

ITEM NO.2

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C).....CC 19064/2016

(Arising out of impugned final judgment and order dated 11/07/2016 in WP No. 3359/2016 passed by the High Court of Bombay at Aurangabad)

JAYSHREE MAHILA BACHAT GAT AND ORS.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

(With permission to file SLP and interim relief and office report)
(For final disposal)

WITH S.L.P.(C) No.29603/2016

(With appln.(s) for exemption from filing O.T. and appln.(s) for exemption from filing c/c of the impugned judgment and interim relief and office report)

S.L.P.(C) No.30079/2016

(With appln.(s) for exemption from filing c/c of the impugned judgment and appln.(s) for exemption from filing O.T. and interim relief and office report)

S.L.P.(C)...CC 19550/2016

(With appln.(s) for permission to file SLP and office report)

S.L.P.(C) No.30088/2016

(With appln.(s) for exemption from filing O.T. and appln.(s) for exemption from filing c/c of the impugned judgment and interim relief and office report)

S.L.P.(C)...CC 19562/2016

(With appln.(s) for permission to file SLP and interim relief and office report)

S.L.P.(C) No.30156/2016

(With appln.(s) for exemption from filing O.T. and appln.(s) for exemption from filing c/c of the impugned judgment and interim relief and office report)

S.L.P.(C)...CC 19656/2016

(With appln.(s) for permission to file SLP and office report)

S.L.P.(C) No.29178/2016

(With appln.(s) for exemption from filing O.T. and appln.(s) for exemption from filing c/c of the impugned judgment and interim relief and office report)

S.L.P.(C) No.29955/2016

(With appln.(s) for exemption from filing O.T. and appln.(s) for exemption from filing c/c of the impugned judgment and interim relief and office report)

S.L.P.(C)...CC Nos.19272-19273/2016

(With appln.(s) for permission to file SLP and office report)

S.L.P.(C) No.10103/2016

(With appln.(s) for intervention and interim relief and office report)

S.L.P.(C)...CC 7909/2016

(With appln.(s) for permission to file SLP and interim relief and office report)

Date : 12/01/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. Colin Gonzalves, Sr. Adv.
Ms. Olivia Bang, Adv.
Mr. Aditya Srivastava, Adv.
Mr. Satya Mitra, AOR

Mr. Viraz Kadam, Adv.
Mr. Nishant Ramakantrao Katneshwarkar, AOR

Mr. Gagan Sanghi, Adv.

Mr. Abhijeet Sinha, AOR

For Respondent(s)

Mr. Maninder Singh, Adv.

Mr. Sudhanshu S. Choudhari, AOR

Mr. Amol Nirmalkumar Suryawanshi, AOR

Mr. Guru Krishna Kumar, Sr. Adv.
Mr. Shashibhushan P. Adgaonkar, Adv.
Mr. Nakul Mohta, Adv.

Mr. K. Radhakrishna, Sr. Adv.
Mr. R.K. Verma, Adv.
Mr. Gurmeet Singh Makkar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Permission to file the special leave petition is
granted.

Mr. Colin Gonsalves, learned senior counsel appearing on behalf of the petitioners has pointed out that the High Court has adverted to the survey made about the eligible units on the basis of the decision rendered in Shagun Mahila Udyogik Sahakari Sanstha Maryadit vs. State of Maharashtra and Others (2011) 9 SCC 340 and has observed as follows:-

"The petitioners and similarly situated units have installed the same by spending huge amounts and they would be rendered without any work and the plant would be idle and rusting. It would not be in consonance with the decentralisation policy as envisaged by the various Departments of the Government and the orders of the Apex Court. The Respondents should do well to reconsider the authority given to the Commissioner to give contract or allot tender in respect of 50% of the Projects to any one Mahilamandal/self help group. It should not be in a manner that monopolistic situation would be created and these Projects would be controlled by a few handful suppliers as is apprehended by the petitioners. The Respondents can conduct the survey of eligible units as in many of the blocks existing contracts are up to the year 2017 and the tender notice itself states that even if pursuant to the tender any offer is accepted in respect of the blocks of which contract is already existing, the same will be operative only after the said contract period is over; and again held thus:-

"The impugned tender notice is set aside to the extent of reducing the projects to 70. All other terms and conditions of the tender are held valid. Respondents shall conduct the survey of the eligible units with regard to extrusion technology (Fully automatic plant) and satisfying all other conditions and shall thereafter proceed to form projects and issue tender notice accordingly."

It is urged by Mr. Gonsalves that though the High Court has directed for survey and not accepted the stand of the State of Maharashtra reducing the projects to seventy and thereby applying the principle of flexibility, yet the same

does not subserve the cause. According to the learned senior counsel, in Shagun Mahila Udyogik Sahakari Sanstha Maryadit (supra), the Court in paragraph 47 has referred to the manufacturing units and, thereafter, affirmed the condition of asking for minimum Rs.1,00,00,000/- turn over for the last three years and further to have fully automated plants, which is not in consonance with the policy of the Central Government.

Learned senior counsel has drawn our attention to the letter of clarification dated 29th January, 2010, sought by the State of Maharashtra. We find that the clarifications sought by the State are as follows:-

"In this regard we would be grateful, if you would kindly clarify the following points, so that the further tender process can be finalised.

1. Does GOI prescribe or recommend factory based production, or any specific technology, for production of THR? Has it prescribed any specific recipes or products?
2. Does it recommend 'Extrusion Technology for THR production?
3. Does it recommend any minimum shelf life for THR? Is there any prescribed water content?
4. Can the State go in for gur-groundnut chikki or similar products as THR, as long as it satisfies the prescribed criteria for calories and proteins etc?
5. Has it authorised Food and Nutirition Board, Western Region, to prescribe Extrusion Technology for TER?

The clarification that has been given to the said letter vide communication dated 26th February, 2010, reads as follows:-

"The provision of SNP, whether in the form of morning snack, hot cooked meal or THR has been left with the State. So far, there are no specific recommendations for the use of extrusion technology or any other technology for THR. The suggestions given by Regional DTA (Western Region) are only suggestive in nature and not a recommendation by GOI. The issue concerning suitable technology of THR would be discussed in detail during the next meeting of the Sub-Committee on Fortification of Supplementary Nutrition component of ICDS and views once finalized will be communicated to all the States."

Mr. Gonsalves submits, after the decision in Shagun Mahila Udyogik Sahakari Sanstha Maryadit (supra), this Court has on many an occasion adverted to the distribution of quality food keeping in view the concept of decentralization. He has drawn our attention to various orders passed in I.A. No.129 of 2013 with I.A. No.110 of 2010 in W.P.(C) No.196 of 2001. The said orders pertain to the State of Gujarat and Rajasthan and covers the period from 06.08.2013 to 01.09.2014. Learned counsel has drawn our attention to the order dated 01.09.2014, wherein it has been held thus:-

"We are assured by Mr. Mehta who is instructed by the Secretary to Government, Women and Children Development present in the Court that the State would spare no effort in setting up these unit as early as possible and filing a status report to ensure that the process of purchasing the food grains from private manufacturers is brought to an end as early as possible.

In the circumstances therefore we extend for a period of two years the system of purchasing food grains from the manufacturers concerned on the basis of competitive bids. We at the same time direct the State Government to file six monthly status reports regarding the progress made in regard to setting up of similar projects in the State of Gujarat and in particular the progress made by the State Government in undertaking a study to assess the

requirement of the total number of such units their capacities and locations."

It is urged by Mr. Gonsalves that National Food Security Act, 2014 (for short, 'the Act') and circulars issued and the policies formulated thereunder, envisage decentralization to involve local self help groups so that there can be achievement of twin purposes, namely, distribution of quality and nutritious food amongst the young children; and involvement of local women who would be in a position to show their concern and affection. According to the learned senior counsel, the principle of having such kind of conditions as postulated and dealt with in Shagun Mahila Udyogik Sahakari Sanstha Maryadit (supra), has not been thought of neither under the Act nor under the circulars or policies of the Central Government, which has been rightly understood by the subsequent orders. He would submit that the authority in Shagun Mahila Udyogik Sahakari Sanstha Maryadit (supra) should be restricted to the approval of the decision of the High Court assailed therein, for the controversy pertained to stipulations in the tender conditions. It is contended by him that affirmance of a contract in a specific case should not be treated to be a judgment laying down the policy, but only opining that the particular award of contract in a specific circumstance was justified.

In view of the obtaining factual matrix, it is necessary that the Union of India, which has formulated the policy and also gives grant to the State Government for distribution of food, should file necessary affidavit duly sworn by the Secretary of the concerned department clearly indicating the policy of the Central Government and what steps it intends to take in furtherance of the scheme, namely, Integrated Child Development Services Scheme (ICDS

scheme), framed by it.

Let the affidavit be filed by the authority as indicated herein-above within three weeks hence. We request Mr. Mukul Rohatgi, learned Attorney General for India to assist the Court. Mr. K. Radhakrishna, learned senior counsel shall also assist the Attorney General so that the policy of the Central Government can clearly come on record and, if necessary, the same should be applied in proper prospective and confusion is not allowed to usher in.

Delay condoned.

Issue notice.

Let the copies of the petitions be supplied to Mr. G.S. Makker and Mr. Viraz Kadam, learned counsel appearing for the Union of India and the State of Maharashtra respectively. A copy of the petitions and the compilation volume shall also be served on Ms. Hemantika Wahi and Mr. S.S. Shamsbery, learned Standing Counsel for the States of Gujarat and Rajasthan respectively so that they can assist the Court in the matter.

As far as the other respondents are concerned, let notice be issued, fixing a returnable date within two weeks hence. Dasti, in addition, is permitted.

The successful parties before the High Court, who substantially agree with the submission of Mr. Gonsalves on the policy of decentralization, are at liberty to file their respective affidavits.

Ms. Olivia Bang, learned counsel assisting Mr. Colin Gonsalves, learned senior counsel for the petitioners, undertakes that she will file a compilation volume that would contain the relevant provisions of the Act, the circulars, the schemes issued by the Central Government from time to

time, the correspondence between the State of Maharashtra and the Union of India and the orders passed by this Court from time to time, after serving copies of the same on the learned counsel for the parties.

Let the matters be listed on 28th February, 2017. As agreed to by the learned counsel for the parties, they will not seek any adjournment on that day.

The interim order passed on the earlier occasion shall remain in force till the next date of hearing.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master