

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL PUBLIC INTEREST LITIGATION NO.01 OF 2022
WITH APPLN/2520/2023

Manoj Vinayakrao Ghodkay
Age: 49 years, Occu.: Social Activist,
R/o. Plot No.RH-7, Flat No.A-501,
Blue-Bells, Near Prozone Mall,
MIDC Chikalthana, Aurangabad. .. Petitioner

VERSUS

1. The State of Maharashtra,
Through the Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai 400032.
2. The Commissioner of Police,
Aurangabad.
3. The Central Bureau of Investigation,
Plot No.5-B, CGO Complex,
Lodhi Road, New Delhi 110003,
Through its Director.
4. The Zilla Parishad, Aurangabad,
Through its Chief Executive Officer.
5. Aurangabad Municipal Corporation,
Aurangabad,
Through its Commissioner.
6. The Principal Secretary,
Rural Development and Water
Conservation Department,
Bandhkam Bhavan, Marzban
Patrawala Road, Fort, Near CST,
Mumbai. .. Respondents

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Mr. Mahesh V. Ghatge, Advocate for the petitioner.
Mr. D. R. Kale, PP for the respondent No.1, 2 and 6 – State.
Mr. Bhushan Kulkarni, Advocate for respondent No.3.
Mr. U. B. Bondar, Advocate for respondent No.4.
Mr. Sanjeev B. Deshpande, Senior Counsel, Advocate for Respondent No.5.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

**RESERVED ON : 14th July, 2023
PRONOUNCED ON : 31st August, 2023**

JUDGMENT (Per Smt. Vibha Kankanwadi, J.) :-

. The petitioner who is a social as well as political activist has filed present Public Interest Litigation for following reliefs :-

“(A) This Public Interest Litigation may kindly be allowed.

(B) By invoking the extra ordinary Writ Jurisdiction, this Hon’ble Court may kindly be pleased to direct through probe into the allegations made in this petition, so also in various representations made to the respondent authorities through the Central Bureau of Investigation, New Delhi, especially having regard to huge amounts involved and multifarious illegalities in the entire tender process, since preparation of its budget itself till actual allotment of work and even

thereafter, in order to ensure that the construction of administrative building of Zilla Parishad, Aurangabad is properly constructed and public money is saved from getting waste.

(C) By issuing appropriate writ or orders or directions, the relevant records in the custody of respondent authorities, especially in the custody of Aurangabad Zilla Parishad, Aurangabad Municipal Corporation and the Commissioner of Police, Aurangabad may kindly be directed to be handed over to the Central Bureau of Investigation to ensure transparent and fair investigation to unfold illegalities.”

2. The petitioner contends that he has registered himself as a contractor being an unemployed engineer and has undertaken various government as well as private works during last more than 20 years. However, he has not renewed his licence as unemployed engineer and has stopped working as contractor since 2019. Now, he is in real estate. Zilla Parishad, Aurangabad i.e. respondent No.4 had issued a tender for construction of its administrative building at Aurangabad. It is alleged that respondent No.4 was guided by political persons, who were interested in allotting the said work to a particular agency and respondent No.5 - Aurangabad Municipal Corporation through its officials had connived with respondent No.4 as well as the successful

bidder by issuing certificates, which do not reflect correct factual position. Therefore, the petitioner had made complaints to the Hon'ble Chief Minister of the State and only superficial inquiry is shown to have been made. As no effective steps were made to unearth the illegalities, the petitioner has filed the present petition. It has been specifically contended that the petitioner has no personal interest in the matter, but being the tax payer citizen of the town, he want the redressal of the grievance of the public at large.

3. It is contended in the petition that the facts emerging for lodging the petition was that the government had taken a decision to construct new administrative building for Zilla Parishad, Aurangabad admeasuring 10838.96 square meters i.e. approximately 1,16,650 square feet in ground plus four stories as well as electrification of works, installation of solar plant, inbuilt furniture and firefighting equipment. The total construction cost worked out was Rs.20,99,70,000/-, but notwithstanding the said higher rate, the construction cost that was worked out by the respondents was to the tune of Rs.37,83,73,333/-, which was double the actual cost of construction. Respondent No.1 had floated tender through additional CEO on 12.07.2021 in the newspaper by prescribing 19.07.2021 to be

the last date for submission of online tender form. However, that tender notice came to be cancelled on the ground of error as well as for administrative reasons. Thereafter, another tender notice was published by respondent No.4 in July, 2021. The tender conditions prescribed were removed from the website and, therefore, the petitioner was handicapped to download those tender conditions, however, some of them have been downloaded by him. He has quoted certain conditions and submitted that the successful bidder as well as another bidder submitted certificates of the bank on a plain paper without putting any date thereon. The bank certificates are therefore said to be forged. The petitioner has harped upon Clause 4.5 (A) (b) and submitted that as per the said requirement, last five years as prime contractor regarding completion of those works was made compulsory. The successful bidder was M/s. N. K. Constructions Limited, who was given certificate by respondent No.5 stating that the said condition was fulfilled. It has been tried to be demonstrated as to how the construction made by said M/s. N. K. Constructions Pvt. Ltd. in respect of Solid - Waste Management Project is incomplete and not as per the requirement. It has also been tried to be demonstrated as to how M/s. N. K. Constructions Pvt. Ltd. is not a fit body for executing the said work of construction of administrative building of

Zilla Parishad. It has been tried to be brought on record as to how the illegalities have been committed while accepting the tender. The allotment of tender work to such ineligible, inexperienced and incompetent agency has caused much loss of public exchequer and according to the petitioner, criminal offence has been committed by respondent Nos.4, 5 and the contractor and that requires to be taken cognizance of.

4. The petitioner has relied on the government resolutions including the government resolution by which administrative approval was granted by the State Government for the construction of the administrative building of Zilla Parishad and the complaints made by the petitioner to the police and the other authorities.

5. Deputy Commissioner, in the office of Divisional Commissioner, Aurangabad, has filed affidavit-in-reply in respect of respondent No.6. She has stated that no such case is made out to send the investigation to Central Bureau of Investigation (for short "CBI"). It has been stated that the Rural Development Department vide Government Resolution dated 13.07.2022 had constituted a four members committee for conducting inquiry in respect of complaint filed by the present petitioner. The committee conducted thorough inquiry and

gave report on 16.11.2011. The petitioner by application dated 08.09.2022 addressed to Additional Chief Secretary, Rural Development Department, Mumbai, had raised objection to the report submitted by the committee. Thereafter, once again the committee was directed to make thorough inquiry and accordingly, once again the thorough inquiry was made and the report was submitted on 14.10.2022. Then it has been contended that the committee has submitted in the report that the tender committee had not taken care while inquiring the point Nos.4 to 7, 14 and 15. The ignorance of the same is serious in nature and, therefore, it was submitted that explanation was called from the committee members. If it is found that the said explanation does not give the satisfactory answer, then disciplinary action would be initiated against the erring committee members.

6. Thereafter, one Ashok Namdeo Thorat, Assistant Police Inspector, (City Division), in office of Commissioner of Police, Aurangabad City has filed affidavit-in-reply on behalf of respondent No.2. He has objected to handing over the inquiry to CBI. It is stated that as regards the forgery in respect of bank certificates is concerned, the inquiry has been conducted by PSI Prabhakar Sonawane and the

report has been submitted. The banks are confirming that they had issued the said bank certificates and, therefore, there is no forgery as such. The police authorities have not found any *prima facie* material for lodging the FIR.

7. Heard learned Advocate Mr. Mahesh V. Ghatge for the petitioner, learned APP Mr. D. R. Kale for respondent Nos.1, 2 and 6 – State, learned Advocate Mr. Bhushan Kulkarni for respondent No.3, learned Advocate Mr. U. B. Bondar for respondent No.4 and learned Senior Counsel Mr. Sanjeev B. Deshpande for respondent No.5.

8. It will not be out of place to mention here that after the submissions were heard on behalf of petitioner on 26.06.2023 by learned Advocate Mr. A. S. Deshpande, when certain questions were asked, he sought accommodation on the points raised. That point was without there being a prayer for registration of offence, whether directly investigation can be directed to be conducted by CBI and, therefore, in a way the maintainability of the petition itself was raised and then the matter was adjourned, as it was so requested by the learned Advocate for the appellant representing him. On the next date, the petitioner changed Advocate and then Criminal Application No.2520 of 2023 came to be filed for amending the Public Interest

Litigation. Applicant – petitioner wanted to add paragraph Nos.19-A to 19-D as mentioned in paragraph No.2 of the application. Perusal of the proposed amendment would show that the facts stated therein were already within the knowledge of the petitioner, yet those submissions were never made and now, by way of addition, it was tried to be stated that as to how except the PIL there is no other alternative mode available for the petitioner to raise the grievance and in support of his contentions, the learned Advocate for the petitioner has relied on the following decisions :-

1. **Munir Alam Vs. Union of India**, [1999 DGLS (SC) 579 : 1999 AIR (SC) 2267].
2. **Ranjitsing Brahmajeetsing Sharma Vs. Kisan Baburao Hazare alias Anna Hazare and others**, [2005 (1) Bom.C.R. (Cri.) 269].
3. **Lalita Kumari Vs. Govt. of U.P and Ors.**, [2013 DGLS (SC) 902 : 2014 AIR (SC) 187].
4. **Union of India Vs. W. N. Chadha**, [1992 DGLS (SC) 862 : 1993 AIR (SC) 1082].
5. **Mehrunisa Kadir Sheikh Vs. Officer-in-charge, Ghatkopar Police Station and Ors.**, [Criminal Writ Petition No.2613 of 2009 decided by the Principal Seat of this Court on 16.10.2009].

Out of these judgments, he relies on the decision in **Mehrunisa Kadir Sheikh (Supra)** to answer the query that was put to him that without there being a prayer for registration of offence, whether

investigation can be handed over to CBI. Here, in this case, the petitioner has not prayed for registration of the FIR or offence on the basis of his allegations and then handing it over for investigation. In **Mehrunisa Kadir Sheikh (Supra)**, this Court had allowed the petition i.e. the investigation to be done, however, at this stage itself, we would like to say that the facts of the case appear to be totally on a different line i.e. the son of the petitioner was arrested in connection with some petty theft and then was beaten by police in the police lockup. In such cases, in any way, there would be an inquiry and then after coming to the conclusion, the offence would be registered. There are guidelines in respect of such cases i.e. custodial death. Therefore, the said yardstick cannot be applied in this case.

9. Learned Advocate for the petitioner has taken us through the documents, especially the government resolution giving sanction for establishing/construction of the administrative building for Zilla Parishad, tender (especially condition No.4.2(g)), condition No.4.3 in respect of Bids from Joint Ventures are not acceptable, then bank certificates those came to be issued by HDFC Bank Ltd. and NKGSB Bank, the replies received by him from various authorities under Right to Information Act, his objections in respect of tender to various

authorities and his communication to the police authorities/representation for registering FIR. He has also pointed out that along with the affidavit-in-reply, the respondent has produced certain documents which shows that after the petitioner had raised objection, directions were given to hold inquiry and the inquiry report was submitted. He submits that now all the respondents are acting hand in glove and they are changing the interpretation of the terms of the tender just to save themselves. He points out the additional affidavit that was filed by petitioner which appears to be based on the further communications made by either him or by his Advocate. He, therefore, submits that when there was material showing the cognizable offence has been committed, then it was incumbent upon the police authorities to register the offence and this has been reiterated again and again by the Hon'ble Supreme Court in **Lalita Kumari (Supra)** and subsequent decisions. If the said authority had not taken cognizance, then remedy under Section 156(3) of the Code of Criminal Procedure for the petitioner cannot be said to be efficacious remedy, as the said complaint would again being sent by Judicial Magistrate First Class to the police itself and it is on record now that police authorities are now willing to investigate the matter.

Now, it is the only remedy available to the petitioner to approach this Court for seeking directions for investigation through CBI.

10. We have referred two affidavits earlier and we would also say that there is affidavit-in-reply on behalf of respondent No.5, Raju Sanda Narsuji Sanda, Executive Engineer with Aurangabad Municipal Corporation. His affidavit pertains to the certificate that was given in respect of the work experience to the successful bidder i.e. M/s. N. K. Constructions. He has given justification for issuing said certificate, which is not necessary for us to go into the aspects.

11. We would reiterate that all the learned Advocates making submissions on behalf of the respective parties have reiterated the stand of the parties and the learned Advocates appearing for the respondents are mainly objecting on the ground that CBI investigation cannot be directed. The present petitioner is attached to a political party and, therefore, in order to settle the personal and political score, the petition has been filed. Learned Senior Counsel Mr. Sanjeev B. Deshpande instructed by learned Advocate Mr. S. S. Deshpande relies on the decision in **Himanshu Kumar and others Vs. State of Chattisgarh and others**, [2022 LiveLaw (SC) 598], wherein it has been laid down by the Hon'ble Supreme Court when the CBI inquiry

can be directed. Here, in this case, the inquiry was already made and it was found by the inquiry committee that there is no substance in the allegations by the petitioner. It is not the case of the petitioner that he had participated in the bidding process and because of the fraud, he has been deprived. He cannot raise the objections in respect of terms of the bid as being violated since it is not a civil public interest litigation. Both the bank authorities have admitted that they had issued the letters in question, which according to the petitioner are forged. The person who issues the letter or in whose name it has been issued can challenge the said document as forged, if the other parameters are complied with. A third person cannot have objection on the ground of fraud.

12. At the outset, we would like to say that the present proceedings is Criminal Public Interest Litigation and, therefore, the challenge to the tender and its terms and the allegation that those criterias have not been fulfilled, cannot be gone into in this petition and as aforesaid, the petitioner has not made any prayer that FIR should be lodged and then the investigation should be handed over. The petitioner had made complaint to various authorities and prayed for registration of the FIR including that of police. A complaint

application appears to have been given to Senior Police Inspector, Kranti Chowk Police Station, Aurangabad, Police Commissioner, Aurangabad, yet when it was noticed by him that no action is being taken, he has not approached under Section 156(3) of the Code of Criminal Procedure. In fact, in view of **Lalita Kumari (Supra)** this course was definitely available to the petitioner. Petitioner himself cannot decide that which is the appropriate remedy for him in the alleged background that the police authorities are unwilling to investigate. Section 156(3) of the Code of Criminal Procedure gives power to the Magistrate to send the case for investigation to police, under which the police would receive all the powers under Section 156(1) of the Code of Criminal Procedure to investigate. Secondly, the private complaint can still be then entertained by the Magistrate and he can order an inquiry under Section 202 of the Code of Criminal Procedure or he/she may make inquiry under Section 202(2) of the Code of Criminal Procedure. Therefore, the petitioner cannot presume that the inquiry would be handed over to police only.

13. The prayer clause in the petition has been reproduced earlier and the petitioner intends to have investigation by CBI into the multifarious illegalities in the entire process of tender, which he says

that it was there since the preparation of the budget itself and it was till the actual allotment of the work. This is the backdoor entry to challenge the tender, which he has not undertaken on the civil side. Forum of Public Interest Litigation cannot be used in such a way. Time and again Hon'ble Supreme Court as well as this Court has held that nowadays there is trend of filing Public Interest Litigation to settle the personal as well as political score. Here, the petitioner is making allegations that in order to protect the interest of one political party, the authorities have changed the terms or interpretation of the terms, but at the same time there are documents on record to show that the petitioner himself is related to a political party. He is using the symbol of that political party on the letterhead and he is stated to be the Vice President for Maharashtra State of that political party of OBC Cell. If he wanted to address the alleged public concern, then he ought not to have used the letterhead of the political party. If we consider his representation dated 30.08.2021 to CEO, Zilla Parishad, Aurangabad, the tabular form prescribes the alleged wrong information that has been given in reference to the term number in the tender and his own remark on the same. This shows that as if he was the Scrutiny Officer at the higher level than the CEO who was supposed to get the construction done. After 13.09.2021, he has not

used the said letterhead of the political party, but again on the communication dated 21.09.2021, he has used the letterhead of the political party.

14. As regards the bank certificates are concerned, the bank authorities have accepted that they have given those certificates. Under such circumstance, there was no question of any forgery or fraud. Merely because it has not been given in a particular form, it does not become fabricated and such inquiry was in fact made by the police officers by getting letters from the concerned banks. Therefore, as regards those documents are concerned, police officers have come to the conclusion that there is no *prima facie* offence made out. The said preliminary inquiry, though may be somewhat belated as compared to the limit that has been laid down in **Lalita Kumari (Supra)**, appears to be undertaken and then conclusion has been drawn. No different conclusion can be arrived at in respect of alleged fraud or preparation of false documents.

15. In **Himanshu Kumar and others (Supra)**, the Hon'ble Supreme Court underlined the great caution issued by it in the case of **State of West Bengal and others Vs. Committee for Protection of Democratic Rights, West Bengal**, [(2010) 3 SCC 571] and reiterated that the

extraordinary power of the Constitutional Courts under Articles 32 and 226 of the Constitution of India cautions that the order in respect of issuance of directions to CBI to conduct investigation cannot be passed as a matter of routine or merely because the parties have levelled some allegations against the local police and can be invoked in exceptional situations, where it becomes necessary to provide credibility and instill confidence in the investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights.

16. In **Committee for Protection of Democratic Rights, West Bengal (Supra)**, it has been observed that the said power issuing direction to CBI to conduct investigation must be exercised sparingly. Those principles were once again reiterated in three Judge Bench decision of the Hon'ble Supreme Court in **K. V. Rajendran Vs. Superintendent of Police, CBCID South Zone, Chennai**, [(2013) 12 SCC 480]. Further in **CBI and another Vs. Rajesh Gandhi and another**, [1997 Cr.L.J. 63], it has been held by the Hon'ble Supreme Court that no one can insist that an offence be investigated by a particular agency. Even recently in **Royden Harold Buthello and Anr. Vs. State of Chattisgarh and Ors.**,

[AIR 2023 SC 1231], these principles have been reiterated. Reliance was placed on the decision in **Mithilesh Kumar Singh Vs. State of Rajasthan and Ors.**,[(2015) 9 SCC 795], wherein it was held that, “even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court’s satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because the party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about the justice becoming a victim because of a shabby or partism investigation that the Court may step in and exercised its ordinary powers.” No doubt, it is in respect of transfer of investigation to CBI, but here as aforesaid there is no FIR itself. The machinery like CBI cannot be used for the preliminary investigation. Here, the inquiry was made. Of course, the

inquiry by the inquiry committee selected by the Government was to see whether there is any irregularity in the process. It appears to be on the civil side. But even when the petitioner is making allegations and asking the CBI to make inquiry into the multifarious illegalities into the entire tender process, the inquiry report is important. The committee has not come to such a conclusion that there is any illegality in the process and, therefore, the said report along with the report of the police in respect of bank certificates are sufficient to conclude that this is not a case where the extraordinary power under Article 226 of Constitution of India is required to be exercised, rather we find that this litigation is politically motivated and an attempt for the backdoor entry to challenge the legally floated tender. By order dated 04.03.2022, the petitioner was directed to deposit amount of Rs.1,00,000/- to show his *bona fides*. Accordingly, he has deposited the said amount around 10.03.2022. As we have come to the conclusion that the petition is politically motivated and as a backdoor entry it has caused loss of valuable time of this Court, we proposed to impose cost of Rs.50,000/- on the petitioner, which should be deducted from the amount deposited by him. Rest of the amount can be returned to the petitioner.

17. For the aforesaid reasons, we proceed to pass the following order :-

ORDER

1. The Public Interest Litigation stands dismissed with cost of Rs.50,000/- to be deducted from the amount deposited by the petitioner with this Court.
2. Rest of the amount be refunded to the petitioner.
3. Criminal Application No.2520 of 2023 also stands disposed of.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

scm