

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.31 OF 2016

1 Dhananjay S/o Vithalrao Deshmukh
Age: 42 years, occu: Agriculturist,
Municipal Councillor Sonpeth,
R/o Deshmukh Compex, Athwadi Bazar,
Sonpeth, Tq. Sonpeth, Dist. Parbhani
PAN NO.BQLD 6121 P
Adhar No. 879490731435
Mobile No.9921042303

2 Prabhakar S/o Tulshriram Sirsath
Age: 53 years, occu: Agriculture
R/o At Sonkhed, A/p Sonpeth
Tq. Sonpeth, Dist. Parbhani
PAN NO.ENRPS 9354 D
ADHAR NO.532022072563
Mob.No. 1) 9404502114,
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Petitioners

Versus

1 The State of Maharashtra
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai 400 032

2 The Collector, Parbhani
Dist. Parbhani

3 The Chief Officer,
Municipal Council, Sonpeth
Tq. Sonpeth, Dist. Parbhani

Respondents

Mr. A.A. Nimbalkar advocate for the petitioners

Mr. V.M. Kagne, AGP for Respondent No.1 and 2

Mr. Amit Mukhedkar, advocate for respondent No.3

CORAM : R.M. BORDE & K.L. WADANE, JJ

(Reserved for orders on : 4.8.2016

Pronounced on : 20.12.2016)

ORDER

1 In the instant Public Interest Litigation (PIL), the petitioners make grievance in respect of illegal allotment of works No.10 and 11 covered under the tender notice dated 5.12.2015 issued by respondent No.3, Chief Officer Municipal Council, Sonpeth.

2 The tender notice dated 5.12.2015 comprises of works which, according to the petitioners, are already completed. It is contended that, the the dates prescribed for submitting on line the E-tenders were during 7.12.2015 to 28.12.2015 and the date for opening of the technical bids was scheduled on 29.12.2015. According to the petitioners, before the allotment of the tender, the works at Sr. No.10 and 11, had already been commenced, few months prior to issuance of the work order. According to the petitioners, there are serious illegalities committed by respondent No.3 in floating the tender and allotment of works to the contractors.

3 The petitioners are residents of Sonkhed, Tq. Sonpeth, district Parbhani. The petitioner No.1 is the elected Municipal Councillor of the Municipal Council, Sonpeth. The petitioners in this petition are seeking issuance of directions to respondent No.1 State to constitute a special investigation team, comprising of an independent person/authority and technical experts to conduct thorough enquiry into :

- (i) illegal allotment and commencement of work Nos.10 and 11 in the tender notice dated 5.12.2015 issued by respondent No.3, Chief Officer, Municipal Council, Sonpeth and
- (ii) the illegal inclusion of works which are already completed in the tender notice dated 5.12.2015 issued by respondent No.3, Chief Officer, Municipal Council, Sonpeth and also issuance of directions to respondent Nos.1 and 2 to take appropriate action including recovery of the amount against the authorities and/or persons found guilty of illegalities in view of the report that would be submitted by the said investigating team depending upon the conclusions and recommendations of the enquiry team.

4 The petitioners contend that, there was an enquiry conducted by the Sub Divisional Officer, Parbhani on consideration

of the complaint tendered by the petitioners and in the report tendered by him, it is observed that, the Chief Officer, Municipal Council, Sonpeth had not taken cognizance of the complaint, at an appropriate time. It is observed that, on 29.12.2015, the date of finalization of the E-tender process, the contract was entered into by the Municipal Council with the concerned contractor and the work order was issued. It is observed that, upon visit to work site, it is noticed that, the foundation of the work was already completed and pillars were raised up to 4 to 5 feet. An inference has been drawn that, the work had commenced prior to completion of tender process. It is recommended by the Sub Divisional Officer in his report that, proper technical investigation be conducted through NIC Parbhani. The Collector was expected to take appropriate decision on consideration of the report of the Sub Divisional Officer.

5 An affidavit in reply has been tendered by the District Administrative Officer at Collector Office, Parbhani on behalf of the Collector. The respondent No.2 has denied all the adverse allegations made in the petition. It is stated that, the construction of the cultural hall and office compound is complete and as such, there is no question of granting any interim relief or stalling the work. It is recorded in the affidavit in reply that, the allotment of

works is in observance of transparent on line e-tendering process after fulfillment of all procedural requirements, such as technical sanction, line plan sanction by competent authorities and administrative sanction by office of District Collector. No work could commence before opening of bids on 29.12.2015. It is stated that, the work of construction of cultural hall, construction of drainage etc and all the incidental works are undertaken after obtaining requisite approval and sanction from the Office of District Collector at Parbhani. It is further stated that, on making enquiries with the NIC Parbhani, it has been reported that, there is no scope for tampering or manipulation in the E-tender process . It is stated that, before uploading of the E-Tender process in question, on the Government web-site, technical sanction was sought from the Office of the Maharashtra Jeevan Pradhikaran and Executive Engineer, Public Works Department at Parbhani; which is a technical body to verify the requirement of works to be done and after receipt of such technical sanction, an administrative sanction was sought from the office of the District Collector, Parbhani. The Administrative Sanction was granted by the Office of the Collector Parbhani on 24.11.2015. Line plan sanction for drainage work is granted by the Assistant Director of Town Planning at Parbhani on 12.10.2012. It is stated that, as

such the expert bodies such as Maharashtra Jeevan Pradhikaran, District Collector and Assistant Director of Town Planning at Parbhani have granted their respective approvals for works, which were sanctioned by the State Government during financial year 2015-2016 to be undertaken under different schemes. Municipal Council is only the implementing agency of the work, which was sanctioned by the State Government. It is incorrect to state that, there is inclusion of such works which are already complete. The work of drainage is undertaken considering the policy of the Government permitting the local authorities to again re-undertake public works previously undertaken after lapse of ten years period from completion of earlier work. It is reiterated that, the allotment of work is in observance of due procedure and a transparent methodology has been adopted in awarding the construction work. It is further stated that, the petitioners have not approached the Court with clean hands and have suppressed material facts. Petition has been presented for personal gain, private motive and oblique reasons, as has been recorded in the affidavit of the Chief Officer of the Municipal Council, Sonpeth.

6 The Chief Officer has presented an affidavit in reply, wherein, it has been stated that, the wife of the petitioner No.2

was functioning as a councillor of Sonpeteh Municipal Council. The petitioner No.2 is the resident of Sonpeth and he had raised an unauthorized construction over Government land bearing plot No.330 which is adjacent to his own plot bearing No.197. On account of illegal and unauthorized construction by elected representative, proceeding bearing petition No.2/2012 was initiated before the District Collector, Parbhani seeking disqualification of the wife of petitioner No.2, under section 44(1) (e) of the Municipal Council & Industrial Township Act, 1965. In the said proceeding, a report was called from the office of the Chief Officer, Sonpeth regarding the illegal construction carried out by petitioner No.2. The Chief Officer tendered a reply stating therein that petitioner No.2 has carried out illegal construction over Government Property. On consideration of the said report, the District Collector, Parbhani by his Judgment and order dated 20.5.2013 declared the wife of the petitioner as disqualified from holding and continuing in the office of Councilor of Municipal Council, Sonpeth. Since report was submitted against the wife of the present petitioner No.2, he filed several frivolous proceedings against the Chief Officer, Municipal Council, Sonpeth. The decision in respect of disqualification of wife of petitioner No.2 has been confirmed by the High Court in Writ Petition No.5151/2014 by

order dated 25.6.2014 and the Honourable Supreme Court has also confirmed the said decision while dismissing S.L.P. (Civil) No.17359 of 2014. The instant PIL is presented with intention to harass the Chief Officer, respondent No.3. It is further stated that, in August, 2012, petitioner No.2 attempted to file a false and bogus complaint, alleging act of atrocities against respondent No. 3 at Police station Sonpeth. Similarly, two other complaints were filed by petitioner No.2 alleging non supply of water to the residence of petitioner No.2 invoking provisions of Prevention of Atrocities Act. The Police authorities refused to register the crime since it was noticed that, the information was prima facie false. The petitioner No.2 approached the National Human Rights Commission, Delhi, making grievance against the Chief Officer. However, the National Human Rights Commission also rejected the complaint filed by the petitioner on 30.1.2013. The petitioner No.2 has developed animosity towards respondent No.3 and as such has presented the instant PIL, seeking action against respondent No.3.

7 It does appear prima facie that the presentation of the instant PIL is not with an object to uphold the public cause and safeguard public interest. However, the presentation of the instant

petition is, as a result of personal animosity of petitioner No.2 against respondent No.3 Chief Officer. The petitioner No.1 is also a Municipal councillor, as such it was open for him to oppose the decision of allotting of works in the General Body meeting of the Municipal Council. However, it prima facie appears that, due to some collateral considerations, instant petition is presented.

8 The Public Interest Litigations are primarily aimed for redressal of the grievances of the public at large, for providing relief to the needy class. The object of entertaining PIL is protecting the rights of the citizens and for redressal of just case of the specified class. It is an obligation of the individual petitioner to approach the Court with clean hands and the object shall be to redress the grievances of the class/segment of the society. If there is any personal interest involved, the petitions are not likely to be entertained.

9 In the matter of *B. Singh Vs. Union of India reported in 2004 AIR Supreme Court 1923*, it is observed by the Supreme court that "when there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes or vendetta to bring to terms a person, not of ones liking, or gain publicity or as a facade

for blackmail, said petition has to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding the public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation." It has been further observed that "a person acting bonafide and having sufficient interest in the proceedings of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique, consideration. In the matter of T.N. Godavarman Thirumulpad Vs. Union of India and others reported in **2006(5) SCC 1777**, it is observed in paragraphs 24 and 25 thus :

24. It has been repeatedly held by this Court that none has a right to approach the Court as a public interest litigation and that Court must be careful to see that member of the public, who approaches the Court in public interest, is acting bona fide and not for any personal gain or private profit or political motivation or other oblique considerations. (See S.P. Gupta vs. Union of India and another (1981 Supp. SCC 87).

25. For the last few years, inflow of public interest litigation has increased manifold. A considerable judicial time is spent in dealing with such cases. A person acting bona fide alone can approach the court in public interest. Such a remedy is not open to an unscrupulous person who acts, in fact, for someone else. The liberal rule of locus standi exercised in favour of bona fide public interest litigants has immensely helped the cause of justice. Such litigants have been instrumental in drawing attention of this Court and High Courts in matters of utmost importance and in securing orders and directions for many under-privileged such as, pavement dwellers, bonded labour, prisoners conditions, children, sexual harassment of girls and women, cases of communal riots, innocent killings torture, long custody in prison without trial or in communal riots, innocent killings torture, long custody in prison without trail or in the matters of environment, illegal stone quarries, illegal mining, pollution of air and water, clean fuel, hazardous and polluting industries or preservation of forest as in the Godavarmans case. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interlopers or wayfarer or officious intervener without any

interest or concern except for personal gain or private profit or other oblique consideration (See *Janata Dal vs. H.S. Chowdhary & others* (1992) 4 SCC 305).

10 Present Public Interest Litigation is an instance of abuse of process of the Court. The Supreme Court has occasions where it dealt with identical cases and clearly set the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. Those principles serialised in the judgment of the Supreme Court in the matter of *Kishore Samrite Vs. State of U.P and others* reported in **AIR 2012 SCW 5802**, are as below :

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the Court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(viii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed

grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

11 It is thus clear that the instant PIL presented by the petitioner is not a genuine litigation and petition is presented with oblique motive. In view of the reasons set out as above, the instant PIL deserves to be dismissed and the same is accordingly dismissed.

(K.L. WADANE, J)

(R.M.BORDE, J)

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