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

**WRIT PETITION NO. 195 OF 2022**

Khilari Infrastructure Pvt. Ltd.,
A company registered under the
Companies Act through its Authorized
Signatory Deepak Jairam Nangre
Age : 33 years, Occu. : Service,
having official address as 101 to 104,
Prabhat Centre Annex, Sectior – 1A, C.B.D., Belapur,
Navi Mumbai-400614. .. Petitioner

**Versus**

1. The State of Maharashtra
Through the Secretary of
Urban Development Ministry,
Mantralaya, Mumbai-32.

2. The Secretary of Public Work Dept.
Maharashtra, Mantralaya, Mumbai.

3. The Director,
Town Planning and Urban Development
Department, Mantralaya, Mumbai.

4. The Chief Officer,
Osmanabad Municipal Council,
Tq. & Dist. Osmanabad.

5. The Osmanabad Municipal Council,
Through it's President.

6. M/s. L C Infra Projects Private Limited,
409, 4th Floor, Iscon Elegance, Nr. Jain Temple,
Opp. Circle-P, Prahladnagar, Cross Road,
Ahmedabad-380015. .. Respondents

Mr. V. D. Sapkal, Senior Advocate a/w Mr. D. S. Manorkar, Advocate for the Petitioner.
Mr. A. R. Kale, AGP for Respondent Nos. 1 to 3.
Mr. Mahesh S. Deshmukh, Advocate h/f Mr. Vivekanand Deshmukh, Advocate for Respondent No. 4.
Mr. N. B. Khandare, Advocate h/f Mr. S. A. Wakure, Advocate for Respondent No. 6.

**AND**
**PUBLIC INTEREST LITIGATION NO. 5 OF 2022**

Abhay S/o Baburao Ingle
Age : 39 years, Occu. : Agri/Vice President (Ex.),
Osmanabad Municipal Council, Osmanabad,
R/o. Shri Ganesh Nagar, Tuljapur Road,
Osmanabad, Tq. & Dist. Osmanabad
Mo. 9822101555
Email – abhayIngale55@gmail.com
Adhar No. 545021542196 .. Petitioner

**Versus**

1. The State of Maharashtra
Through Secretary,
PWD Department,
Maharashtra State, Mantralaya,
Mumbai-400 032.

2. The State of Maharashtra
Through its Secretary
Urban Development Department,
Mantralaya, Mumbai-32.

3. The Director,
Town Planning and Urban Development
Department, Mantralaya,
Mumbai-32.

4. The Chief Engineer,
Maharashtra Jivan Pradhikaran
Aurangabad.

5. The Chief Officer,
Osmanabad Municipal Council,

Tq. & Dist. Osmanabad.
6. Superintendent Engineer,
PWD Department,
Osmanabad Circle,
Tq. & Dist. Osmanabad.

7. M/s. L. C. Infra Projects Pvt. Ltd.
Through its Director
Having its office at 409, 4th Floor,
Iscon Elegance, Near Jain Temple
Opp. Circle P, Pralhad Nagar Cross Road,
Ahmedabad (Gujarat) – 380015. .. Respondents

Mr. V. D. Salunke, a/w Mr. R. D. Raut, Advocate for the Petitioner.
Mr. A. R. Kale, AGP for Respondent Nos. 1 to 3.
Mr. M. S. Deshmukh, Advocate h/f Mr. V. B. Deshmukh, Advocate for Respondent No. 5.
Mr. N. B. Khandare, Advocate h/f Mr. S. A. Wakure, Advocate for Respondent No. 7.

**CORAM : R. D. DHANUKA &**
**S. G. MEHARE, JJ.**

**Date on which reserved for judgment : 29th April, 2022.**

**Date on which judgment pronounced : 06th May, 2022.**

**JUDGMENT (PER R. D. DHANUKA, J.) :-**

. Rule. The learned counsel appearing for the respondents waives service. Rule is returnable forthwith.

2. By consent of parties both the proceedings were heard together and being disposed of by common order.

3. The petitioner in Writ Petition No. 195 of 2022 filed under

Article 226 of the Constitution of India has prayed for a writ of certiorari for quashing and setting aside the report/result of the tender opening committee of the respondent Nos. 4 and 5 dated 28.12.2021 in respect of the petitioner, work order order dated 30.12.2021 and agreement dated 30.12.2021 executed in favour of the respondent No. 6. The petitioner also prays for a writ of mandamus directing the respondent Nos. 4 and 5 to take the decision considering the financial bid of the petitioner for execution of the work order and agreement.

4. In Public Interest Litigation No. 5 of 2022, the petitioner has prayed for a writ of certiorari for quashing and setting aside the work order dated 30.12.2021 issued by the respondent No. 5 - Municipal Council in favour of respondent No. 7 and to issue a fresh tender for underground sewage scheme under MSJNMA and further seeks directions to issue fresh tender for underground sewage work under the said scheme for Osmanabad city. The petitioner also seeks an order and direction against the respondents to decide the representation dated 17.01.2022 made by the petitioner.

**Facts and submissions in Writ Petition No. 195 of 2022 :**

5. On 01.12.2021, the Osmanabad Municipal Council (for the sake of convenience referred as 'said Council') issued a draft of paper

proclamation in respect of work of Osmanabad underground sewerage scheme under Maharashtra Suvarna Jayanti, Nagrotthan Mahaabhiyan (MSJNM). The estimated cost of the work was Rs. 185,42,82,861/-. The security deposit amount was fixed as Rs. 92,71,415/-. The stipulated period for completing the work was 30 months. It was provided that the online process would be followed in respect of tender and the date for filling the tender form would be between 01.12.2021 and 16.12.2021. The respondent No. 4 uploaded on the Government website E-Tender Notice No. 1/2021-2022 for the work of Osmanabad underground sewerage under the said MSJNM.

6. Clause 6 of the tender document prescribed pre-qualification criteria for work experience and technical specification. Clause 6 also provided for the criteria of bidding capacity. The formula given for bidding capacity was 2NA-B.

7. On 23.12.2021, the respondent No. 4 issued a letter to the petitioner raising various queries. On the same day, the respondent No. 4 issued a letter thereby directing the petitioner to submit the details of the running bills of last four months of the project given for bid capacity calculation within 24 hours. It is the case of the petitioner that the petitioner submitted those details on 24.12.2021. On 28.12.2021, the respondent No. 4 uploaded the report of tender

opening committee of Osmanabad underground sewage scheme. The result of the technical bid was opened declaring the petitioner company as not qualified on the ground that supporting documents did not match the bid capacity calculation. Two bidders had been declared qualified and other three bidders were disqualified.

8. It is the case of the petitioner that the petitioner submitted the documents on 29.12.2021 which were already forming part of the tender form submitted on 24.12.2021. The petitioner filed this writ petition for various reliefs on 03.01.2022. The matter was listed on board on 05.01.2022. The learned counsel for the respondent Council made a statement that the work order was issued in favour of respondent No. 6. The learned counsel submitted the copy of the work order dated 30.12.2021 and also a copy of the agreement of the same date.

9. It is the case of the petitioner that, on 05.01.2022, the status of the financial bid was shown as pending and there was no update in respect of the opening of the financial bid on the website. On 08.01.2022, the status was uploaded that the technical bid had been finalized on 28.12.2021 at 03.22 p.m. and financial bid opening date immediately was given as 28.12.2021 at 03.25 p.m. The petitioner accordingly with permission of the Court amended the writ petition

and added additional grounds and prayers. The petitioner prayed for quashing and setting aside the work order and agreement both dated 30.12.2021 and for directing the respondent Nos. 4 and 5 to take the decision considering the financial bid of the petitioner for execution of the work order and agreement. The writ petition is opposed by the said Council and the respondent No. 6, successful bidder by filing reply.

10. Mr. V. D. Sapkal, learned senior counsel for the petitioner in writ petition submits that though the petitioner has raised various grounds in this writ petition, the petitioner is not pressing the relief of mandamus against the respondent Nos. 4 and 5 to take the decision on the financial bid of the petitioner and for execution of the work order and agreement. The learned senior counsel invited our attention to the additional grounds raised in paragraph Nos. 10-A to 10-K.

11. The learned senior counsel placed reliance on Section 93 (2) of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 (for short 'the said Act') and would submit that it is sine-qua-non that before execution of the contract the approval or sanction of the Municipal Council is necessary. since there is no approval of the Municipal Council obtained by the President of the said Council and the Chief Officer of the Council, the contract entered into

between the said Council and the respondent No. 6 is void and not binding on the said Council.

12. It is submitted that Under Section 93 (2) (c) of the said Act, no contract involving an expenditure exceeding the amounts as prescribed, the Chief Officer of 'A' class, 'B' class and 'C' class respectively, could not have executed a contract unless otherwise authorized in this behalf by the Council, except with the approval and sanction of the standing committee. He also invited our attention to the proviso to Section 93 (2) (c) and would submit that for such contract, only if the Government prescribes from time to time, a committee consisting of the President and Chief Officer are empowered to approve such contract within a period of 15 days from its receipt. He submits that no such category of contract has been prescribed by the State Government authorizing the committee consisting of the President and Chief Officer for approving such contract in the facts of this case.

13. The learned senior counsel invited our attention to the sanction granted for awarding the said tender in favour of respondent No. 6 on 28.12.2021 and would submit that the said sanction was granted only by the President and Chief Officer of the said Council. He submits that this sanction granted by the President and the Chief Officer of the said

Council is totally without authority and contrary to Section 93 (2) (c) of the said Act. He submits that since the said sanction was not granted by the said Council under Section 93 (2) (c) of the said Act, in view of Section 93 (5) of the said Act, the said contract was not binding on the said Council.

14. In support of his submission the learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Nandkishore Ganesh Joshi Vs. Commissioner, Municipal Corporation of Kalyan and Dombivali and Others*** reported in ***AIR 2005 (Supreme Court) 34*** and more particularly, on paragraph Nos. 16 to 21. He submits that after considering the identical provisions, the Hon'ble Supreme Court has held that a contract which was entered into by the Commissioner without obtaining prior approval of the standing committee, contract was void and not binding. Such approval cannot be said to be an empty formality. The committee is required to perform its function in terms of the provisions of the said Act. A statutory authority has a duty to act in public interest as also fairly and in reasonable manner.

15. It is submitted by the learned senior counsel that it is an admitted position that the President of the said Council was to vacate his office on the same day on which the sanction was granted by the

President and the Chief Officer of the Council and work order was issued and contract was executed. It is submitted that online status of the financial bid was shown as pending on 05.01.2022. There was no updates in respect of opening of financial bid on the website. The status was downloaded on 05.01.2022. He submits that the technical bid of the petitioner was found disqualified. On 28.12.2021, the financial bid of the respondent No. 6 was opened. Seven days prior notice was not given as required under Section 81 of the said Act to be given to Municipal Council members. The respondent No. 6 was already blacklisted on the date of submitting its bid. These facts were suppressed by the respondent No. 6 in the bid document. There was no transparency maintained by the said Council.

16. The respondent No. 6 was not qualifying the required technical qualification as per the terms and conditions of the tender. As per the Government Resolution at least two participants were necessary as required for opening of financial bid. The respondent No. 6 and his partner were shown technically qualified to compete in financial bid. The financial bid of PC Snehal Construction Ltd. was more than Rs. 189,13,68,518/-. The tender estimate was Rs. 185,42,82,861/-. He submits that the higher bids of the tender cost however, are not accepted and thus, automatically the bidder becomes disqualified.

**Facts and submissions in Public Interest Litigation :**

17. By this Public Interest Litigation, the petitioner has prayed for a writ of certiorari for quashing and setting aside the work order dated 30.12.2021 issued by the Chief Officer, Osmanabad in favour of the respondent No. 7 – M/s. L. C. Infra Projects Pvt. Ltd. in respect of underground sewage scheme under MSJNMA and also prays for a writ of mandamus against the respondent No. 5 to issue a fresh tender for the said work.

18. The petitioner also prays for a writ of mandamus to decide the representation dated 17.01.2022 made by the petitioner and to take action according to law and seeks directions against the respondent Nos. 1 to 6 from taking taking any fresh action in respect of the work order dated 30.12.2021 issued in respect of the said work.

19. The petitioner is elected as a member of the said Council and is Ex-Vice President of the said Council. Mr. V. D. Salunke, learned counsel for the petitioner submits that the petitioner is a tax payer. With effect from 30.12.2021 an administrator was to be appointed of the affairs of the said Council. The respondent No. 5 executed an agreement with respondent No. 7 on the same day. He submits that the

technical bid was opened on 28.12.2021. The financial bids were opened on 29.12.2021 and the work order was issued by the said Council in favour of respondent No. 7 on 30.12.2021. The bank guarantee was submitted by respondent No. 7 on the same day.

20. The learned counsel for the petitioner placed reliance on the Rule 46 (4). The learned counsel for the petitioner submits that the Assistant Secretary Town Planning Department issued a letter on 30.11.2021 when the Government Resolution was published stating that considering the ensuing elections of Municipal Council due, the process of calling the E-tender shall be completed within 15 days. The said condition prescribing completion of the tender process within 15 days was against the said Government Resolution dated 27.09.2018. He submits that under the Government Resolution dated 27.09.2018, any tender process above Rs. 100 Crores was to be completed in 45 days. The said Council thus could not have reduced the tenure of the process of completion of the tender to 15 days on the ground that tenure of the President of the Council was coming to an end on 27.12.2021. The tender notice was issued by the said Council as “First Call”. As per the Government Resolution dated 27.09.2018, if it was the first call then the timeline of 45 days was mandatory in nature. The tender did not provide for any pre-bid meeting deliberately. The Pre-

bid meeting was mandatory under Clause 2.5 of the Government Resolution dated 27.09.2018 for all the tenders for more than Rs. 1.5 Crores and was required to be held before minimum seven days in advance.

21. It is submitted by the learned senior counsel that the said Council did not consider the objections raised by the petitioner before opening the tender. Three applicants were disqualified in technical bid on 28.12.2021. The bid of the respondent No. 7 was however accepted.

22. It is submitted by the learned counsel that the tenure of the President of the said Council came to an end on 31.12.2021 and therefore, the President of the said Council was in hurry to grant tender in favour of respondent No. 7. The said Council did not grant sanction as per the norms of the Government in respect of the tender and did not follow mandatory procedure since the tenure of the President was coming to an end on 31.12.2021.

23. The learned counsel for the petitioner submits that the execution of the agreement in favour of the respondent No. 7 by the said Council was without obtaining any sanction from the said Council contemplated under Section 93 of the said Act and thus the said contract is not binding. He adopted the submissions of Mr. Sapkal,

learned senior counsel for the petitioner in Writ Petition No. 195 of 2022 on this issue. It is submitted that the entire process of inviting tender without following the mandatory norms and to execute an agreement in favour of respondent No. 7 by the said Council is totally without authority.

24. Mr. M. S. Deshmukh, learned counsel for the Council invited our attention to various submissions made in the Public Interest Litigation filed by the President and would submit that the petitioner has lifted 17 paragraph from the earlier writ petition which was dismissed by this Court after recording detailed reasons. The learned counsel invited our attention to the order passed by the Division Bench of this Court in Writ Petition No. 9757 of 2021 filed by the petitioner in the Public Interest Litigation in this Court impugning the first tender notice issued on 20.05.2021 on various grounds. This Court noticed that the petitioner was not a participant in the tender process. The third tender notice was already issued on 18.08.2021. The tender work was for the benefit of public. The tender process pursuant to the third tender notice was in progress. The technical bids were evaluated. The tenderers filling in the bids pursuant to the third tender notice would not be known to the party issuing the tender. It was an open tender, wherein all eligible persons could compete. This Court noticed that the delay in public

work was in nobody's interest. This court accordingly disposed of the said writ petition filed by the petitioner herein without granting any relief in favour of the petitioner.

25. The learned counsel for the said Council invited our attention to the order dated 11.10.2021 passed by the Division Bench of this Court in the said Writ Petition No. 9757 of 2021 and would submit that this Court refused to continue the interim order passed in the said Writ Petition No. 9757 of 2021 earlier. The learned counsel for the said Council invited our attention to the judgment delivered by this Court on 23.12.2021 in Writ Petition No. 14284 of 2021 filed by the petitioner herein in Public Interest Litigation and more particularly paragraph Nos. 3, 5, 7, 10, 13 and 15 and would submit that the issues raised by the petitioner in this Public Interest Litigation were agitated by the petitioner in the said Writ Petition No. 14284 of 2021 and by the detailed judgment, this Court has negatived all the contentions of the petitioner herein and thus dismissed the second writ petition filed by the petitioner. He submits that the Division Bench of this Court in the said judgment had also followed the judgment of the Hon'ble Supreme Court in case of ***Michigan Rubber (India) Limited Vs. State of Karnataka and others*** reported in ***(2012) 8 SCC 216*** and also the judgment in case of ***Raunaq International Ltd. Vs. I.V.R. Construction***

***Ltd. And others*** reported in ***(1999) 1 SCC 492***. It is submitted that the petitioner in the Public Interest Litigation as well as the petitioner in the writ petition have challenged the same tender notice before opening of tender bids.

26. It is submitted by the learned counsel that the said Council was required to issue third tender notice in view of the change in the "State Schedule Rate". The State Government had accordingly issued Government Resolution dated 30.11.2021. He submits that the third call could not be taken to its logical end due to requirement of procedural sanction. The revised sanction was accordingly obtained. He submits that on 01.12.2021, the third tender notice was issued by the said Council with revised contractual price prescribing for completion of tender process within a period of 15 days. He submits that the issue raised by the petitioner in Public Interest Litigation of non compliance of mandatory requirement of 45 days for completion of tender process, in the earlier writ petition filed by the petitioner has been rejected specifically by the Division Bench of this Court.

27. The learned counsel for the said Council invited our attention to the grounds raised at pages 11 and 12 of the Public Interest Litigation and would submit that the similar grounds were raised in the second writ petition filed by the petitioner in the Public Interest Litigation.

28. The learned counsel for the said Council submits that on 17.12.2021, the technical bid of all the five bidders were opened and were scrutinized upto 23.2.2021. He invited our attention to the letter dated 23.12.2021 from the said Council to the petitioner in writ petitioner seeking certain details from the petitioner. The scrutiny of the technical bids continued for a period of 6-7 days. The petitioner in the writ petition was called upon to submit certain RA bills. After considering the technical bids of all the five bidders, the said Council rejected the technical bids of three bidders on 28.12.2021 including that of the petitioner in writ petition. There was no complaint received from any of the bidders whose technical bids were rejected on 28.12.2021 and thus two days time was not required before opening of the financial bid. He submits that the said Council had followed the principles of fair play before opening the technical bids and even thereafter till award of contract in favour of respondent No. 7. The respondent No. 7 was also called to submit various details as were sought from the petitioner in the writ petition. There is no undue favour in favour of the respondent No. 7 as sought to be canvassed by the learned counsel for the petitioner in both the proceedings.

29. In so far as the issued of bank guarantee raised by the learned senior counsel for the petitioner is concerned, the learned counsel for

the said Council states that none of the petitioners have alleged that the bank guarantee submitted by the respondent No. 7 - contractor was a fake bank guarantee. The petitioner in writ petition has not raised any such objections. The contractor may have good relations with the bank and can furnish such bank guarantee on the same day. Merely, on such ground, the petitioner cannot allege any malafides on the part of the said Council.

30. The learned counsel for the said Council placed reliance on tender condition No. 2 and would submit that if the Council finds that the documents or bank guarantee submitted by the tenderer is false or misleading his earnest money has to be forfeited and his registration can be suspended for the period of one year in addition to legal action that may be taken against such tenderer. Since the bank guarantee or other documents submitted by the successful bidder were not fake or misleading, no action was taken against the successful bidder by the said Council.

31. The learned counsel for the said Council invited our attention to the condition in the bid documents in respect of Envelope No. II (Commercial Bid) and would submit that the said condition did not provide for any waiting period period for opening the commercial bid

after opening of the technical bid.

32. The learned counsel for the said Council tendered a compilation of documents. He relied upon the notification dated 14.06.2018 issued by the State Government and more particularly Clause 4 thereof and would submit that the committee comprising of the President and Chief Officer are empowered to approve all contracts if the bid amount is equivalent or below the estimate rate.

33. The learned counsel for the said Council invited our attention to the Government Resolution dated 27.09.2018 and in particular paragraph No. 1 thereof and would submit that the said Council has strictly followed the said Government Resolution. The State Government had granted financial sanction by the said Government Resolution and accordingly the President of the said Council was empowered to accord sanction.

34. The learned counsel for the said Council placed reliance on Section 93 of the said Act and would submit that on 14.06.2018, the State Government had prescribed the rules empowering the President and Chief Officer to grant sanction in certain situations which applied to the facts of this case. He relied upon Section 58 of the said Act which provides as to what functions of the President are. He submits

that Clause (b) and (d) of Section 58 (1) of the said Act came to be deleted. There was an amendment to Section 93 of the said Act by the Government Resolution dated 27.09.2018 i.e. Section 13 (1) (I) with effect from 25.01.2018 and simultaneously power was granted to the President of the Council to accord sanction in certain circumstances.

35. It is submitted that, the bid submitted by the respondent No. 7 was below the estimated cost. The earlier general body was required to approve the contract. Now powers are given to the President and Chief Officer of the Municipal Council to approve contracts in certain circumstances. The bids submitted by the bidders being below the estimate, the President and Chief Officer of the Municipal Council were empowered to sanction such contract and to enter into an agreement.

36. In so far as issue regarding to disqualification of respondent No. 7 raised by the petitioner is concerned, the learned counsel for the said Council invited our attention to the letter addressed by the said Council to the respondent No. 7 seeking certain clarifications about experience of respondent No. 7. The respondent No. 7 was called upon to produce various details. The respondent No. 7 furnished such details and after considering those details, the technical bid of the successful bidder was considered. The condition of 900 dia. Prescribed in the tender

condition was satisfied by the respondent NO. 7.

37. The learned counsel for the said Council placed reliance on the judgment of the Hon'ble Supreme Court in case of ***M/s. N. G. Projects Limited Vs. M/s. Vinod Kumar Jain & Ors.*** delivered on 21.03.2022 in Civil Appeal No. 1846 of 2022 and unreported judgment of this Court delivered on 24.03.2022 in Writ Petition No. 2169 of 2022 in case of the ***Shivam Enterprises through its Sole Proprietor Pankaj S/o Late (Shri) Anand Kishore Vs. The Union of India and others*** and unreported judgment of this Court delivered on 24.03.2022 in Writ Petition No. 1274 of 2022 in case of ***M/s. Bhagwati Construction through its Proprietor Shri Vikas Deorao Deosarkar Vs. Zilla Parishad Nanded and another.***

38. The learned counsel for the said Council also placed reliance on the judgment of the Patna High court in case of M/s. L. C. Infra Projects Pvt. Ltd. Vs. Bihar Urban Infrastructure Development Corporation Ltd. in Civil Writ Petition No. 8973 of 2020 delivered on 25.03.2021 on the issue of blacklisting and for release of earnest deposit. He submits that on the date of submission of tender the respondent No. 7 was not blacklisted.

39. Mr. Khandare, learned counsel for the successful bidder adopted

the submissions made by Mr. Deshmukh, learned counsel for the said Council in both these matters and placed reliance upon various averments made in the affidavit in reply filed by his client and would submit that his client has already started the work pursuant to the work order issued by the said Council and execution of the contract in favour of his client. He submits that his client was not blacklisted on the date of submission of tender. The said blacklisting order was set aside by the High Court.

40. The learned counsel for the petitioner on instructions states that only survey has been carried out by the successful bidder. Per contra, it is the case of the respondent No. 7 that pipes are already received and the work of estimated plant has already started. The learned counsel for the successful bidder also invited our attention to the averments made in paragraph No. 5 of the affidavit in reply filed by his client stating that the work awarded to his client has already started.

41. Mr. Sapkal, learned senior counsel for the petitioner in writ petition once again relied upon Section 93 (1) (b) of the said Act and would submit that since in this case the contract awarded to the respondent No. 7 was for more than one year period, Section 93 (1) (b) of the said Act would apply and not Section 93 (1) (a) of the said Act.

He submits that the sanction the said Council was thus mandatory before awarding contract in favour of respondent No. 7 and for execution of contract. He submits that even by virtue of notification dated 14.06.2018, the effect of Section 93 (1) (b) of the said Act is not diluted. Compliance of Section 81 of the said Act was also mandatory which was not followed by the said Council. He relied upon Section 93 (1) (b) of the said Act and would submit that the proposal was required to be placed before the said Council by the the committee before awarding contract. The learned senior counsel for the petitioner relied upon Section 93 (5) of the said Act and submits that the contract executed in the manner prescribed under the said provisions is not binding and is void.

42. The learned counsel for the said Council submits that the petitioner in writ petition had given false and incorrect information in the writ petition regarding previous work to be completed. He submis that Section 93 (1) (b) of the said Act will not apply. Section 93 (2) of the said Act is independent of Section 93 (1) of the said Act. The said Council is governed by the said scheme and based on that the State Government had accorded sanction by empowering the President and the Chief Officer to grant sanction and to execute agreement.

43. Mr. Salunke, the learned counsel for the petitioner in Public Interest Litigation in his rejoinder argument submits that, the petitioner has not suppressed any facts in the public interest litigation filed by his client and has annexed orders passed in three writ petitions filed by his client earlier. He invited our attention to the order passed by the Division Bench of this Court in Writ Petition No. 9753 of 2021 and in Writ Petition No. 14284 of 2021 filed by his client and more particularly paragraph No. 7 and would submit that, the observations made by this Court in the said judgment are restricted to the challenge made by the petitioner in the said petition and would not apply to the challenge of the petitioner in this public interest litigation.

44. It is submitted that, the challenge in this public interest litigation is to the work order and the agreement dated 30th December, 2021 executed by the council in favour of the respondent No. 7/successful bidder is in violation of the mandatory conditions prescribed U/Sec. 93 of the Act. He submits that, the cause of action in this public interest litigation is different. He submitted that the council has not produced any document on record of these proceedings to show that the approval of the standing committee was taken by the President and the Chief Officer of the Council before issuing work order or executing an agreement with the respondent No. 7 successful bidder. The learned

counsel invited our attention to the ad-interim order passed by this Court on 05th January, 2022 in Writ Petition No. 195 of 2022 and would submit that, this Court has made it clear that further steps would be subject to the decision of the said writ petition.

**Reasons and conclusions :**

45. The petitioner in Writ Petition No. 195 of 2022 and the petitioner in Public Interest Litigation No. 05 of 2022 have though raised various issues in their respective petitions, have urged limited issues at the stage of arguments which are being dealt with in this judgment.

46. On 02nd May, 2021, the Council had floated first tender notice for the same work which is subject matter of this petition. Two bids were received. The respondents did not proceed with the tender process. The next tender notice was issued on 15th July, 2021. Pursuant thereto also only two bids were received. Third tender notice was issued on 18th August, 2021. The petitioner Abhay Baburao Ingle, who is petitioner in Public Interest Litigation had filed Writ Petition No. 9753 of 2021 in this Court impugning the said tender process on various grounds including the ground of malafides against the council. This Court was of the view that the petitioner was not participant in the tender process. Third tender notice was already issued on 18/20th

August, 2021. The tender work was for the benefit of public. The technical bids were evaluated. This Court accordingly held that as third tender notice was already issued, there was no point in going back and asking the municipal council to proceed with first/second tender notice. The qualified bidder will have to be selected and third bid will have to be considered.

47. In para No. 7 of the said judgment this Court held that postponing the public work was in nobody's interest. It was also not the case of the petitioner that because of not proceeding with first/second tender notice and issuance of third tender notice public exchequer was at loss. This Court disposed of the said writ petition filed by the petitioner in that writ petition, who is petitioner in this public interest litigation without granting any relief to the petitioner therein.

48. The petitioner in public interest litigation filed Writ Petition No. 14284 of 2021 in this Court assailing the tender notice dated 01st December, 2021 issued by the council for the work which is the subject matter of the work in question in these proceedings. One Mr. Udaysihna Ashok Nimbalkar also had filed separate Writ Petition No. 14311 of 2021 for the similar reliefs. By judgment dated 23rd

December, 2021, the Division Bench of this Court disposed of both the writ petitions.

49. It was urged by the petitioners therein that the tender notice had not been issued floating norms and the mandatory requirement. Pre-bid meeting was not contemplated in the tender notice, though was mandatory under the Government Resolution. Sufficient time was not given to the bidders. Only fifteen days time was given. It was not proper. At least 45 days time ought to have been given. It was also urged by the petitioners therein that Section 93 of the said Act was also not adhered too by the council. The estimated cost was increased by Rs. 30 crores from the earlier tender and the same was illegal.

50. It was urged by the petitioners in said two writ petitions that the term of the President of the Municipal Council was going to come to an end on 27th December, 2021 and as such haste was made thereby skipping mandatory requirement and thus the tender process deserves to be quashed and set aside. It was urged by the petitioners that there should be time lag between opening of the technical bid and financial bid. There was no qualification issued by the council that technical and financial bids would be opened on the same day.

51. On the other hand it was the submission of the council that it was not a case that of the petitioners that the President had taken the decision abruptly. For the fourth time tender process was resorted too. Earlier three times tender process could not be concluded for one or other reason. It was brought to the notice of this Court by the learned counsel for the council that Section 93 of the said Act had been scrupulously adhered too. The revised technical sanction had been accorded by the Maharashtra Jivan Pradhikaran. The difference in the estimate cost was because of difference in DSR rates.

52. In the said judgment delivered by this Court on 23rd December, 2021, this Court noticed that the tender notice was issued for work of Osmanabad underground sewage scheme under the Maharashtra Suvarna Jayanti Nagarothan Mahaabhiyan. It is not disputed that 75% funds are to be contributed by the Government and 25% funds are to be borne by the local body. For such matters certainly the scope of judicial review would be in a narrow compass. The Court only would be required to consider fairness in action and the absence of arbitrariness or malafides. This Court noticed that the MJP had given technical sanction. The administrative sanction was also accorded by the competent authority. It was after receipt of technical and administrative sanction tender notice was floated. The respondent

council had adhered to the two envelop procedure.

53. In paragraph No. 15 of the said judgment this Court observed that, this Court failed to understand as to what purpose would be served by prolonging public welfare work. The petitioner in Writ Petition No. 14284 of 2021 had earlier also filed writ petition challenging third tender notice. This Court further held that, postponing the public welfare work would be in nobody's interest. By postponing the work the cost of the work would rise. Inflation is the order of the day. It will be loss to the public exchequer and the same would benefit none.

54. This Court held that, Section 93 of the said Act is complied with. No deviation as alleged by the petitioners to be materially affecting fair process of tender was pointed out. This Court observed that, it did not find that there was no fair play in action on the part of the council in issuing the tender. The decision making process has been adhered too. By filing present writ petitions, the petitioners would be merely obstructing in the development and the public welfare work. The same would not augur well for the citizens of the said region. This Court observed that, there were no malafides on the part of the council in the said action. After adverting to the judgment of the Apex Court in a

case of **Michigan Rubber (India) Limited Vs. State of Karnataka and others** reported in ***(2012) 8 SCC 216***, this Court observed that, by postponing the work, the public interest would be affected and accordingly dismissed both the said writ petitions having found no merit in the contentions of the petitioners therein.

55. A perusal of the averments made in the public interest litigation by the same petitioner indicates that, the petitioner has once again reiterated most of the submissions which were already made in the earlier two writ petitions and were not accepted by this Court and more particularly regarding the council not conducting the tender process in public interest, but is issued for personal benefit. A perusal of the grounds raised in the public interest litigation by the petitioner indicates maximum grounds raised in the public interest litigation are reiteration of the grounds already raised in the second writ petition filed by the petitioner, which is already rejected by this Court by a detailed judgment delivered on 23rd December, 2021.

56. However, during the course of arguments, Mr. Salunke, the learned counsel for the petitioner in public interest litigation submits that, the petitioner in this public interest litigation has impugned work order dated 30th December, 2021 issued by the council in favour of the

respondent No. 7 successful bidder and for writ of mandamus to issue a fresh tender for underground sewage scheme under MSJNMA for Osmanabad city on the ground that council has not followed the mandatory procedure U/Sec. 93 of the said Act. A perusal of the grounds raised in the public interest litigation does not indicate that any such ground has been raised in this public interest litigation.

57. Be that as it may, this Court will deal with the submissions advanced by the learned counsel for the petitioners in both these petitions as challenge is to the issuance of work order as well as execution of agreement in favour of the successful bidder on the ground of alleged non compliance of Section 93 of the said Act is involved.

58. Section 2(6) of the said Act defines council means a municipal council constituted or deemed to have been constituted for a small urban area specified in a notification issued in this respect under clause (2) of Article 243-Q of the Constitution of India or under sub section (2) of Section 3 of the this Act. Under Section 7 of the said Act the Municipal authorities and establishment of council are described. Municipal authorities charged with carrying out the provision of the act for each municipal area are (a) the Council, (b) the President, (c) the

Standing Committee, (d) the Subjects Committees if any (dd) the Wards Committee where constituted, (e) the Chief Officer. Section 58 of the said Act provides functions of the President. Section 93 of the said Act provides for provisions relating to contracts and tenders.

59. Section 93 of the said Act duly amended reads thus :

> **93. Provision relating to contracts and tenders.**- (1) In the case—
>
> (a) of every contract which will involve expenditure not covered by a budget grant;
>
> (b) of every contract the performance of which cannot be completed within the official year current at the date of the contract,
> the sanction of the Council by a resolution passed at an ordinary meeting shall be necessary.
>
> (2) (a) Every contract under or for any purpose of this Act shall be made on behalf of the Council by the Chief Officer.
>
> (b) No such contract which the Chief Officer is not empowered by this Act to carry out without the approval or sanction of some other municipal authority shall be made by him until or unless such approval or sanction has first of all been duly given.
>
> (c) No contract which will involve an expenditure exceeding [such amounts as may be prescribed] shall be made by the Chief Officer of 'A' Class, 'B' Class and 'C' Class Council, respectively, unless otherwise authorised in this behalf by the Council, except with the (approval or sanction of the Standing Committee).
>
> [Provided that, for such a category of contract as the Government prescribe, from time to time, a committee consisting of the President and Chief Officer shall approve such contract, within a period of fifteen days from its receipt]
>
> (d) Every contract made by the Chief Officer involving an expenditure exceeding 2 [75 per cent. of the limits prescribed under clause (c) shall be reported by him within fifteen days after the same has been made (to the Standing Committee).
>
> (e) The foregoing provisions of this section shall apply to every variation or discharge of a contract to the same extent as to an original contract.
>
> (3) Every contract entered into by a Chief Officer on behalf of a Council shall be entered into in such manner and form as would bind such Chief Officer if such contract were on his own behalf, and may in the like manner and form be varied or discharged:
>
> Provided that—
> (a) where any such contract, if entered into by a Chief Officer, would require to be under seal, the same shall be sealed with the common seal of the Council;
>
> (b) every contract for the execution of any work for supply of any materials or goods which will involve an expenditure exceeding3[such amounts as may be prescribed] be in writing and shall be sealed with the common seal of the Council and shall specify the work to be
> done or the materials or goods to be supplied, as the case may be, the price to be paid for such work, materials or goods and in the case of a contract for work, the time or times

within which the same or specified portions thereof shall be completed.

(4) The common seal of the Council shall not be affixed to any contract or other instrument except in the presence of two members of the Standing Committee who shall attach their signatures to the contract or instrument in token that the same was sealed in their presence. The signatures of the said members shall be distinct from the signatures of any witnesses to the execution of any such contract or instrument.

(5) A contract not executed in the manner provided in this section shall not be binding on the Council.

(6) Except as is otherwise provided in sub-section (2), a Chief Officer, shall before entering into any contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding 1 [such amounts as may be prescribed] give notice by advertisement in a local newspaper, inviting tenders for such contract :

Provided that, at least clear seven days shall be allowed to elapse between the date of the publication of the advertisement in the newspaper inviting tenders and the last date fixed for the receipt of tenders by the Chief Officer.

(7) The Chief Officer shall not be bound to accept any tender which may be made in pursuance of such notice, but may, with the approval of the Council, accept any of the tenders so made which appears to him, upon a view of all the circumstances, to be the most advantageous or may reject all the tenders submitted to him.

(8) A Council, after obtaining the approval of the Collector, may authorise the Chief Officer, for reasons which shall be recorded in its proceedings, to enter into a contract without inviting tenders as herein provided or without accepting any tenders which he may receive after having invited them.

(9) A Chief Officer shall require security for the due performance of every contract into which he enters under sub-section (6) and may, in his discretion, require security for the due performance of any other contract into which he enters under this Act.

60. Since the learned counsel appearing for the petitioners have addressed this Court on the issue as to whether council has followed the procedure prescribed U/Sec. 93 of the said Act while issuing work order and awarding contract to the successful bidder or not, we shall deal with the said issue first.

61. The tender opening committee for the work in question was comprising of five persons i. e. Chief Officer of the Municipal Council, Head Accountant, Internal Auditor, Assistant Accountant, Assistant

Internal Auditor and Municipal Engineer. The correspondence exchanged between the bidders was with the Chief Officer of the Municipal Council. A proviso was inserted by MAD-25 of 2018 i. e. Section 13(a)(i) to Section 93(2)(c) stating that for such category of contract Government may prescribed from time to time a committee consisting of President and Chief Officer shall approve such contract within a period of fifteen days from its receipt.

62. The State Government issued Government Resolution dated 30th November, 2021 regarding administrative sanction and prescribing a committee consisting of President and Chief Officer to approve the said contract. Accordingly on 28th December, 2021, committee consisting of President and Chief Officer of the respondent No. 4 accorded contract in favour of the successful bidder. A perusal of the said G. R. dated 30th November, 2021 annexed by the council to the affidavit in reply makes a reference to the respondent No. 4 council specifically and also about work in question. Based on the said G. R., the President of the Council and the Chief Officer have accorded sanction below the cost estimated by the council. The respondent No. 6 was the lowest bidder.

63. In view of the specific Government Resolution passed in respect of tender invited by the respondent No. 4 council and in view of the

fact that the contract awarded by the council in favour of the successful bidder was below the estimated cost of the council, in our view the President and the Chief Officer of the council were empowered to issue work order and to execute an agreement with the successful bidder.

64. In our view Section 93(2)(i) read with proviso of the said Act applies to the facts of these cases and by complying with the powers prescribed under the said provisions read with Government Resolution, President and Chief Officer have rightly executed work order and a contract with successful bidder. Section 93(1)(b) of the said Act pressed in service by the learned senior counsel for the petitioner, thus, would not apply to the facts of this case. The case of the council would fall under proviso to Section 93(2)(c) of the said Act. In our view there is thus, no merit in the submissions of the learned counsel for petitioners that the work order issued in favour of the successful bidder by the said council is void or is not binding on the council.

65. In so far as judgment of the Supreme Court in a case of ***Nandkishore Ganesh Joshi Vs. Commissioner, Municipal Corporation of Kalyan and Dombivali and Others*** (supra) relied upon by Mr. Sapkal, the learned senior counsel for the petitioner is concerned, the Supreme Court after construing Section 73(c) of the Bombay Provincial

Municipal Corporation Act, 1949 has held that, although the Commissioner is entitled to execute contract on behalf of corporation, but statutory embargo is placed thereupon by reason of Clause (c) of Section 73 of the Act. A contract which may be entered into by the Commissioner requires prior approval of the Standing Committee. The approval of the standing committee is required to be granted before any contract is entered into. The approval of a contract and that too with previous approval of the standing committee cannot thus said to be an empty formality. The standing committee is required to perform its function in terms of said Act. It is held that by the Supreme Court the statutory authority has duty to act in public interest as also fairly and in a reasonable manner.

66. A perusal of Section 73 of the Bombay Provincial Municipal Corporation Act, which was considered by the Supreme Court in the said judgment indicates that there was no proviso as inserted in Section 93(2)(c) of the said Act permitting President and the Chief Officer of the council to approve a contract in a manner of contract as the Government may prescribe from time to time. The judgment of the Hon’ble Supreme Court in a case of ***Nandkishore Ganesh Joshi Vs. Commissioner, Municipal Corporation of Kalyan and Dombivali and Others*** (supra) thus, would not assist the case of the petitioners.

67. In so far as the submission of the petitioner that the respondent council has hurridly dealt with the issue of work order and the contract and more particularly on the last day of tenure of the President of the council is concerned, it was specifically urged by the petitioner in the said Writ Petition No. 14284 of 2021 that the term of the President of the Municipal Council was going to come to an end on 27th December, 2021 and as such haste was made thereby skipping mandatory requirement. This Court in the said judgment delivered on 23rd December, 2021 did not accept the said submission made by the learned counsel for petitioners.

68. In so far as the issue of black listing of the successful bidder raised by the petitioner is concerned, the successful bidder has placed on record the documents to indicate that as on the date of submitting the bid by the respondent No. 6, the said party was not black listed. There is thus no merit in the submission made by the learned senior counsel for the petitioner. The said black listing order of the respondent No. 6 was quashed and set aside by the Patna High Court.

69. In so far as the submission of the learned senior counsel for the petitioner that, the respondent No. 6 had not filed the required

technical documents and more particularly raised in ground No. 10-H of the writ petition is concerned, Mr. Deshmukh, the learned counsel for the municipal council and Mr. Khandare, the learned counsel for the successful bidder rightly controverted these allegations in the affidavit in reply and also across the bar. In our view there is thus, no merit in the submissions of the learned senior counsel for the petitioner. The work order has already been issued.

70. Mr. Deshmukh, the learned counsel during the course of his arguments demonstrated the entire tender process including the query raised by the council not only upon the petitioner in writ petition, but also successful bidder before opening technical bid of the bidders. The financial bid was opened by the council not on the same day as sought to be canvassed by the learned counsel for the petitioner. There was gap of about six days in opening financial bid and the technical bids. The petitioner in writ petition was admittedly disqualified in the technical bid submitted by him and thus financial bid of the petitioner was rightly not opened by the council.

71. In so far as the issue of bank guarantee submitted by the successful bidder on the same day of which the financial bid was opened is concerned, in our view the arrangement of bank guarantee

made by the successful bidder on the same day on which financial bid was opened would depend upon the relation of the bidder with their respective banks to furnish such documents. Be that as it may submission of the bank guarantee by the respondent No. 6 successful bidder on the same day on which the financial bid was opened would not establish any malafides or any undue favour in favour of the successful bidder by the council or by the President or Chief Officer of the council.

72. The tender/bid was issued for the fourth time for the same work and thus there were no malafides on the part of the President or the Chief Officer of the Municipal Council to conclude the transaction and to award the contract before expiry of the term of the President of the council. If the council would have waited for election of the new President on 30th December, 2021, the public project would have been further delayed.

73. A perusal of the affidavit in reply filed by the respondent No. 6 successful bidder indicates that it is a case of the successful bidder that on the date of filing affidavit in reply i. e. 31st March, 2022, the respondent No. 6 had already commenced its work. The respondent No. 6 was informed by the Municipal Council vide letter dated 28th

December, 2021 under signature of the Chief Officer that the bid of the respondent No. 6 has been approved by the appropriate committee of the said council and was asked to deposit an amount of Rs. 3,70,85,658/- i. e. 2% of the estimated cost in the form of fixed deposit receipt of bank guarantee from nationalized/scheduled bank in the name of the Chief Officer, Osmanabad Municipal Council. The respondent No. 6 accordingly has paid security deposit in the form of bank guarantee and has already executed an agreement on 30th December, 2021.

74. The respondent No. 6 in the affidavit in reply has clarified that, the respondent No. 6 had submitted its self declaration on 09.12.2021 and had made it clear that the respondent No. 6 was not black listed by any Government, Semi Government organization/any local body and any other private body. In any event the said black listing order was set aside by the Patna high Court subsequently. The respondent No. 6 had uploaded various certificates as per requirement of the tender document. The submission made in the affidavit in reply filed by the respondent No. 6 and across the bar that the respondent No. 6 has already started the work prior to the date of filing affidavit in reply are accepted.

75. Though the learned counsel for the council and for the successful bidder made an attempt to demonstrate that the petitioner in writ petition itself was not qualified and it's tender bid was not submitted in accordance with provisions of the tender, we do not propose to go into said issue in view of the fact that, the petitioner in the writ petition has not pressed prayer clause A-2 and B.

76. The Hon'ble Supreme Court in a case of ***N. G. Projects Limited Vs. M/s. Vinod Kumar Jain & Ors.*** (supra) has held that, the construction of roads was an essential part of development of infrastructure in any State and it would be only unwarranted interference with the contract awarded which would cause loss to the public interest. The Hon'ble Supreme Court after adverting to various judgments on the issue held that since the construction of road is infrastructure project and keeping in view intent of legislature that infrastructure project should not be stayed, the High Court would have been well advised to hold its hand to stay. The construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India. The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating

the consequences of non-performance.

77. The Hon'ble Supreme Court held that, it was not the case of the writ petitioner that action of Technical Evaluation Committee was actuated by extraneous considerations or was malafide. The Supreme Court accordingly held that writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. The Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions.

78. It is held that, if the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather

than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. The Hon'ble Supreme Court held that the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.

79. The Hon'ble Supreme Court mentioned a word of caution in the said judgment that any contract of public service should not interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good. The grant of interim injunction by the learned Single Bench of the High Court has helped no-one except a contractor who lost a contract bid. The Hon'ble Supreme Court accordingly was pleased to set aside grant of interim injunction by the learned Single Judge of the High Court holding that the said order has helped no one except contractor who lost a contract bid and had only caused loss to state that no corresponding gain to any one.

80. The Division Bench of this Court comprising of (R. D. Dhanuka and S. G. Mehare, JJ) in an unreported judgment delivered on 24$^{th}$ March, 2022 in Writ Petition No. 2169 of 2022 in case of Shivam

Enterprises Vs. The Union of India and others and in judgment delivered on 24th March, 2022 in Writ Petition No. 1274 of 2022 in a case of M/s Bhagwati Construction through its Proprietor Vs. Zilla Parishad Nanded and another and in companion matters after adverting to the principles laid down by the Hon'ble Supreme Court in a case of ***N. G. Projects Limited Vs. M/s. Vinod Kumar Jain & Ors.*** (supra) has refused to interfere with the award of tender and dismissed the petitions.

81. This Court while rejecting the earlier petitions filed by Abay Baburao Ingle, who is petitioner in public interest litigation has rejected those petitions on the ground that the tender work was for benefit of public and delay in public work was in nobody's interest. This Court observed in the said judgment delivered on 23rd December, 2021 in the petition filed by the petitioner Mr. Abhay Ingle that no purpose would be served by delaying public welfare work. By filing the writ petitions the petitioners would be merely obstructing in the development of public welfare work and the same would not auger well for the citizens of the said region and by postponing the work the cost of the work would rise. Inflation is the order of the day and it would be loss to the public exchequer and the same would benefit none. In our view the principles laid down by the Hon'ble Supreme Court in a case of ***N. G.***

***Projects Limited Vs. M/s. Vinod Kumar Jain & Ors.*** (supra), judgments of this Court in case of Shivam Enterprises Vs. The Union of India and others and in case of M/s Bhagwati Construction through its Proprietor Vs. Zilla Parishad Nanded and another (supra) would apply to the facts of this case. The principles laid down by this Court in the petition filed by Mr. Abhay Ingle, who is petitioner in public interest litigation while rejecting earlier writ petitions would apply to the facts of this case. We respectfully bound by the principles laid down by the Hon'ble Supreme Court and this Court.

82. In so far as the petitioner in public interest litigation is concerned, he was Vice President of the Municipal Council, Osmanabad and had filed petitions even in past as already referred in the earlier paragraphs in the judgment with a view to obstruct public project undertaken by the Municipal Council, Osmanabad and was not successful. This public interest litigation is one more attempt on the part of the petitioner to obstruct the public project on one or other frivolous ground. In our view since the petitioner in public interest litigation has not filed this public interest litigation with bonafide intention and is filed with a view to obstruct the public project undertaken by the Municipal Council, Osmanabad, which is a public project, the amount of Rs. 1,00,000/- (Rs. One Lac only), deposited by

the petitioner in public interest litigation is liable to be forfeited.

83. In our view, since contract was rightly awarded to the respondent No. 6 by the Municipal Council and in view of the fact that, the successful bidder has already started the work, no case is made out for interference with the issuance of work order and execution of the contract by the municipal council in favour of the respondent No. 6 successful bidder. The writ petition as well as public interest litigation are devoid of merits.

84. We accordingly pass following order.

**O R D E R**

A. The Writ Petition No. 195 of 2022 and Public Interest Litigation No. 05 of 2022 are dismissed.

B. The deposit of Rs. 1,00,000/- (Rs. One Lac only) made by the petitioner in Public Interest Litigation No. 05 of 2022 pursuant to the order dated 03rd March, 2022 is forfeited.

C. Rule accordingly is discharged. No order as to costs.

**( S. G. MEHARE )**
**JUDGE**

**( R. D. DHANUKA )**
**JUDGE**

P.S.B.