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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1436 OF 2023

Kirvan Vendsol Pvt. Ltd.

.. Petitioner

Vs.

The State of Maharashtra & Ors.

.. Respondents

Mr. Srirang Katneshwarkar a/w Mr. Deepak Pote i/by Mr. Ajay K. Kanawade for petitioner.

Mr. P. P. Kakade, Govt. Pleader a/w Mr. B. V. Samant, AGP for respondents/State.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: FEBRUARY 3, 2023

P.C.:

- 1.** The respondent no.1 floated e-tender for selection of supplier for Supply and Installation of Automatic Sanitary Pad Vending Machines, Sanitary Napkins & Incinerators along with Sanitary Pads in Government schools in the State of Maharashtra Prathamik Shikshan Parishad (MPSP).
- 2.** The petitioner claims to be a start-up and MSME. As per the tender conditions for a tenderer to be eligible to apply, it should possess past three years' experience and turnover of Rs.12 crores. The petitioner does not qualify in both these conditions.
- 3.** The learned counsel for the petitioner submits that there is a policy of the Government to encourage the start-ups. The

petitioner is a start-up, registered in the year 2019. The Central Government under its Circular dated 20th September, 2016 has directed the departments to relax the conditions of prior turnover and prior experience in public procurement to all start-ups (whether micro and small enterprises or otherwise). The learned counsel submits that the petitioner being registered in the year 2019 would be categorized as start-up for a period upto five years. In view of that, it was incumbent upon the respondents to allow the petitioner to bid in the tender process without insisting for past experience and required turnover. According to the learned counsel, the State Government also has such a policy of encouraging the start-ups. The learned counsel refers to the State Government Resolution dated 1st December, 2016.

4. The learned counsel submits that the tender conditions are illegal. As per the tender, the maximum temperature required is 800 degree Celsius, whereas as per the norms for disposal of the solid waste, the same has to be upto 950 degree Celsius. The reference is made by the learned counsel to the Solid Waste Management Rules, 2016.

5. The learned counsel submits that in such a scenario this Court may intervene in the matter. The learned counsel relies upon the judgment of this Court in the case of **Tirupati Construction, Latur vs. State of Maharashtra & Ors.**, reported in 2021 (4) Mh.L.J. 428.

6. The learned AGP submits that the circular relied upon by the petitioner is issued by the Central Government and applicable to its departments. Moreover, procurement is for supply of sanitary napkins to the adolescent girls of the

schools in the State of Maharashtra. It is necessary to maintain the quality as it would concern the health of the school girls and in such a case the conditions of experience and turnover cannot be relaxed. According to the learned AGP as per the State of Maharashtra Government policy, the tenders are reserved for MSMEs in respect of 240 items. This is only to encourage the start-ups and MSMEs.

7. We have considered the submissions.

8. The tender in question is for selection of supplier for supply and installation of automatic sanitary pad vending machines, sanitary napkins & incinerators along with sanitary pads in Government schools in the State of Maharashtra Prathamik Shikshan Parishad (MPSP). The same is to further the object of promotion of safe and hygienic menstrual practices in the State especially for school-going adolescent girls. The object of the project has been detailed in the tender. The same reads thus: -

“b) Objective of the Project:

- 1) Encourage safe and hygienic menstrual practices in school-going adolescent girls.
- 2) Stimulate safeguards from conventional dogma associated with menstruation.
- 3) Promote healthy habits and eradicate stigma.
- 4) Improve the schooling-experience of adolescent girls with menstrual hygiene education, accessible sanitary products, paid relief, and adequate sanitary facilities at school.
- 5) To minimize girls' dropout rates, so the learning continues unaffected.
- 6) Instant hassle-free access to sanitary essentials.
- 7) Access to proper methods of disposal of menstrual waste.

8) Development of girl-friendly safe school spaces.

Through this Request for Information, Maharashtra Prathamik Shikshan Parishad intends to shortlist supplier for Supply and Installation of Sanitary Pad Vending Machine & Incinerators in Government schools in the State of Maharashtra."

9. As the project is for safe and hygiene menstrual practices in school-going adolescent girls and is for supply of sanitary napkins in the Government schools in the State of Maharashtra, naturally, the predominant factor that would have to be kept in mind by the State is the quality of the sanitary napkins to the school-going girls and for that purpose the past experience is utmost necessary. Further, the supply is to 9940 schools in the State of Maharashtra. Large number of supplies would be required and for that purpose the past turnover and experience would be relevant.

10. As has been rightly pointed out by the learned counsel for the petitioner that this Court would not sit over as an appellate authority and this Court would interfere only if it is found that the decision is arbitrary, the conditions are illegal, irrational, then only this Court would interfere. This Court would not sit in appeal over decisions of executive authorities or instrumentalities. Plausible decisions need not be overturned, and latitude ought to be granted to the State in exercise of executive powers.

11. Naturally, as the safety and hygiene menstrual practices in school-going adolescent girls is of paramount importance and for that purpose the high quality will have to be maintained, we do not find that there is any illegality in the tender conditions of past experience and turnover.

12. We are not inclined to go into the other challenge on the ground of temperature required to be maintained, as the petitioner is not qualified for bidding of the tender.

13. In light of that, no case is made out for interference. The writ petition is dismissed. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
PANDIT
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