

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 109 OF 2022

Pramod Premchand Oswal	}	Petitioner
Versus		
The Pune Municipal Corporation	}	
& Ors.	}	Respondents

Mr. Anil V. Anturkar, Senior Advocate a/w
Mr. Ajinkya M. Udane for petitioner.

Mr. Abhijit P. Kulkarni a/w Mr. Aditya S.
Mahadik for respondent nos.1 to 4/PMC.

Mr. Sanjay S. Mehta a/w Mr. Anand Melwani
a/w Mr. Aman Rite for respondent nos.11,
15 & 18.

Mr. Mohan N. Devkule for respondent no.19.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE : SEPTEMBER 22, 2022

P.C.:

1. Relief claimed by instituting this PIL petition is for quashing a tender notice invited by the Pune Municipal Corporation (hereafter "PMC", for short) for the purpose of outsourcing labour for cleaning/sweeping of roads as well as contracts, if any, awarded in pursuance of such tender.

2. The petitioner is a corporator of the PMC. Presently, however, the Municipal Commissioner is the Administrator of PMC since the term of the General Body of PMC has expired. According to the petitioner, while issuing the impugned tender notice, Government Resolution (hereafter

“GR”, for short) dated 26th November 2018 in respect of ‘performance guarantee’ has been thrown to the winds. Instead of insisting for a performance guarantee (10% of the bid) after the stage of identification of the L-1 bidder has been reached, the PMC has been insisting for such performance guarantee to be submitted even at the time of submission of the bids in respect of all but one of the areas covered by the impugned tender notice. In respect of the said area, however, the bidders have been called upon to submit performance guarantee in terms of the GR dated 26th November 2018.

3. The pleaded case also reveals that in respect of a particular area, a bid has been received from a bidder, who has fabricated documents to suit its interests. Despite such fabrication, the said bidder was not disqualified and allowed to participate in the tender. If such bidder had been disqualified, there would have been one qualified bidder and having regard to GR dated 1st December 2016, the PMC would have been under an obligation to proceed for a re-tender which, obviously, has not been taken recourse to, to serve the vested interest of the officers of the PMC and the said bidder.

4. By an order dated 19th September 2022, we had called upon the PMC to file a reply affidavit by yesterday. Such affidavit has been filed.

5. At the outset, Mr. Kulkarni, learned advocate for the PMC has objected to the maintainability of the PIL petition. The objections are three-fold. First, he contends that

though the impugned tender notice was issued in May, 2022, the petitioner has invoked the PIL jurisdiction of this Court on 11th September 2022 without there being any reasonable explanation for the delay. Secondly, according to Mr. Kulkarni, the trigger for this PIL is the refusal of injunction by the Civil Courts (trial court and appellate court) as claimed by the plaintiffs/appellants, who as unsuccessful bidders had challenged the terms and conditions of the tender notice before such Courts. The suggestion of Mr. Kulkarni is that after the unsuccessful bidders failed in their pursuit of stalling the process of tender, the petitioner, whose other identity is that of a contractor, has approached this Court with motive, which can hardly be seen as *bona fide*. Thirdly and finally, Mr. Kulkarni contends that despite being aware of the terms of the impugned tender notice, which was issued in May, 2022, the petitioner did not choose to lodge any objection with the Administrator of the PMC pointing out any illegality in the tender notice/process as well as seeking corrective action in terms of the extant GRs.

6. Mr. Kulkarni's contention is that the PIL ought not to be entertained in view of the aforesaid conduct of the petitioner.

7. Mr. Anturkar, learned senior advocate for the petitioner had, on the earlier occasion, contended that the PMC in proceeding with the tender process had not followed the GR dated 26th November 2018. This, according to him, amounted to a patent illegality in the process. In course of hearing today, Mr. Anturkar reiterated the aforesaid

contention. As has been noticed above, an allegation has been raised in the PIL petition with regard to fabrication of documents by one of the bidders. Mr. Anturkar also sought to impress upon us that in view of the admission of the concerned bidder, as appears from one of the documents annexed to the reply affidavit of the PMC, we ought to interfere and grant relief as claimed by the petitioner.

8. However, having regard to the objection raised by Mr. Kulkarni that the petitioner had not lodged any objection with the Administrator of the PMC prior to invoking the writ jurisdiction of this Court, Mr. Anturkar sought for leave of the Court to approach the Administrator with a suitable representation/objection and also prayed for an order that till a week after the Administrator communicates its decision on such representation/objection to the petitioner, the tender process may not be carried further.

9. Such a stance was taken by Mr. Anturkar upon perusal of the judgment of a coordinate Bench of this Court in Public Interest Litigation (L) No. 1553 of 2022 (**Vijendra Kumar Rai vs. State of Maharashtra and Ors.**), decided on 21st February 2022. It has been held in such decision as follows: -

4. The prayer in this PIL petition is for a Writ of Mandamus directing the respondents 2 to 6 to conduct an inquiry. Law is well-settled that in case of an alleged breach of a mandatory duty, the salutary general rule, which is subject to certain exceptions, is that when a writ of Mandamus is asked for, the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he

should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the Mandamus desires to enforce and that, that demand was met by a refusal. We may refer to the decisions of the Supreme Court reported in AIR 1975 SC 460 [**Saraswati Industrial Syndicate vs. Union of India**], AIR 1976 SC 1654 [**State of Haryana vs. Chanan Mal**], (2013) 5 SCC 427 [**Rajasthan State Industrial Development & Investment Corporation vs. Subhash Sindhi Cooperative Sindhi Cooperative Society**] and (2013) 5 SCC 470 [**Rajasthan State Industrial Development & Investment Corporation vs. Diamond & Gem Development Corporation Limited**], which lay down the law in this regard. Perusal of the aforesaid decisions would also reveal that a demand for enforcement of a duty could be refused either by words or conduct, and it is not necessary that only when refusal is by words that a writ petition for a Mandamus could lie. If it is evinced from the conduct of the authority that the demand would not be considered, the party aggrieved need not indefinitely wait for an express refusal. It would be sufficient for him to show that a valid demand has been made which is met with an implied refusal. However, there are exceptions to the general rule on the existence whereof a writ petition can be instituted without there being a formal demand for justice. If making of a demand would be an idle formality or if irretrievable damage will ensue if the party aggrieved were driven to demand justice first and wait for a response, the writ court in the judicious exercise of its discretion may not insist on the party approaching it to do so.

5. There is no legitimate reason as to why this salutary rule may not apply even in case of a Public Interest Litigation, where a Writ of Mandamus is claimed. After all, one of the objects of a Public Interest Litigation invoking the writ jurisdiction is to enforce public duties of the Government/authorities. The petitioner, in the present case, ought to have brought to the notice of the concerned authorities the alleged violation of the prohibitory order and

demanding action against the alleged offenders as per law. There being no demand, question of a refusal either by words or conduct does not arise. On facts, we hold that it is not a case where any of the exceptions noticed above would also apply. We are, therefore, loath to exercise our jurisdiction under Article 226 of the Constitution.

10. While agreeing with the said judgment and in view of Mr. Anturkar's prayer, we see no reason to examine the rival contentions on merits. The PIL petition stands disposed of by granting liberty to the petitioner to approach the Administrator with a suitable representation/objection. If such representation/objection is received by the Administrator, he shall proceed to decide the same in accordance with law, as early as possible. The resultant decision shall be communicated to the petitioner immediately after disposal of his representation/objection.

11. So far as the prayer of Mr. Anturkar that the tender process may not be carried forward till one week of communication of the Administrator's decision on the representation/objection to the petitioner is concerned, we see no reason to grant such prayer in view of the decision of the Supreme Court in **State of Orissa vs. Madan Gopal Rungta**, reported in AIR 1952 SC 12. The prayer is, thus, refused.

12. All contentions on merits are kept open.

13. No costs.

SALUNKE
J V

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by SALUNKE J V
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(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)