SC/ST hamlets/habitations in the country have AWCS as early as possible.

(iii) The contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals.

(iv) All State Governments/Union Territories shall put on their website full data for the ICDS schemes including where AWCS are operational, the number of beneficiaries category-wise, the funds allocated and used and other related matters.

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(v) All State Governments/Union Territories shall use the Pradhanmantri Gramodaya Yojna fund (PMGY) in addition to the state allocation and not as a substitute for State funding.

(vi) As far as possible, the children under PMGY shall be provided with good food at the Centre itself.

(vii) All the State Governments/Union Territories shall allocate funds for ICDS on the basis of norms of one rupee per child per day, 100 beneficiaries per AWC and 300 days feeding in a year, i.e., on the same basis on which the Centre make the allocation.

(viii) BPL shall not be used as an eligibility criteria for ICDS.

(ix) All sanctioned projects shall be operationalised and provided food as per these norms and wherever utensils have not been provided, the same shall be provided (Instance of Jharkhand State has been noticed in the Report where

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utensils have not been provided). The vacancies for the operational ICDS shall be filled forthwith. (Instance of Uttar Pradesh where vacancies have not been filled up is quite alarming though in the affidavit it has been stated that a drive has been initiated to fill up the vacancies).

(x) All the State Governments/Union Territories shall utilize the entire State and Central allocation under ICDS/PMGY and under no circumstances, the same shall be diverted and preferably also not returned to the Centre and, if returned, a detailed explanation for non-utilisation shall be filed in this Court.

(xi) All State/Union Territories shall make earnest effort to cover the slums under ICDS.

(xii) The Central Government and the States/Union Territories shall ensure that all amounts allocated are sanctioned in time so that there

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is no disruption whatsoever in the feeding of children.

9. Pursuant to the aforesaid directions, respondent Nos. 1 and 2 passed a resolution on 28th October, 2005. The resolution provided for a detailed procedure of making available "Ready to Eat" ('RTE') food targeted to beneficiaries through Anganwadis. The food was to be supplied by Mahila Mandal, Mahila Sanstha, Women Self Helping Saving Groups, Sale Assistant Saving Group for Anganwadis, registered under the provisions of either (i) Public Trust Act, 1950, (ii) Societies Registration Act, 1860, (iii) Maharashtra Cooperative Societies Act, and (iv) Company registered under the Companies Act, 1956. The resolution further required that every member of the Group should be a woman.

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10. In the meantime, this Court had passed a number of other orders providing for Supplementary Nutrition to the beneficiaries, particular attention was directed to be paid to the following:-

(i) Children falling within the age group of 6 months to 3 years,

(ii) Pregnant and lactating women and

(iii) Severely underweight children within the age group of 6 months to 3 years.

11. The Central Government found that the original ICDS scheme was insufficient to cater to the nutritional demands of the categories of children and women noticed above. The Central Government, therefore, conducted further surveys through experts which recommended that the gap in the calories norms between the Recommended Dietary Allowance (in short 'RDA') and the Actual Dietary Intake (in short 'ADI') be filled. Therefore, the Central Government, in consultation with its

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experts, published a revised nutritional and feeding norm for supplementary nutrition in ICDS Scheme on 24th February, 2009. The revised norms required that the supplementary food may be fortified with essential micro nutrients with 50% of RDA level per beneficiary per day.

12. These revised norms were filed before this Court alongwith an affidavit dated 2nd March, 2009 by the Central Government highlighting the various factors including the recommendations received from the Task Force constituted by the Central Government. Upon consideration of the affidavit of the Central Government, this Court passed a further order on 22nd April, 2009. In Paragraph 5 and 6, it was observed as follows:-

> "**5.** The Revised Nutritional and Feeding Norms for SNP in ICDS Scheme circulated vide letter no.5-9/2005/ND/Tech.(Vol. I) dated 24.02.2009 states that children in the age group of 6 months to 3 years must be entitled to food supplement of 500 calorie of energy and 12-15 gm. of protein per child per day in the form of take home ration

(THR). For the age group of 3-6 years, food supplement of 500 calories of energy and 12-15 gm of protein per child must be made available at the Anganwadi Centers in the form of a hot cooked meal and a morning snack for severely underweight children in the age group of 6 months to 6 years, an additional 300 calories of energy and 8-10 gm of protein would be given as THR. For pregnant and lactating mothers, a food supplement of 600 calories of energy and 18-20 gm of protein per beneficiary per day would be provided as THR.

6. The letter dated 24.02.2009 No.5-9/2005/NO/Tech (Vol. II) has been annexed to the affidavit dated 2nd March, 2009 filed by the Union of India. It is directed that norms indicated in the said letter addressed to all the State Government sand Union Territories have to be implemented forthwith and the respective States/UTS would make requisite financial allocation and undertake necessary arrangements to comply with the stipulation contained in the said letter."

13. This Court noticed the statement made by the learned Additional Solicitor General that Supplementary Nutrition Food (in short 'SNF') in the form of Take Home Ration (in short 'THR') shall be provided to all children in the age group of 6 months to 3 years and additional 300 calories to severely underweight children in the age group of 3

to 6 years, pregnant women and lactating mothers as per norms laid down in the letter dated 24th February, 2009. Accordingly, all Union Territories and State Governments were directed to ensure compliance with the aforementioned stipulations without fail. A further direction was issued to all the States and Union Territories to provide supplementary nutrition in the form of a morning snack and a hot cooked meal to the children in the age group of 3 to 6 years, in accordance with the guidelines contained in the letter dated 24th February, 2009 preferably by 31st December, 2009. Provision was also made for continuance of the Nutritional Programme for Adolescent Girls and Kishori Shakti Yojana till such time as a comprehensive universal scheme for the empowerment of adolescent girls called the Rajiv Gandhi Scheme for the Empowerment of Adolescent Girls is implemented.

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14. The Central Government, through the Ministry of Women and Child Development and Food and Nutrition Board Office vide its letter dated 28th July, 2009, circulated the Recipe to the State Government (respondent No. 1) as per new norms of ICDS for preparation of the food. It was provided that the feeding norms ought to have two components in it, to be provided as supplementary nutrition to the beneficiaries at Anganwadis namely:- Hot Cooked Meal (HCM) and Take Home Ration (THR). Directions were issued that HCM and THR should be given in the form of "energy dense food / micro nutrient fortified food" and should conform to the standards laid by the Prevention of Food Adulteration Act, Integrated Food Law, Infant and Young Child Practices. The micro nutrient fortified food was defined to be the food in which essential mineral and vitamins are added separately to ensure that minimum dietary requirements are met. It was emphasised that to attain the required

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protein content in the food proposed to be supplied, the only source was Soyabean. The food was to be processed by using Extrusion Technology to draw maximum results by use of Soyabean. The guidelines in the aforesaid letter further emphasised that since the revised guidelines laid major stress on micro nutrient fortification of the THR, it required "expert technical supervision" and that it can be achieved by using accurate machines with precision in measuring the quantity in milligrams.

15. It was in response to the directions issued by this Court from time to time and to implement the revised norms set by the Central Government that respondent No. 1, Maharashtra Government passed a resolution on 24th August, 2009. Under this resolution, the Government not only prescribed the procedure for implementing the revised norms but also revised the rates in all the categories of beneficiaries.

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16. Based on the above, an Expression of Interest (in short 'EOI') was taken out by respondent No. 2, the Commissioner, i.e., Integrated Child Development Services Scheme, Maharashtra, on 7th December, 2009 for supply of fortified blended food manufactured through process of extrusion. In response to the aforesaid EOI, the State Government received 351 applications for 34 districts across the State of Maharashtra.

17. The aforesaid EOI was challenged by one Smt. Nanda Chandrabhan Thakur in Writ Petition No. 2588 of 2009 before a Division Bench of the Bombay High Court. Primary challenge of that petitioner was to condition No.6 which required the applicant to possess a turn over of Rs. 1 crore for the last three consecutive financial years. Condition No. 6 of the EOI provided as under:-

"6. The eligible Mahila Mandal, Mahila Sanstha, self helping saving group, should

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attach a certificate about producing of the Food or equivalent like Fortified Blended Premix and supplying the same upto the Anganwadi in ICDS for the last 3 consecutive financial years having a turn over of Rs. 1.00 crores. The said certificate should be certified by the Chartered Accountant. (Year 2006-2007, 2007-2008, 2008-2009).”

18. Upon consideration of the matter, the Division Bench observed that plain language of the condition indicates that only Mahila Mandal, Mahila Sanstha and Self helping Saving Group can participate in the tender process, provided they qualify other requirements in Clause 6. It was further observed that one of the requirements of this clause was that the tenderer should attach a certificate about producing the specified food for three consecutive financial years (2006-2007, 2007-2008 and 2008-2009) having a turnover of atleast one crore. The said certificate should be certified by a Chartered Accountant.

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19. The writ petition was dismissed with the observations that since the petitioners were not espousing the case of Mahila Mandal or Mahila Sanstha or Self helping Saving Group, they were not eligible as per the tender document at all. Secondly, even if the petitioners were held to be eligible, they did not have a turn over of Rs. 1 crore as required under Clause 6. The petitioners had also sought to argue that the condition of Rs. 1 crore would deprive small time traders and business persons from participating in the tender process. This submission was also negated by the Division Bench with the observation that the criteria fixed by the respondent is a policy matter and is keeping in mind all other factors to further the implementation of child development service scheme. The clause was found to be not arbitrary in any manner.

20. It appears that the EOI had also given rise to certain agitations by some of the Mahila Bachat Gats.

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During the pendency of these complaints, the Government decided not to proceed further and stayed the process under the EOI on 16th January, 2010. A Committee was constituted on 19th January, 2010 to go into the complaints. Upon examination of the entire material, the Committee concluded that the Extrusion Technology was necessary to produce the food as required under the directions of the Central Government. On 5th February, 2010, the Committee, therefore, recommended that the stay granted by the State Government may be vacated. The decision was communicated by respondent No. 1 to respondent No. 2 through letter dated 22nd February, 2010. The tender submitted by the petitioner was rejected.

21. This led to the appellant herein filing a Writ Petition No. 1311 of 2010, seeking a direction that the appellant be also considered in respect of supply of extruded fortified blended food / energy food under

ICDS Scheme. However, the aforesaid writ petition was withdrawn on 17th February, 2010 with liberty to approach the Government.

22. It is the claim of the appellant that the writ petition was withdrawn as respondent No. 1 had itself stayed the decision of respondent No. 2 to award the contract and was reviewing the condition Nos. 6, 7 and 8. Not knowing that the stay order dated 16th July, 2010 had been recommended to be vacated on 5th February, 2010, the appellant made a representation to respondent Nos. 1 and 2 for consideration to supply the food under the ICDS Scheme. As noticed earlier, in view of the vacation of the stay on 22nd February, 2010, condition Nos. 6, 7 and 8 remained intact. We may further notice here that in the order dated 22nd February, 2010, respondent No. 1 had decided as under:-

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(i) That 5% of the tender work be reserved for Mahila Mandal / Mahila Bachat Gat etc., who do not have the Extrusion Technology.

(ii) For this 5% work so reserved, the Extrusion Technology is not required.

23. However, on 23rd February, 2010, the decision taken in the letter dated 22nd February, 2010, was withdrawn. It was, however, further provided that "in future, if some Mahila Bachat Gat / Mahila Sanstha / Mahila Mandal made production machinery, set up unit and shown their ability of making products, then the Commissioner, Ekatmik Bal Vikas Seva Yojana, Navi Mumbai will give them an opportunity and will purchase THR production made by them."

24. Thereafter, the appellant submitted three representations on 26th February, 2010, 2nd March, 2010 and 4th March, 2010 requesting respondent

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Nos. 1 and 2 to consider them for supply of the food under ICDS Scheme. It is the case of the appellant that without considering these representations, the respondent Nos. 1 and 2 signed an agreement, awarding the contract to respondent Nos. 4 to 6 for a period of one year, with a clause for extension of two years. Ultimately, in spite of further representations of the appellant, the work order was awarded to respondent Nos. 4 to 6 to support the supply of food material forthwith in accordance with the agreement signed on 28th April, 2010.

25. Aggrieved by the action of respondent Nos. 1 and 2 in awarding the contract to respondent Nos. 4 to 6, the appellant filed a writ Petition No. 4210 of 2010 on 25th August, 2010. The High Court initially passed an order on 30th August, 2010 granting interim relief. Respondent Nos. 1 and 2 filed an application for vacation of stay, the appellant in the reply to the aforesaid application stated that the

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respondent Nos. 4 to 6 have not fulfilled one of the conditions in the original application form namely that of applicants should submit the copies of the documents signed by the notary, which included VAT Clearance Certificate as on 31st March, 2009. It was also stated that the respondent Nos. 4 to 6 had wrongly stated that no tax was due and payable. Upon consideration of the entire matter, the High Court dismissed the writ petition filed by the appellant. Hence the present Special Leave Petition.

26. We have heard the learned counsel for the parties at length. Although, very elaborate submissions have been made by the learned counsel for the parties, it would be appropriate to summarize the submissions.

27. Mr. Mukul Rohtagi, learned senior counsel, appearing for the appellant, submitted that the

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condition Nos. 6, 7, 8 and 9 in the EOI are arbitrary. He further submits that the Government order permitted the grant of contract for a period of one year. However, the agreement entered into with respondent Nos. 4 to 6 provides that the agreement will remain valid for one year and extendable for next 24 months from the date of allotment of the first dispatch advice by the Commissioner with the same terms and conditions. Learned counsel submitted that since the period of one year has expired, it would be appropriate to invite fresh tenders. Learned counsel invited our attention to the Government Resolution dated 24th August, 2009, which clearly provided that as per existing practice, the period of supplying supplementary nutrition food, Mahila Mandal, Women Institutions, Self Assistance Saving Group will be for the period of one year only. Mr. Rohtagi further invited our attention to the Minutes of the meeting held on 5th February, 2010, in view of the

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Government Circular dated 19th January, 2010 regarding selection of tenders. In Paragraph 7 of the Minutes, it is mentioned that "the agreement for the supply of THR will be for one year and the orders for supply will be given for one year only." On the basis of the above, it is submitted that permitting the extension of the contract for three years is contrary to the decisions taken by the Competent Authority. Hence, the contract is liable to be declared illegal. Learned senior counsel, thereafter, submitted that the entire selection process was suspect. Having stayed the selection process, it was vacated only to show undue favour to respondent Nos. 4 to 6. According to the learned senior counsel, it would have been much more transparent if the tender process was conducted afresh. Mr. Rohtagi then submitted that even if the appellant is not successful on the one year issue, respondent Nos. 4 to 6 still could not be selected as they are not qualified. Learned senior

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counsel made a reference to Clause 17 of the EOI, which reads as under:-

- "All applicants should submit the copies of the following documents signed by the Notary.
- Certificate of District Industry Centre, VAT Registration/CST Registration certificate.
- Validity Certificate as per Food Adulteration Prohibition Act, 1954.
- PAN Card.
- ISO 9001 : 2000 Certificate, H.A.C.C.P. Certificate for preparing extruded fortified blended/energy food.
- Income tax returns
- VAT clearance certificate (as on 31.3.2009)
- Evidence/proof to the effect that production centre having permanent structure which is owned public acquired on agreement is in the possession of the Institution."

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28. Mr. Rohtagi submits that the VAT Clearance Certificate given by respondent Nos. 4, 5 and 6 depict the details of tax dues from 1st April, 2006 to 31st March, 2009 as "Nil". The statement made is that amount of tax dues is given as per return. The aforesaid declaration, according to the learned senior counsel is not correct. It is submitted that the information given by the Tax Department in response to an enquiry made by the appellant under the Right to Information shows that respondent Nos. 4, 5 and 6 owe lakhs of rupees. It is further submitted by Mr. Rohtagi that not only the statements made by respondent No. 4 are incorrect but there is concealment of the fact that the aforesaid respondents were black listed by the Tax Department. Mr. Rohtagi submits that cumulative effect of all the aforesaid facts would clearly show that the respondent Nos. 4 to 6 have been shown undue favour by respondent Nos. 1 and 2. Learned senior counsel buttressed this submission on the

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ground that conditions are clearly tailor-made for respondent Nos. 4 to 6, to the exclusion of everybody else.

29. In response to these submissions, Mr. C.U. Singh, learned senior counsel, appearing for respondent Nos. 1 and 2 submitted that there is no condition limiting the contract to one year. In fact, it has always been one year extendable by two years. Learned senior counsel drew our attention to the events leading to the passing of the order by this Court on 22nd April, 2009. Mr. Singh has pointed out that the appellant admittedly does not fulfill any of the conditions, i.e., 6, 7, 8 and 9. The appellant does not have the turn over of over Rs. 1 crore each year for the last continuous three financial years. This condition has already been upheld by the Bombay High Court in Writ Petition No. 2588 of 2009. The appellant also does not fulfill condition No. 9 as admittedly, it does not have a functioning

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unit for preparation of fortified blended nourishing food (premix) prepared by extruded system. Learned senior counsel pointed out that initially in Writ Petition No. 1311 of 2010, the appellant had challenged condition Nos. 6, 8, 13 and 14 of the EOI. This writ petition was withdrawn on 17th February, 2010 with liberty to represent to the Government. The present writ petition was filed on 24th August, 2010 before the Nagpur bench. In this writ petition, none of the tender conditions were challenged. The appellant merely prayed for a declaration that condition No. 6 be deemed to be waived. Learned senior counsel submits that the points urged by Mr. Rohtagi in this Court were never argued before the High Court. Therefore, according to the learned senior counsel, the submissions of the appellant need to be shut out at the threshold. It is further submitted that the representations submitted by the appellant and others were duly considered. The appellant was

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duly heard. The contract was given initially for one year, which was extendable for three years, on satisfactory performance in the twelve months. Therefore, the agreement clearly stipulated that the work order shall be for one year, extendable by 24 months. According to the learned senior counsel, there is no justification for saying that the contract was to be limited only to one year. Learned senior counsel further submitted that under any circumstances, appellant by its own showing has no locus standi to challenge the grant of contract to respondent Nos. 4 to 6. Mr. Singh points out to the submission made by the appellant in I.A. No. 1 of 2010 seeking permission for filing additional documents. In Paragraph 1, the appellant submits that it had submitted the application for supply of ICDS food for all 34 districts of Maharashtra. It is further submitted that all documents as required by the Notice dated 7th December, 2010 were also submitted. The appellant further states that it had

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complied with all conditions mentioned in the application, excepting conditions 6, 7 and 8 of the application form. Mr. Singh submits that in the face of this admission, the appellant does not deserve to be heard at all. He has relied on two judgments of this Court in the case of **Glodyne Technoserve Limited** Vs. **State of Madhya Pradesh & Ors.**[1] and **Larsen and Toubro Limited & Anr.** Vs. **Union of India & Ors.**[2], in support of the submissions that the tender conditions have to be strictly complied with by all the candidates.

30. Mr. P.S. Patwalia, learned senior counsel, appearing for respondent Nos. 4 to 6, submitted that it was on the representations made by various associations and the appellant that the tender process was stayed. Upon consideration of the entire material, the two letters dated 22nd February, 2010 and 23rd February, 2010 were issued. Learned senior

[1] (2011) 5 SCC 103

[2] (2011) 5 SCC 430

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counsel further submitted that although in the letter dated 22nd February, 2010, it was stated that the period of the tender would be one year, the same was withdrawn the next date. Thereafter, the respondent Government reverted back to the EOI. It is further submitted that respondent Nos. 4 to 6 had already been supplying hot meals for a number of years. The condition with regard to supply of THR was added pursuant to the orders passed by this Court, as noticed earlier. In any event, it is submitted by the learned senior counsel that the condition of one year relates only to hot food, it has no connection to the supply of THR. The respondent Nos. 4 to 6 are supplying only THR. It is further submitted that the Sales Tax objection raised by the appellant is wholly without any basis. On 31st March, 2009, there was no Sales Tax dues. This is evident from the assessment made in favour of the respondents, which was much later in point of time. As on 31st March, 2009, the statement

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made by the respondents was in accordance with the return filed. Learned senior counsel also submitted that these arguments were not raised before the High Court. On the question of black listing, it is submitted that the recommendation for black listing was based on an incident in the year 2004. This was subsequently explained and there was no black listing. Mr. Patwalia also emphasised that the appellant is even otherwise ineligible. It is not in possession of a unit. A reference is made in this connection to the Lease Agreement executed by the appellant on 24th December, 2009. In this agreement, the appellant would be permitted to lease out an existing manufacturing facility. Therefore, on 7th December, 2009, relevant for the purpose of EOI, the appellant did not have a manufacturing unit. Again referring to the Joint Venture Agreement, entered into by the appellant with a third party, it is pointed out that it is without any definite terms and conditions, no consideration

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was so ever provided for the Joint Venture Agreement. Mr. Patwalia further submits that the appellant is trying to mislead the Court by relying on an Analysis Certificate dated 25th December, 2009, which shows that the appellant had manufactured fortified blended sukhadi premix on 12th December, 2009. Since the appellant did not have a manufacturing unit, the certificate is clearly procured for the purposes of this case. Learned senior counsel, therefore, submits that the High Court rightly dismissed the writ petition filed by the appellant herein. In reply to the submissions, Mr. Rohtagi submitted that the appellant is concerned only with transparency which must be observed in any tender process. The appellant is only desirous of getting an opportunity to participate in the tender process.

31. We have considered the submissions made by the learned counsel for the parties. We are of the

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considered opinion that the writ petition has been rightly dismissed by the High Court after examination of the entire issue. The High Court concluded that the appellant failed to satisfy the eligibility criteria as contained in Clause 6, as noticed earlier. The aforesaid clause requires that the tenderer should have produced the specified food for the last three consecutive years and supplied the same to Anganwadi's in ICDS. Since the appellant did not possess a suitable manufacturing unit, the appellant would be rendered ineligible on this score alone. As pointed out by Mr. C.U. Singh, the appellant admitted in terms in its pleadings in I.A. No. 1 of 2010 that it does not satisfy conditions 6, 7 and 8. We could have, therefore, dismissed the appeal solely on the ground that the appellant had made a voluntary admission by which it was bound. However, keeping in view the importance of the issues involved, i.e., the provision of supplementary diet to

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a segment of the Indian population, which is either severely undernourished or in need of extra calories, we have chosen to examine the entire matter to ensure that the Scheme is being implemented in its letter and spirit by all the participating agencies.

32. In our view, the High Court also correctly observed that the validity of the eligibility criteria contained in Clause 6 of the tender dated 7th December, 2009 has already been upheld by the Division Bench whilst dismissing the Writ Petition No. 2588 of 2009. The High Court also correctly negated the submissions of the appellant that in spite of not having a unit of its own, the appellant ought to be declared eligible. The High Court also found that in the facts and circumstances of the case, it was only respondent Nos. 4 to 6, who were suitable for grant of contract.

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33. We are also unable to accept the submission of Mr. Rohtagi that the original Government decision had limited the period of contract to one year. In fact, as demonstrated by the learned senior counsel for the respondents, the Government decision as well as tender condition clearly stipulated that the contract would be initially for one year. Upon completion of one year, the work of the successful candidate would be reassessed. In case, it is found that the performance has been satisfactory, the tender shall be extended for a period of two more years.

34. We are also of the considered opinion that the food, which is to be supplied to the recipients as a part of the supplementary nutrition programme has to be prepared in the manner prescribed by the Government for safety and nutrient composition of the food. It can not be left to uncertainties of the machinery available with individual manufacturers.

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The successful supplier is duty bound to necessarily comply with all the specifications laid down by the Government in its norms. Mr. C.U. Singh and Mr. Patwalia, in our opinion, by referring to the various documents, have clearly demonstrated that the appellant is not eligible at all to be even considered in the tender process. It has also been pointed out that all the objections raised by the appellant and other Mahila Mandal / Mahila Sanstha / Mahila Bachat Gat etc. etc. were duly considered by the Government. This is evident from the letters dated 22nd February, 2010 and 23rd February, 2010.

35. We are also not impressed by the submission of Mr. Rohtagi that the condition of having Rs. 1 crore over the three previous consecutive years, is either arbitrary or whimsical. Mr. C.U. Singh by making detailed reference to the counter affidavit has shown that in the State of Maharashtra, there are 34 districts having an annual value in terms of at-least

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Rs. 1.7 crores per district. Therefore, the condition of asking for minimum Rs. 1 crore turn over for the last three years can not be said to be arbitrary. In fact, the condition would be of utmost importance.

36. We also find substance in the submission of Mr. C.U. Singh and Mr. Patwalia that EOI had deliberately stressed on the need of precise measurements for the preparation of the food. The supplier is required to provide a fine mix of all kinds of ingredients including the revised intake of proteins and calories to the precise level. In fact, the level of precision is earmarked for each kind of food. The concept behind the same can not be permitted to be demonized by referring to it as food prepared by "automated machines". The procedure adopted is necessary to ensure that there is "zero infection" in the food which is going to be consumed by infants and the children who are already under nourished. It cannot be over emphasised that,

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since the beneficiaries of the Dense Energy Food and Fortified Blended Mixture are infants from the age group of 6 months to 3 years and pregnant and lactating mothers, it was all the more desirable to have fully automated plants. Such procedure avoids the use of human hands in processes like – handling, cleaning, grinding, extrusion, mixing etc., all of which are done automatically.

37. We are of the considered opinion that the aforesaid considerations can not be said to be extraneous to the purpose for which EOI was floated.

38. Taking into consideration, all the facts and circumstances of the case, we find the appeal to be wholly devoid of any merit and is, therefore, dismissed.

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.....J.
[Altamas Kabir]

.....J.
[Surinder Singh Nijjar]

New Delhi;
August 19, 2011.

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