



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

WRIT PETITION (L) NO.36983 OF 2024

Vast Media Network Pvt. Ltd.

Through its Director Abhijit Rane,
Office at Gr 02 Harmony Commercial,
C wing, Goregaon West, Mumbai,
Maharashtra - 400104

....Petitioner

Versus

1. **The State of Maharashtra**

Through its Principal Secretary,
Ministry of Dairy Development,
Mantralaya, Mumbai 400032

2. **The Chief Executive Officer**

Aarey Milk Colony, Aarey Colony,
Goregaon, Mumbai, Maharashtra 400065

3. **The Commissioner,**

Maharashtra Dairy Development
Maharashtra State,
New Administrative Building,
Abdul Gafarkhan Road, Worli Seaface,
Mumbai- 400018

4. **Nitin Laxmidas Dama**

46/370, Motilal Nagar No. -1,
road no.-10, Goregaon West,
Mumbai-400 104, Maharashtra

....Respondents

Mr. Anil V. Anturkar, Senior Advocate with Mr. Harshvardhan Suryavanshi and Mr. Sandeep Dubey i/b Mr. Piyush Deshpande, *for Petitioner.*

Mr. Kevic Setalwad, Senior Advocate with Ms. P.H. Kantharia, Government Pleader, Ms. Jyoti Chavan, Additional Government Pleader and Ms. Nazia Sheikh, AGP, *for Respondent Nos. 1 to 3.*

Mr. Aseem Naphade with Ms. Chaitra Rao, Ms. Meera Parmar and Mr. Jatin Sheth, *for Respondent No. 4.*

**CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.
RESERVED ON : 13 JUNE 2025.
PRONOUNCED ON : 19 JUNE 2025.**

J U D G M E N T (*Per : Sandeep V. Marne, J.*) :

1. The Petitioner has filed the present Petition seeking cancellation of the tender process in pursuance of Tender Notice dated 24 July 2024 issued by Respondent Nos. 1 to 3 for grant of lease of 16 warehouses and Central Store Office for tenure of 30 years. Petitioner is aggrieved by non-allotment of Central Store Office to it even though its financial bid is identical to that of Respondent No.4. It is aggrieved by action of the tendering authority in applying the preference clause in the tender notice (providing for preference to bidder applying for higher number of warehouses), which, according to the Petitioner, applies only in relation to warehouses and not for the Central Store Office.

2. Brief facts leading to filing of the present Petition are that Respondent Nos.1 to 3 had floated tender for grant of lease for a period of five years in respect of its Central Store Office. Petitioner was successful in the said tender process and was granted lease in respect of Central Store Office for the period from 1 March 2013 to 28 February 2018. It is the case of the Petitioner that upon expiry of the tenure of lease, extensions were granted to him. On 13 October 2023 Respondent No.2 published Tender Notice for grant of license in respect of the Central Store Office for the tenure of 11 months. Petitioner applied in pursuance of the said Tender Notice. However Respondent No.2 took a decision not to proceed with the said Tender Notice for grant of license. It was apparently decided to allot the Central Store Office on lease for a tenure of 30 years. It was also decided to grant similar leases in respect of 16 warehouses on Respondent Nos. 1 to 3. Accordingly, Tender Notice No.1 of 2024 dated 24 July 2024 was issued for grant of lease in respect of 16 Warehouses and Central Store Office for a tenure of 30 years. Petitioner apparently objected to cancellation of the earlier tender process. However, it also submitted its bid in respect of Tender Notice dated 24 July 2024 for allotment of Central Store Office. Petitioner apparently did not submit bid for allotment of any of the 16 warehouses. Respondent No.4 also submitted bid for allotment of Central Store Office in addition to allotment of eight warehouses. Respondent No.4 was declared as successful bidder in respect of one warehouse (Warehouse No.16) and Central Store Office. Though Petitioner and Respondent No.4 had submitted financial bid at same rate i.e. Rs.75/- per square feet per month for

Central Store Office, decision was taken to allot lease in respect of Central Store Office to Respondent No.4 by applying preference clause in the tender document, since Respondent No.4 had submitted bid for more number of warehouses. Petitioner got aggrieved by decision of Respondent Nos.1 to 3 in allotting Central Store Office to Respondent No.4 and addressed several representations. Respondent Nos.1 to 3 however went ahead and awarded lease in respect of Central Store Office in favour of Respondent No.4 for a tenure of 30 years. Petitioner is aggrieved by the impugned tender process and has filed the present Petition seeking cancellation of the entire tender process.

3. We have heard Mr. Anturkar, the learned Senior Advocate appearing for the Petitioner. He would raise only three contentions in support of challenge to the impugned tender process. Firstly, he would submit that the scrutiny sheet reflects that Petitioner's bid was considered and rejected for allotment of Warehouse Nos.7 and 10 when in fact it had never submitted any bid for those warehouses and had submitted the same for Central Store Office. He would therefore submit that the impugned decision declaring the Petitioner as disqualified for Warehouse Nos.7 and 10 suffers from gross non-application of mind. Secondly, he would submit that the scrutiny sheet reflects that the bid of the Petitioner is rejected by applying the eligibility criteria at Serial No.1 whereas in the Affidavit-in-Reply Respondent Nos.1 to 3 have averred that Petitioner's bid is not accepted by applying condition set out in paragraph 4 (IV) of the Tender Notice. That this again shows gross

non-application of mind in implementation of the impugned tender process. He would also rely upon judgment of the Constitution Bench in *Mohinder Sing Gill & Anr. vs. Chief Election Commissioner, New Delhi & Ors.*¹ in support of his contention that reasons cannot be supplemented in the form of Affidavit and that validity of the order must be adjudged only on the basis of reasons stipulated in the impugned decision. Thirdly, Mr. Anturkar would contend that rejection of Petitioner's bid by applying Condition No.4 (IV) is grossly erroneous as the said clause has relevance only to warehouse and has absolutely no application for evaluating bids in relation to the Central Store Office. He would submit that the Tender Notice clearly draws distinction between the warehouses and Central Store Office. That therefore a bidder bidding for more number of warehouses cannot be given preference while considering the bid for allotment for Central Store Office. On the above three broad submissions, Mr. Anturkar would pray for setting aside the impugned tender process *qua* Central Store Office.

4. The Petition is opposed by Mr. Setalwad, the learned Senior Advocate appearing for Respondent Nos.1 to 3. He would submit that Respondent Nos.1 to 3 have rightly given preference to the bidder submitting bids in respect of higher number of warehouses. That a composite tender was issued for grant of lease in respect of warehouses as well as Central Store Office. That no distinction can be drawn between warehouses and Central Store Office as the Central Store Office is shown in the same column as that of warehouses in the table at number of places. He would submit that

1 AIR 1978 SC 851

the tendering authority has not made any distinction between warehouses and Central Store Office and that its interpretation would be final and binding.

5. Mr. Setalwad would submit that since total 17 premises were put up for auction, the tendering authority's endeavor was to award leases to minimum number of entities and accordingly preference clause was inserted to award lease in respect of one entity applying for higher number of warehouses. Since Respondent No.4 had applied for allotment of nine premises, as against Petitioner applying for allotment of only one premise, the tendering authority has rightly granted preference to the Respondent No. 4. Mr. Setalwad would accordingly pray for dismissal of the Petition.

6. Mr. Naphade, the learned counsel appearing for Respondent No.4 would submit that the tendering authority has rightly applied Clause 4(IV) of the Tender Document after noticing that the financial bids submitted by Petitioner and Respondent No.4 were identical at Rs.75/- per square feet per month. He would submit that the tendering authority is entitled to give preference to an entity applying for higher number of warehouses. That no distinction is drawn in the Tender Document between warehouses and Central Store Office and there is uniform application of the terms and conditions in the Tender Document in respect of warehouses and Central Store Office. Mr. Naphade would accordingly pray for dismissal of the Petition.

7. Rival contentions of the parties now fall for our reconsideration.

8. In the present case, there is no dispute to the position that Petitioner and Respondent No.4 are found technically qualified in the tender process. Though ten bids were submitted, only seven bidders were found technically qualified, which includes Petitioner and Respondent No.4. While Petitioner applied for allotment of only Central Store Office, Respondent No.4 had applied for allotment of eight warehouses and the Central Store Office. Thus Respondent No.4 had undoubtedly submitted bids for allotment of more premises than that of the Petitioner. Both Petitioner as well as Respondent No.4 quoted the same rate of Rs.75/- per square feet per month for the Central Store Office. On account of quotation of the same rate, the tendering authority was faced with the difficulty of electing the successful bidder. The Tendering Authority took recourse to Clause 4(IV) of the tender document, which reads thus :

“IV जे निविदाकार ई-निविदेमध्ये जास्तीत जास्त गोदामांसाठी एकत्रितपणे देकार सादर करतील त्या निविदाकारास निवड प्रक्रियेत प्राधान्य दिले जाईल.”

9. Thus, under Clause 4(IV) of the tender document, preference was required to be given in the selection process to the bidder submitting bids for maximum number of warehouses. As observed above, there is no dispute to the position that Respondent No.4 had submitted bids in respect of total nine premises whereas Petitioner had submitted bid only for one premise. Faced with the situation of application of Preference Clause No. 4(IV) by the tendering

authority, Petitioner has taken a stand that the said preference clause has no application to selection of bidders for allotment of Central Store Office.

10. According to Petitioner, the Tendering Authority has made conscious distinction between the warehouses and Central Store Office. In the opening portion of the Tender Document, total 17 premises put up for auction were described as under:

क्र.	गोदाम क्रमांक	अनामत रकम (सुरुवातीच्या तीन महिण्यांचे गोदाम भाडे सुरक्षा अनामत रकम)	शेरा
१.	गट क्र.२ गोदाम क्र.१ (क्षेत्रफळ ३२४४ चौ.फूट)	रु.६,२२,८४८/-	एकापेक्षा अधिक गोदामासाठी निविदा भरावयाच्या असल्यास प्रत्येक गोदामासाठी निश्चित करण्यात आलेल्या अनामत रकमेच्या बेरजे इतकी अनामत रकम भरणे आवश्यक राहील.
२.	गट क्र.२ गोदाम क्र.२ (क्षेत्रफळ ३२६८ चौ.फूट)	रु.६,२७,४५६/-	
३.	गट क्र.२ गोदाम क्र.३ (क्षेत्रफळ ३२३५ चौ.फूट)	रु.६,२१,१२०/-	
४.	गट क्र.२ गोदाम क्र.४ (क्षेत्रफळ ३२३९ चौ.फूट)	रु.६,२१,८८८/-	
५.	गट क्र.२ गोदाम क्र.५ (क्षेत्रफळ ३२१७ चौ.फूट)	रु.६,१७,६६४/-	
६.	गट क्र.२ गोदाम क्र.६ (क्षेत्रफळ ७,११३ चौ.फूट)	रु.१३,६५,६९६/-	
७.	गट क्र.२ गोदाम क्र.७ (क्षेत्रफळ ७,११३ चौ.फूट)	रु.१३,६५,६९६/-	
८.	गट क्र.२ गोदाम क्र.८ (क्षेत्रफळ ७,११३ चौ.फूट)	रु.१३,६५,६९६/-	
९.	गट क्र.२ गोदाम क्र.९ (क्षेत्रफळ ७,११३ चौ.फूट)	रु.१३,६५,६९६/-	
१०.	गट क्र.२ गोदाम क्र.१० (क्षेत्रफळ ७,११३ चौ.फूट)	रु.१३,६५,६९६/-	
११.	गट क्र.२ गोदाम क्र.११ (क्षेत्रफळ ७,११३ चौ.फूट)	रु.१३,६५,६९६/-	
१२.	गट क्र.२ गोदाम क्र.१२ (क्षेत्रफळ ३२६८ चौ.फूट)	रु.६,२७,४५६/-	
१३.	गट क्र.२ गोदाम क्र.१३ (क्षेत्रफळ ३२६८ चौ.फूट)	रु.६,२७,४५६/-	
१४.	गट क्र.२ गोदाम क्र.१४ (क्षेत्रफळ ३२६८ चौ.फूट)	रु.६,२७,४५६/-	
१५.	गट क्र.२ गोदाम क्र.१५ क्षेत्रफळ ७,५०० चौ.फूट)	रु.१४,४०.०००/-	
१६.	गट क्र.४ गोदाम क्र.१६ (क्षेत्रफळ २,८०० चौ.फूट)	रु.५,३७,६००/-	
१७.	गट क्र.२ मध्यवर्ती भांडार कार्यालय क्षेत्रफळ ६१९ चौ.फूट)	रु.१,१८,८४८/-	

11. According to the Petitioner, the premises at Serial Nos.1 to 16 are warehouses whereas the premises at Serial No.17 is the Central Store Office, which is consciously kept separate and distinct from that of the warehouses. It is also submitted that Clause 4(IV) uses the word “*warehouses*” and does not use the word “*premises*”. We find considerable force in the submission canvassed on behalf of the Petitioner. Clause 4(IV) of the Tender Document provided for grant of preference to the bidder submitting bids in respect of maximum number of ‘*warehouses*’. If the Tendering Authority intended to apply preference clause 4(IV) even to Central Store Office, it ought to have used the word “*premises*” rather than using the word “*warehouses*” in Clause 4(IV).

12. Even otherwise, there are several clauses in the Tender Document, which clearly indicate that conscious distinction is made by the Tendering Authority between warehouses and Central Store Office while implementing the impugned tender process.

13. The opening paragraph of the Tender Notice clearly draws distinction between “16 warehouses” and “1 Central Store Office” and reads thus :

“आरे दुग्धवसाहतीतील गट क्र.२ येथील मधील गोदाम क्र.१ (क्षेत्रफळ ३२४४ चौ. फुट) गोदाम क्र. २ (क्षेत्रफळ ३२६८ चौ. फुट) गोदाम क्र.३ (क्षेत्रफळ ३२३५ चौ. फुट) गोदाम क्र.४ (क्षेत्रफळ ३२३९ चौ. फुट) गोदाम क्र. ५ (क्षेत्रफळ ३२१७ चौ. फुट) तसेच गोदाम क्र. ६,७,८,९,१० व ११ (क्षेत्रफळ प्रत्येकी ७,११३ चौ. फुट) गोदाम क्र.१२, १३ व १४ (क्षेत्रफळ प्रत्येकी ३२६८ चौ. फुट) व मध्यवर्ती भांडार कार्यालय (क्षेत्रफळ ६१९ चौ. फुट) गट क्र. २५ गोदाम क्र.१५ मधील (क्षेत्रफळ ७,५०० चौ. फुट) व गट क्र.४ मधील गोदाम क्र.१६ (क्षेत्रफळ २,८०० चौ. फुट) अशी १६ गोदामे व १ भांडार कार्यालय, ३० वर्ष कालावधीसाठी भाडे तत्वावर “आहे त्या स्थितीत” “(AS IT IS)” भाडेतत्वावर देण्यासाठी इच्छुकांकडून निविदा मागविण्यात येत आहे. इच्छुक निविदाकार १६ गोदामापैकी ०१ गोदाम/काही गोदामे/सर्व गोदामासाठी निविदा भरू शकतील. सदर निविदासंच दि. २६/०७/२०२४ पासून

www.mahatenders.gov.in या संकेतस्थळावर उपलब्ध करून देण्यात येत आहे.”

(emphasis and underlining added)

14. What is also pertinent to note here is that the bidders were granted liberty to submit bids for either for one warehouse/some warehouses/all warehouses ‘out of the 16 warehouses’. This is clear from the stipulation that “इच्छूक निविदाकार १६ गोदामापैकी ०१ गोदाम/काही गोदामे/सर्व गोदामासाठी निविदा भरू शकतील.” Thus the right to apply for allotment of more than premises was restricted only in respect of ‘16 warehouses’, thereby drawing a conscious distinction between ‘warehouses’ and ‘Central Store Office’.

15. Going further, the list of 17 premises also clearly made a distinction between ‘16 warehouses’ and the ‘Central Store Office’ as the remark “एकापेक्षा अधिक गोदामासाठी निविदा भरावयाच्या असल्यास प्रत्येक गोदामासाठी निश्चित करण्यात आलेल्या अनामत रकमेच्या बेरजे इतकी अनामत रकम भरणे आवश्यक राहील” applied only to the 16 warehouses and the said remark was not made in respect of the premises at Serial No.17 being the Central Store Office. In our view therefore, the Petitioner has rightly contended that the preference clause in paragraph 4(IV) applied only to bidders in respect of the 16 warehouses and that the same had absolutely no connection with implementation of tender process *qua* Central Store Office. The Tendering Authority has consciously used the word “warehouses” in Clause 4(IV) instead of using the term “Premises” therein. It has made conscious distinction between 16 warehouses and one Central Store Office in the opening paragraph of the Tender Document. In our view therefore, the

action of the tendering authority in giving preference to Respondent No.4 only on account of he submitting bids for eight warehouses plus Central Store Office over the Petitioner is clearly arbitrary, irrational and against the tender conditions.

16. While holding that the decision of the tendering authority in granting preference to Respondent No.4 by application of Condition No.4 (IV) to be arbitrary and irrational, we are conscious of the settled position of law that interpretation of the tendering authority is final and binding on bidders. However, the present case does not involve two possible interpretation of Clause 4(IV). The tendering authority itself has drawn a conscious distinction between 16 warehouses and one Central Store Office in the Tender Document. Having done so, it ought to have restricted the preference clause only in respect of bidders applying for allotment of warehouses. Application of preference Clause 4(IV) to bidder applying for allotment of Central Store Office is clearly erroneous. Since the tender conditions are clear and unambiguous, in our view, Clause 4(IV) had no application while allotting the Central Store Office premises, which is clearly distinct from the 16 warehouses as per the Tender Document itself.

17. Since Petitioner and Respondent No.4 have quoted same rate i.e. Rs.75/- per square feet, the tendering authority could have entered into renegotiations with both the bidders and ought to have allotted the Central Store Office only to the bidder offering higher rate. We are fortified in observing so in view of judgment of the Apex Court in *Ram and Shyam Co. vs. State of Haryana and Ors.*²

² (1985) 3 SCC 267

18. Mr. Anturkar has fairly contended that the Petitioner is open for renegotiation process and does not insist that the Central Store Office must be allotted to it even though the rate quoted by Respondent No.4 is identical. We find this approach on the part of the Petitioner to be fair and reasonable.

19. If Petitioner and Respondent No.4 are permitted to renegotiate their bids, the same would benefit Respondent Nos.1 and 3 who would be in a position to secure better rate for allotment of the Central Store Office. The Central Store Office is ultimately the property of the State Government and it is in larger public interest that the said premises fetch higher rent. It is also pertinent to note that the premises would be allotted for fairly long tenure of 30 years and this is yet another reason why the public interest demands that the premises are allotted at maximum possible rate.

20. Considering the peculiar facts and circumstances of the present case, we are of the view that the impugned decision of allotting the Central Store Office to Respondent No.4 deserves to be set aside for the time being. Instead Petitioner and Respondent No.4 need to renegotiate their offers with Respondent Nos.1 to 3 and the allotment needs to take place in favour of the entity amongst the two offering better rate. For this limited purpose, the impugned tender process needs to be revived only in respect of Central Store Office. Since Petitioner and Respondent No.4 have quoted same rate of Rs.75/- per square feet per month, Respondent Nos.1 to 3 need to invite them for renegotiations so as to ensure that the Central Store

Office is ultimately allotted to the entity offering higher rate. Merely because the Lease Agreement is executed in favour of Respondent No.4 and possession thereof is granted in his favour, the same cannot be a reason enough for not entertaining the present Petition. The possession has been handed over to Respondent No.4 during pendency of the present Petition by taking the same away from the Petitioner, on 23 January 2025. Considering the position that the lease would be in respect of long period of 30 years, mere possession of the Central Store Office by Respondent No.4 for about five months would not create any equities in its favour. Since the Petition has remained pending, execution of the Lease Deed as well as grant of possession of Central Store Office to Respondent No.4 was obviously subject to the final outcome of the Petition.

21. We accordingly proceed to pass the following order :

- i) Allotment of Lease of Central Store Office in favour of Respondent No.4 is set aside and the tender process initiated vide Notice dated 24 July 2024 is restored *qua* the Central Store Office.
- ii) Since Petitioner and Respondent No.4 have quoted same rate of Rs.75/- per square feet per month, Respondent Nos.1 to 3 shall invite Petitioner and Respondent No.4 for renegotiations. After holding the renegotiations, Respondent Nos.1 to 3 shall allot lease in respect of Central Store Office to the entity offering higher rate. Except the Petitioner and Respondent No.4, no other bidder shall be entitled to participate in such renegotiation process.

iii) Till fresh decision is taken for allotment of lease in respect of Central Store Office, Respondent No.4 shall continue to hold possession thereof. In the event of Respondent Nos.1 to 3 taking decision to allot the lease in respect of Central Store Office in favour of the Petitioner, Respondent No.4 shall forthwith vacate the possession of the Central Store Office within two weeks of decision of Respondent Nos.1 to 3.

22. With the above directions, the Petition is **partly allowed and disposed of**. Considering the facts and circumstances of the present case, there shall be no order as to costs.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)

Digitally signed
by
SUDARSHAN
RAJALINGAM
KATKAM
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