

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 2142 OF 2019
IN
CIVIL APPLICATION NO. 15094 OF 2018**

**THE MAHARASHTRA STATE ROAD CORPORATION
THROUGH MANAGING DIRECTOR AND ANOTHER
VERSUS
GURUDATTA INFRASTRUCTURES THROUGH AUTHORIZED
PERSON SANJAY ASHOK RODE AND ANOTHER**

**IN
WRIT PETITION NO. 13954 OF 2018**

**GURUDATTA INFRASTRUCTURES THROUGH AUTHORIZED
PERSON SANJAY ASHOK RODE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Applicants : Shri M. K. Goyanka
Advocate for Respondent No. 1 : Shri S. S. Kulkarni
AGP for Respondent No. 2 : Shri N. T. Bhagat
Advocate for Respondent No.3 : Shri S. G. Chapalgaonkar
(R/4 - in WP)

**CORAM : RAVINDRA V. GHUGE AND
K. K. SONAWANE, JJ.**

DATED : 11th APRIL, 2019.

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PER COURT :

1. The applicant in this Civil Application is the original respondent No.3 in Writ Petition No. 13954/2018. By this Civil Application, a request is made to recall/review the order

passed by this Court (Coram : S. S. Shinde and K. K. Sonwane - JJ.) on 19/12/2018 in Civil Application No. 15094/2018.

2. In view of the orders of the learned Administrative Judge, this Civil Application is being considered upon the Constitution of this Bench.

3. We have heard the learned Advocates for the respective sides, as well as, the intervener whose intervention application has been allowed and by an amendment to the Writ Petition, he has been arrayed as respondent No.4.

4. It is obvious that Civil Application No.15094/2018 was filed by the petitioner contending that a letter dated 11/12/2018 was issued by respondent No.3, which was an appeal to the successful bidders to come forward and place on record their relevant documents. The applicant petitioner had put forth his prayer clauses 'A' to 'F' in Civil Application No. 15094/2018 as under :-

"A] The applicant may kindly be permitted to bring on record the letter dtd. 11.12.2018 on record.

B] By issuing an appropriate writ, order, direction the letter dtd. 11.12.2018 issued by the respondent no. 3 may kindly be quashed and set aside.

C] Pending hearing and final disposal of the present writ petition the effect and operation of the letter dtd. 11.12.2018 issued by respondent no.3 may kindly be stayed.

D] Ad interim relief in terms of prayer clause "C" as above may kindly be granted.

E] Award cost to the petition.

F] Any other appropriate order which this Hon'ble Court deem fit and proper in the facts and circumstances of the case may be passed".

5. While dealing with the said application, this Court considered the request of the petitioner to place the letter dated 11/12/2018 on record and amend the prayer clauses in the Writ Petition so as to introduce his prayer clauses (B) and (C) in relation to the letter dated 11/12/2018.

6. After hearing the applicant - petitioner and the learned AGP, we had passed an order on 19/12/2018, the relevant paragraph 2 being as under :-

" Without prejudice to the rights and contentions of

the parties and right to file reply. Civil Application is allowed in terms of prayer clauses (A) and (B). Necessary amendment be carried out on or before 21.12.2018."

7. It is, therefore, quite evident that this Court allowed the petitioner to amend the petition by placing the letter dated 11/12/2018 on record and introduce his prayer clauses in the Writ Petition. It is equally obvious that none of the contesting respondents were heard when the said order was passed granting reliefs in terms of prayer clauses (A) and (B).

8. We are of the view that prayer clause 'A' was being allowed so as to enable the applicant petitioner to bring the said letter on record and add to the prayers existing in the Writ Petition. In paragraph 2 itself we made it clear that the necessary amendment should be carried out on or before 21/12/2018 since the Writ Petition was listed for admission hearing on 21/12/2018.

9. In the light of the above, we are of the view that relief in terms of prayer clause (B) was not intended to be granted as that would practically amount to granting final relief to the applicant petitioner even before the amendment was carried

out and obviously before hearing the respondents.

10. We find that the petitioner has conveniently maintained a silence on the inadvertent inclusion of prayer clause (B) in order dated 19/12/2018 when the Writ Petition was taken up for admission hearing on 21/12/2018. This Court extended the time to serve the respondents and listed the matter on 28/01/2019.

11. In view of the above, this Civil Application is allowed. The order passed by this Court on 19/12/2018 in Civil Application No. 15094/2018 is recalled only to the extent of deleting prayer clause (B) from paragraph 2. Paragraph 2 of the order would, therefore, read as under :-

"Without prejudice to the rights and contentions of the parties and right to file reply, Civil Application is allowed in terms of prayer clause (A). Necessary amendment be carried out on or before 21/12/2018".

12. The learned Advocate for the petitioner prays that this Court should hear the petitioner and the litigating sides on the grant of prayer clause (C) set out in Civil Application No. 15094/2018.

13. We are unable to accede to his request for the reason that as the order dated 19/12/2018 is a subject matter of review before us, we cannot exercise our jurisdiction to hear the contentions of the parties and grant any relief when prayer clauses (B) and (C) in the said Writ Petition have been added as prayer clauses 'H' and 'I', in the Writ Petition by way of an amendment. We, therefore, grant the petitioner liberty to circulate the Writ Petition before the appropriate Bench.

(K. K. SONAWANE, J.)

(RAVINDRA V. GHUGE, J.)

shp/-