

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

WRIT PETITION NO.8597 OF 2019

1. Nilesh Suresh Kshatriya
Age : 44 years, Occu : Business,
R/o. B. No. 31, Sunit, Ramkrupa,
(Mhada) Colony Opp. Pratap
Nagar, Durgah Road, Kranti Chowk,
Aurangabad.
2. Bhavesh Bipinchandra Saraf
Age : 45 years, Occu : Business,
R/o. Plot No.31-B Krishna Gulab
Near Meena Taj Thakre Hall, Swar
Sangam Society New Shreya Nagar,
Aurangabad
3. Kamlesh Upendra Javeri
Age : 32 years, Occu : Business,
R/o. Opp. Jagrut Hanuman Temple,
Flat No.2 Madhav Apartment,
Pandariba, Aurangabad
4. Anil Bhagwanrao Khandalkar
Age : 52 years, Occu : Business,
R/o. S.B. Colony, Aurangpura,
Aurangabad.

.. Petitioners

Versus

1. The State of Maharashtra
General Administration Department,
Mantralay Mumbai
2. Municipal Corporation, Aurangabad
through its Commissioner
3. Standing Committee,
Municipal Corporation, Aurangabad

4. Dreams Creation Advertising
Through its Sole Proprietorship,
Mr. Shaikh Habib s/o. Shaikh Pasha
Age : Major, Occu : Business,
Having its registered address at,
Plot No.379, Cord Road Near Janseva
Kirana Store, Samta Nagar, Aurangabad.
5. Future Media Advertising
Through its Partner
Mr. Shaikh Habib s/o. Shaikh Pasha,
Age : Major, Occu : Business,
Having its registered address at
Plot No.379, Cord Road Near Janseva
Kirana Store, Samta Nagar, Aurangabad. .. Respondents

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Mr. R.F. Totala, Advocate for the Petitioners
Mr. A.S. Shinde, AGP for Respondent – State
Mr. J.R. Shah, Advocate for Respondent Nos.2 & 3
Mr. Subodh P. Shah, Advocate for Respondent No.4
Mr. Anandsingh Bayas, advocate for respondent no.5

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 02-08-2022
PRONOUNCED ON : 10-08-2022**

JUDGMENT (PER SANDEEP V. MARNE, J.) :

1. Heard. Rule. It is made returnable forthwith. Learned AGP Mr. A.S. Shinde, learned advocate Mr. J.R. Shah, learned advocate Mr. Subodh Shah and learned advocate Mr. Anandsingh Bayas waive service. At their joint request, the matter is heard finally at the admission stage.

2. The present petition is filed by four petitioners challenging the decision of the respondent - Corporation in awarding contract for a period of 30 years as well as the agreement dated 24.11.2017 executed by it in favour of respondent nos.4 and 5. Further prayer is made seeking writ of mandamus to direct the respondent - Municipal Corporation to invite e-tender for future period for the work of installation of hoardings, uni-poles and collection of taxes in accordance with the Government Resolution dated 26.11.2014.

3. The respondent - Municipal Corporation had invited proposals for expression of interest vide advertisement dated 19.11.2016 for the following five works:

- (I) Submission of proposal for hoardings at lands / buildings owned by the Municipal Corporation.
- (II) Installation of direction indicator gantries in the newly developed areas.
- (III) Installation of bus stops for bus services of Municipal Corporation.
- (IV) Development of spaces below flyovers and development of Islands.
- (V) Conducting survey in respect of advertisements on commercial hoardings, boards and kiosks except display boards on shops and recovery of tax thereon.

4. It is an admitted position that petitioner no.1 participated in the process of invitation of proposals for expression of interest in respect of various works. It appears that the proposals of petitioner no.1 were rejected on technical grounds. Petitioner no.1 did not challenge rejection of his proposals and acquiesced in such rejection.

5. The respondent - Municipal Corporation received proposals from eligible bidders in respect of the works at serial nos. (I) and (V). The general body of the Municipal Corporation adopted resolution no.1291 in its meeting held on 19.09.2017 and resolved to award the work at Sr. No.(I) to respondent no.4 and the work at serial no.(V) to respondent no.5. Accordingly, approval was granted by the general body for award of work for 30 years on the basis of the demands of respondent nos.4 and 5. The Standing Committee of the Municipal Corporation thereafter adopted resolution no.239 in its meeting held on 22.12.2017 and granted financial approval for award of respective works to respondent nos.4 and 5.

6. Accordingly, agreements came to be executed by respondent - Municipal Corporation in favour of respondent nos.4 and 5 on 24.12.2017 regarding the respective works.

7. The present petition came to be filed by the petitioners on 05.07.2019 challenging the aforesaid decision of the Municipal Corporation in awarding the work for 30 years as well as the agreements executed with respondent nos.4 and 5 on 24.11.2017. The main objections of the petitioners are that no tenders were invited before awarding the work, that the work could not have been awarded for a long period of 30 years, that the contracts have not been signed by the Municipal Commissioner as required under Section 73 of the Maharashtra Municipal Corporations Act, 1949 and, that the Municipal Corporation has incurred losses by award of works to respondent nos.4 and 5.

8. Before advertng to the merits of the matter, we put across to Mr. R.F. Totala, learned advocate appearing for the petitioners as to how the petitioners have *locus standi* to file the petition and whether this Court would be justified in interfering in the matter on account of delay and laches on the part of the petitioners. Needless to say that these two objections are specifically taken not only by respondent - Municipal Corporation, but also by respondent nos.4 and 5.

9. With regard to the issue of *locus standi*, Shri. Totala submitted that the petitioners are tax payers and are interested in ensuring that the Municipal Corporation does not award any contract by incurring losses. So far as the participation of petitioner no.1 in the contract awarding process is concerned, Shri. Totala submitted that respondent no.1 is not interested in acceptance of his bid or award of work to him. He submitted that respondent no.1 has also filed the present petition in common interest with respondent nos.2 to 4 to ensure that the respondent - Municipal Corporation does not wrongfully award work by incurring losses.

10. He invited our attention to para no.4 of the rejoinder filed by the petitioners, which reads thus:

“4. I say and submit that, it is alleged that Petitioners are not having locus to file the petition, are absolutely incorrect. It is clearly stated in para no.1 of the petition that, they are citizens and also doing the same business, more so they are the tax payers and any action which affects the financial rights of corporation in that circumstances they are having the locus to challenge the illegal action, more so, petitioner no.1 has participated in the tender process and after getting the knowledge filed the present petition which is perfectly maintainable.”

11. With regard to the issue of delay and latches, Shri. Totala invited our attention to para no.3 (v) of the petition, which reads thus:

“3 (v). Petitioners say and submit that, he has noted in the market that some agency has started erecting the hoardings, Uni Poles and therefore petitioner approached to his lawyer and filed an application under RTI and reply of the same was received by respondent – AMC, on 18.04.2019.”

12. He also invited our attention to para no.3 of the rejoinder which reads thus :

“3. I say and submit that, the points are raised about delay and latches in filing the petition but it is specifically mentioned in point no.v that, petitioner received the reply on 18th April 2019 to his application filed under RTI Act, 2005, and immediately writ petition is filed on 4th July 2019 and therefore there is no question of any delay and latches more so the impugned agreement which is challenged is in continuation for the period of 30 years from the date of signing of the agreement and it is signed on 19.01.2018 and as such the cause is in continuation.”

13. In short, the submission of the petitioners on the point of delay and latches is that the petitioners became aware of the work being awarded to respondent nos.4 and 5 and illegality in the process only after they received the reply on 18.04.2019 and accordingly the petition filed on 05.07.2019, cannot be said to be barred by the principles of delay or latches.

14. Mr. J.R. Shah appearing for respondent – Municipal Corporation, Mr. Subodh Shah appearing for respondent no.4 and Mr. Anandsingh Bayas appearing for respondent no.5 have also made detailed submissions on both the points of locus of the petitioners as

well as delay and latches.

15. So far as the first issue of locus of the petitioners is concerned, we find the combination of four petitioners for filing of the present petition rather strange. It is beyond comprehension as to how petitioner no.1, who participated in the process and whose bid was rejected, can file a joint petition with petitioner nos.2 to 4 who had not participated in the process. Since petitioner no.1 participated in the process, he obviously has personal interest in the matter. So far as petitioner nos.2 to 4 are concerned, their interest has been projected as akin to public interest. Therefore, filing a joint petition by one petitioner who has personal interest in the matter with 3 other petitioners having alleged public interest is something which cannot be countenanced.

16. Even the theory of alleged public interest of petitioner nos.2 to 4 appears unbelievable in view of specific averment made in para no.4 of the rejoinder, “it is clearly stated in para no.1 of the petition that, they are citizens and also doing the same business”.

17. Thus, petitioner nos.2 to 4 also appear to have private interest with petitioner no.1 with regard to the subject matter

involved in the petition. In fact, during the course of submissions, Mr. Totala admitted that on account of award of works to respondent nos.4 and 5 the business of the petitioners has been affected. Therefore, it is difficult to believe that any of the petitioners have any public interest in filing the present petition.

18. Once it is held that none of the petitioners have public interest in filing the present petition, it becomes imperative that the petitioners prove their locus for filing the present petition. Since petitioner nos.2 to 4 did not participate in the contract process, they do not have any locus in challenging award of the works to respondent nos.4 and 5. So far as petitioner no.1 is concerned, even though he participated in the contract process, Shri. Totala has specifically clarified during the course of his submissions that petitioner no.1 is not interested in award of the works in his favour. Thus, the aspect of participation of petitioner no.1 in contract process is sought to be disconnected by the petitioners themselves with the prayers sought in the petition. Therefore, even petitioner no.1 would have no locus to file the present petition.

19. It has been submitted by Shri. Subodh Shah, advocate appearing for respondent no.4 that petitioner nos.2 to 4 are proxies set up by petitioner no.1 to prosecute his private interest in the

matter of award of works to respondent nos.4 and 5. This contention appears to be believable on account of the fact that the correspondence prior to the filing of the present petition is made solely by petitioner no.1. As observed earlier, Shri. Totala has submitted before us that on account of award of works to respondent nos.4 and 5, business of petitioner nos.2 to 4 has been affected. This leaves no room for doubt that petitioner no.1 has added petitioner nos.2 to 4 only to set up the case of public interest when in fact not only petitioner no.1 but even petitioner nos.2 to 4 have private interest in the subject matter involved in the petition.

20. We, therefore, hold that the petitioners do not have even remote locus for setting up a challenge to the award of the works in favour of respondent nos.4 and 5.

21. Coming to the issue of delay and laches, the defence sought to be put forth by Shri. Totala about award of contracts to respondent nos.4 and 5 only on 18.04.2019, has been successfully demolished by the Counsels appearing for respondent nos.4 and 5 by inviting our attention to letter dated 03.08.2018 of the Ultra Outdoors Private Ltd., addressed to respondent no.5. Petitioner no.1 is the proprietor of Ultra Outdoors Private Ltd. Petitioner no.1 made an enquiry with respondent no.5 on 03.08.2018 about the amount of tax payable in respect of the sign board of one of his clients. Thus, on

03.08.2018 itself, petitioner no.1 was fully aware that respondent no.5 was already awarded the contract of assessment and collection of taxes in respect of sign boards. Therefore, the statements made in the petition as well as in the rejoinder by the petitioners about receipt of knowledge of award of works on 18.04.2019 are utterly false. Furthermore, having participated in the contract process it is difficult to believe that petitioner no.1 did not know the outcome of the process. Therefore, while rejecting the defence of the petitioner with regard to the issue of delay and latches, we deprecate the conduct of the petitioners in making false statements on oath.

22. Since we have come to the conclusion that the petitioners do not have *locus standi* to file the present petition as well as the petition being barred by principles of delay and latches, we do not deem it necessary to go into merits of various contentions raised in the petition. The said issues are left open.

23. The petition is, therefore, dismissed. No order as to the costs.

24. Rule is discharged.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)