

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.5702 OF 2018**

Santosh Arjun Kamble.

...Petitioner

vs

1.The Municipal Corporation of the City of Solapur.

...Respondents

Mr.S.S.Shah, for the Petitioner.

Mr.M.P.Rao, Senior Counsel i/b. Mr.D.G.Dhanure, for Respondent Nos.1 to 3.

Mr.N.S.Parabkar, for Respondent No.4.

Mr.M.M.Pabale, AGP for Respondent No.5.

**CORAM : NARESH H.PATIL ACTING C.J &
G.S.KULKARNI, J.****DATED: 26th September,2018**

P.C.:-

1. Today this petition is placed before us for hearing on interim relief.

2. Initially by an order dated 4 June 2018, ad-interim relief was granted whereby the Municipal Corporation was directed that till the next date work order shall not be issued to respondent no.4. By a further order dated 13 August 2018 rule was issued on the petition and the ad-interim

relief granted on 4 June 2018 was continued. As directed in the earlier orders, the respondents have now appeared and counter affidavits are placed on record.

3. The petitioner in his capacity as citizen of India has filed this petition challenging the proceedings of tender issued by respondent no.1-Municipal Corporation of the city of Solapur (for short 'the **Municipal Corporation**') for the work of underground sewerage scheme under Amrut Mission of the Government of India, whereby a decision has been taken by the Municipal Corporation to award the tender to respondent no.4-Das Offshore Engineering Pvt. Ltd. (for short 'Das Offshore') who was the lowest bidder, by a resolution passed by the General Body of the Municipal Corporation on 7 April 2018.

4. The contention of the petitioner is that respondent no.4-Das Offshore was not eligible under the pre-qualification criteria namely collection network of “double corrugated PE pipes” and “RCC weir on Nalla”, as Das Offshore was not having the experience under the following relevant clauses of the tender conditions namely clause 1 and clause 6 as contained paragraph 6 of the tender conditions.:-

Sr.no.	Components in project	Experience required for
1	...	
	Collection network of Double corrugated PE pipes	Contractor should have experience of Lowering, laying, jointing and satisfactory hydraulic testing and commissioning in Sewerage scheme Satisfactorily

		DWC PE pipe/HDPE Pipe/ RCC Pipe/GRP pipe line work of minimum Diameter 150 mm dia and above of minimum Length 60 km under single contract
...		
6	RCC Weir on Nalla	Experience of Providing Constructing & Commissioning similar Type of Work.

5. For convenience the above two conditions are referred as the '**first clause**' and the '**second clause**'.

6. The Maharashtra Jeevan Pradhikaran, an independent body was appointed to undertake examination of the technical bids, which opined that Das Offshore could not qualify these two conditions which are part of several other conditions as set out in paragraph 6 of the tender conditions.

7. The Municipal Corporation has filed an affidavit interalia pointing out documents pertaining to technical evaluation of the bid of Das Offshore-respondent no.4, and the correspondence the tendering authority had entered with the State Government, whereby approval of the State Government was sought in regard to said two criterias/conditions, which pertained to a small part of the tender namely the first clause (supra) pertained only to 0.25% of the tender work of Rs.43,52,267/- and the second clause (supra) regarding KT Weir pertains only to 0.68% of the tender work amounting to Rs.1,18,80,575/-. It is stated that the highest bid was of one Laxmi Civil Engineering who quoted the rate of

Rs.196,26,98,656.35, and the lowest bid was quoted by Das Offshore which was of Rs.169,67,62,143.61. It is stated that the State Government which would administer the Amrut Scheme of the Central Government, had taken into consideration the entire issue on the technical bids of Das Offshore and other bidders, and by a letter dated 20 February 2018 granted its approval informing the Municipal Corporation to open the financial bids.

8. The respondent-Corporation has submitted that the project work of important nature has been stalled at the behest of such a petitioner who has nothing to do with the tender process. It is stated that the petitioner has not bonafide approached this Court and in fact has approached this Court with a malafide intention in a frivolous petition, which was causing delay in the time bound project and resulting a loss to the public exchequer.

9. There is an additional affidavit dated 31 August 2018 filed on behalf of the Municipal Corporation of Mr.Dulange Gangadhar Madiwalappa, Public Health Engineer of the Corporation interalia contending that the petitioner has no right to challenge the award of contract in favour of Das Offshore in proceedings which are not a public interest litigation. The award of the contract in favour of Das Offshore, has not infringed any fundamental rights of the petitioner. It is stated that the

petitioner cannot be an aggrieved party and has no *locus standi* to approach this Court. It is submitted that at the most the other two bidders namely Laxmi Civil Engineering Services Pvt. Ltd. and Patil Construction & Infra Ltd. can be the parties to raise the grievance if at all in regard to the tender in question and not the petitioner, when the present petition is not filed as a Public Interest Litigation. In support of his submission, learned Senior Counsel for the Municipal Corporation relies on the decision of the Supreme Court in the case “*Vinoy Kumar Vs. State of U.P.*”¹ and “*Jagdish Mandal Vs. State of Orissa & Ors.*”².

10. This additional affidavit on behalf of the Municipal Corporation reiterates that the underground drainage scheme under Amrut Mission is required to be implemented within stipulated time period and the delay in implementing the said scheme would cause loss to the public exchequer and the whole scheme which is in the interest of public at large to the benefit of the health of the citizens. The affidavit sets out in detail the importance of the project and the serious prejudice being caused to the citizens of Solapur on account of delay.

11. The Municipal Corporation has also pointed out that the very resolution dated 7 April 2018 passed by the General Body of the Municipal Corporation approving the award of the tender in favour of Das Offshore-

1 AIR 2001 SC 1739

2 (2017)14 SCC 517

respondent no.4, was challenged before this Court in writ petition no.5958 of 2018, filed by one Ganesh P. Wankar. It is stated that the said petition in a somewhat different manner assailed the said resolution of the General Body of the Municipal Corporation, namely by invoking an issue under Section 35A of the Maharashtra Municipal Corporations Act,1949. By an order dated 17 July 2018 the Division Bench of this Court has dismissed the said writ petition upholding the said resolution passed by the Municipal Corporation to award the contract in favour of respondent no.4.

12. It is submitted that the present petitioner also challenges the very same resolution dated 7 April 2018 passed by the General Body of the Municipal Corporation, however, on the pretext of disqualification of Das Offshore. It is further submitted that the tenor of the petition is such that as if the petitioner himself is one of the bidders in the tender process.

13. On behalf of Respondent no.5-the State Government, counter affidavit has been filed on behalf of Mr.Pandurang Jotiba Jadhav, Joint Secretary, Urban Development Department, supporting the decision taken by the Municipal Corporation to award the tender to Das Offshore, on the basis of an opinion/decision taken by the State Level Technical Committee (SLTC). The relevant paragraphs in the counter affidavit are required to be noted which reads thus:-

“12. It is further submitted that in view of the different opinions provided by Maharashtra Jeevan Pradhikaran, the State Level Technical

Committee dealt with the issue of Solapur Sewerage Project tender technical qualification. The said committee considered the proposal submitted by Commissioner Solapur Municipal Corporation, comments submitted by MJP vide its letters dated 13.12.2017 (ANNEXE-B) and 19.01.2018 (Exhibit F of the reply filed by Respondent No.1,2 and 3). The committee considered following points:-

1. The Commissioner Solapur Municipal Corporation has requested to allow opening of financial bids of all three bidders.

2. The Committee also considered that the PMC agency i.e. MJP while providing evaluation report dated 13.12.2017 and 19.01.2018 had also suggested to drop the conditions of experience of future call with respect to the KT weir and DI pipe laying being insignificant.

3. The cost of components i.e. DI pipe laying, KT Weir is very negligible to the overall cost of tender.

4. The committee also noticed that the Respondent No.4 i.e. Das Offshore Engineering Pvt.Ltd. is already executing previous sewerage scheme of Solapur Municipal Corporation having Cost of Rs.187 Crore. The said scheme also includes component of property connections and scheme is at its completion stage. So practically there is no issue of non-experience of work of property connections.

13. Thus, in order to avoid delay in implementation of scheme after detailed deliberations of Committee decided to accept the proposal submitted by the Commissioner, Solapur Municipal Corporation to open the financial bids of all three bids and the decision was communicated to Maharashtra Jeevan Pradhikaran and Commissioner Solapur municipal Corporation vide letter dated 20.02.2018 (Exhibit G of the reply filed by Respondent No.1,2 and 3)

14. It is also submitted that, the Amrut Mission is the flagship scheme of the Government of India. The mission period of the said schemes is 2015 to 2020. As per the strict instructions from Government of India all the schemes approved under MARUT mission should be completed within mission period. The Government of India continuously following the progress of the projects approved under MARUT mission. Accordingly if the said tender was not opened then there is again loss of time and also there were possibility of more costlier tender in future. So by considering all this circumstances, State Level technical committee come to the conclusion that to qualify all three bidders and permit Solapur Municipal Corporation to open financial bids of all three bidders including respondent no.4 for the Scheme.

15. It is also submitted that, Solapur Municipal Corporation opened the financial bid of all 3 bidders. After financial bid opening, respondent no.4 i.e. Das Offshore Engineering Pvt.Ltd. Had the lowest quote i.e. 2.70% below of the tender cost. Accordingly Solapur Municipal Corporation accepted the quote of L1 Contractor i.e. Respondent No.4 by General Body resolution dated 07.04.2018.

16. Accordingly Solapur Municipal Corporation had submitted the proposal for the approval of the tender to the State Level Technical Committee. The State Level Technical Committee approved the said tender of the Solapur Municipal Corporation but has not communicated the decision to Solapur Municipal Corporation because of ad-interim stay in the present petition. So the procedure followed for the selection of L1 contractor is purely on the merit and as per the procedure prescribed in the mission guidelines itself. So there are no any flaw in the procedure of acceptance of the tender of Respondent No.4.

17. It is respectfully submitted that the said Solapur Sewerage scheme is approved under the Amrut flagship mission of the Central Government. So it is required to be executed within time bound manner and delay in the execution of the said scheme will delay the service to the citizens.”
(emphasis supplied)

14. We have heard the learned Counsel for the parties. We have perused the petition and the counter affidavits as filed on behalf of the respondents.

15. At the outset we are quite surprised as to how the petitioner can have a *locus standi* to file this petition challenging the tender process, when the petition is not filed as a Public Interest Litigation and significantly when the petitioner is not even remotely concerned with the tender process. Even when we consider as to 'whether the petitioner would be entitled to any interim relief', this issue becomes relevant. This for the reason that what is in question before us is a prayer which would stall an important public project at the instance of a total third party that too in a petition which is not a PIL. In our opinion, the learned Counsel for the Municipal Corporation has rightly relied on the decision of the Supreme Court in *Vinoy Kumar Vs. State of U.P.* (supra) wherein the Court has

observed that generally speaking a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded. The observations of the Supreme Court in paragraphs 2 and 3 of the decision read thus:-

“2. Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas-corpus or quo warranto or filed in public interest. It is a matter of prudence, that the Court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason or poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief.

3. In the instant case the petitioner had not filed the petition in public interest and did not disclose the circumstances which prevented the affected persons from approaching the Court. In the discharge of his professional obligations, the petitioner-Advocate is not obliged to file the writ petition on behalf of his clients. No circumstance was mentioned in the petition which allegedly incapacitated the affected persons from filing the writ petition. Section 30 of the Advocates Act, only entitles an Advocate to practise the profession of law and not to substitute himself for his client. The filing of the writ petition in his own name, being not a part of the professional obligation of the Advocate, the High Court was justified in dismissing the writ petition holding that the petitioner-Advocate had no locus standi.”
(emphasis supplied)

16. Adverting to the above mandate of law, we may observe that considering the tenor of the present petition, it is clearly seen that this is a

petition which otherwise would be filed by a party who is unsuccessful in the tender process. We therefore, see substance in the contention as urged on behalf of the Municipal Corporation that the present petition is not bonafide and also the submissions that if such petitions are entertained, the sanctity of the tender procedure at the behest of a third party would be seriously jeopardized, in proceedings which are not public interest litigations.

17. We may also observe that the whole intention to file this petition not as a public interest litigation, would be obviously to avoid a deeper scrutiny a PIL passes through, under the rules of the High Court. The consequence of relevant declarations which would be required to be made in a public interest litigation as also the possibility that being a public project the Court may put the petitioner to terms namely to deposit amounts in applying the mandate of law as prescribed by the Supreme Court in “*Raunaq International Ltd. vs. I.V.R. Construction Ltd. and Ors.*”³ We are therefore, consciously applying the test of identifying unscrupulous litigation, as the law at the threshold mandates. Admittedly, the project in question is an important public project being implemented by the Municipal Corporation under the Scheme of the Central Government namely Atal Mission for Rejuvenation and Urban Transformation (AMRUT), which is a scheme to develop basic amenities like Water supply,

3 (1999) 1 SCC 492

sewerage, storm water drainage and green spaces in 500 mission cities in India. Out of total 500 mission cities from India, 44 cities in State of Maharashtra are selected by the Government of India under the said AMRUT mission. The scheme is implemented by the Government of Maharashtra by a Government Resolution dated 13 October 2015 as approved by the State Cabinet.

18. In the above conspectus there is a serious doubt about the petitioner's entitlement to any interim relief on the count of petitioner's *locus standi* to file this petition. Nonetheless for the sake of completeness, we consider the limited grievance as raised by the petitioner to examine whether the petitioner would be at all entitled to any interim relief on merits.

19. The record indicates that the bid of respondent no.4-Das Offshore was the lowest bid namely of Rs.169,67,62,143.61. The other two bids being of Rs.196,26,98,656.35 (Laxmi Civil Engineering Services Pvt. Ltd.) and Rs.191,56,14,814.75 (Patil Construction & Infra Ltd.). As regards the qualification criteria as noted by us above not only the tendering authority/Municipal Corporation but also the "State Level Technical Committee" has examined the said issue. The State Government has stated that the Committee has also noticed that Das Offshore was already executing previous sewerage scheme of the Solapur Municipal

Corporation. The said scheme also included component of property connections and the scheme is at the stage of completion. It is stated that practically there is no issue of non-experience of work of property connections. It is also not in dispute that the ineligibility in regard to the technical criteria pertained only to 0.25% (Rs.43,52,267/-) and 0.68% (Rs.1,18,80,575/-). Thus the tendering authority as also the Special Committee as appointed by the State Government had opined that the ineligibility to this extent is insignificant. The learned Counsel for Das Offshore has pointed out from the record that on all the parameters the tendering authority and the Special Committee are satisfied that the Das Offshore was qualifying the conditions.

20. We find that in regard to the technical parameters, the tendering authority as also the Special Committee appointed by the State Government has applied its mind on all the technical parameters and more particularly to the two alleged non compliances which pertained to 0.25% + 0.68%=0.93% of the entire tender work, as set out in the first and second clauses (supra).

21. On perusal of the record, we do not find that there is anything unconscionable or there exists any arbitrariness or illegality or something opposed to public policy, in the decision making process as adopted by the authorities to accept the beneficial bid of Das Offshore who is the lowest

bidder. We also cannot lose sight of the fact that these are important public works being undertaken for the benefits of public at large under the scheme of the Central Government and certainly the original bidders who are unsuccessful have not come forward or raised any grievance in regard to award of tender to Das Offshore. All these circumstances are writ large and speak about the bonafides of the petitioner. The public work in question is already delayed at the behest of the petitioner.

22. We also cannot lose sight of the fact that the decision of the general body of the Municipal Corporation dated 7 April 2018 approving the award of contract to Das Offshore, was also a subject matter of consideration in Writ Petition No.5958 of 2018 as dismissed by the Division Bench of this Court (A.S.Oka & Riyaz I.Chagla, JJ.) by an order 17 July 2018. It therefore, clearly appears that the attack on this decision is by different methods. Obviously the first attempt failed in the Division Bench rejecting the earlier petition filed by Mr.Ganesh Prakash Wankar. We cannot be oblivious to our overriding judicial concern of the litigants devising ways and methods, to exploit the legal process and being put up at the hands of disgruntled persons. The abuse of the process of the Court needs to be prevented.

23. For the above reasons we certainly not inclined to continue the ad-interim order as granted by this Court. The ad-interim order dated 4

June 2018 stands vacated. The prayers for interim relief are rejected. It would be now open to the Corporation to take further necessary steps in regard to the public work in question.

24. At this stage the learned Counsel for the petitioner seeks continuation of ad-interim relief for a period of two weeks. In the facts and circumstances of the case, the request is rejected.

(G.S.KULKARNI, J)

(ACTING CHIEF JUSTICE)