

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1516/2023

Sushikshit Berojgaranchi Navkiran Nagrik Seva
Sahakri Sanstha Maryadit, Amravati (Registration
No.743/2010), Office at Near Durga Mata Mandir,
Belpura, Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its
Commissioner, Office at Rajkamal Square, Amravati,
Tq. and Dist. Amravati.

RESPONDENT

**WITH
WRIT PETITION NO. 1513/2023**

Sharda Mahila Bachat Gat (Registration
No.APPG274009002948), Office at Baripura, Navi Basti,
Badnera, Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its
Commissioner, Office at Rajkamal Square, Amravati,
Tq. and Dist. Amravati.

RESPONDENT

**WITH
WRIT PETITION NO. 1509/2023**

Samyak Nagrik Seva Sahakri Sanstha Maryadit,
Amravati (Registration No. 697/2006), through its
President, Office at Opposite Krushnabai Deshmukh
Vidyalaya, Prabhu Colony, Mahadeo Khori Road,
Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its
Commissioner, Office at Rajkamal Square, Amravati,
Tq. and Dist. Amravati.

RESPONDENT

**WITH
WRIT PETITION NO. 1511/2023**

Afsar Khan S/o Miya Khan, aged about 56 years,
Occupation : Contractor, R/o Pathan Pura,
Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its
Commissioner, Office at Rajkamal Square, Amravati,
Tq. and Dist. Amravati.

RESPONDENT

WITH
WRIT PETITION NO. 1507/2023

Shyam Babanrao Shingare, aged about 58 years,
Occupation : Contractor, R/o Nilkanth Chowk,
Budhwara, Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its
Commissioner, Office at Rajkamal Square, Amravati,
Tq. and Dist. Amravati.

RESPONDENT

WITH
WRIT PETITION NO. 1518/2023

Maitri Sushikshit Berojgar Nagrik Seva Sahakri Sanstha
Maryadit, Amravati (Registration No. 777/2013),
through its Secretary, Office at Sabnis Plot,
Rajapeth, Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its
Commissioner, Office at Rajkamal Square, Amravati,
Tq. and Dist. Amravati.

RESPONDENT

WITH
WRIT PETITION NO. 1514/2023

Sanjay S/o Ramraoji Hirpurkar, aged about years,
Occupation : Contractor, R/o Budhwara Chowk, New
Jain Temple, Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its
Commissioner, Office at Rajkamal Square, Amravati,
Tq. and Dist. Amravati.

RESPONDENT

WITH
WRIT PETITION NO. 1508/2023

Maitri Sushikshit Berojgar Nagrik Seva Sahakri Sanstha
Maryadit, Amravati (Registration No. 777/2013),
through its Secretary, Office at Sabnis Plot,
Rajapeth, Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its
Commissioner, Office at Rajkamal Square, Amravati,
Tq. and Dist. Amravati.

RESPONDENT

WITH
WRIT PETITION NO. 1512/2023

Berojgaranchi Maharashtra Nagrik Seva Sahakri Sanstha Maryadit, Amravati (Registration No. 732/2009), Office at Behind Akbari Mashjid, Akbar Nagar, Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its Commissioner, Office at Rajkamal Square, Amravati, Tq. and Dist. Amravati.

RESPONDENT

WITH
WRIT PETITION NO. 1517/2023

Vikas Ganga Nagrik Seva Sahakri Sanstha Maryadit, Amravati (Registration No. 342/2002), through its President, Office at Mudliyar Nagar, Line No.1, Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its Commissioner, Office at Rajkamal Square, Amravati, Tq. and Dist. Amravati.

RESPONDENT

WITH
WRIT PETITION NO. 1515/2023

Shri Sai Sushikshit Berojgar Nagrik Seva Sahakri Sanstha Maryadit, Amravati (Registration No. 823/2017), Office at Near Kalamaroti Mandir, Bhaji Bazar, Tarkheda, Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its Commissioner, Office at Rajkamal Square, Amravati, Tq. and Dist. Amravati.

RESPONDENT

WITH
WRIT PETITION NO. 1510/2023

Mohammad Irshad S/o Abdul Sattar, aged about 46 years, Occupation : Contractor, R/o Habib Nagar No.1, Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

Amravati Municipal Corporation through its Commissioner, Office at Rajkamal Square, Amravati, Tq. and Dist. Amravati.

RESPONDENT

Shri Anand S. Jaiswal, Senior Advocate with Shri Amol B. Patil, counsel for the petitioners.

Shri Chandrashekhar S. Kaptan, Senior Advocate with Shri Ankush P. Kalmegh, counsel for the respondent.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : APRIL 24, 2023.

ORAL JUDGMENT : (PER : A.S. CHANDURKAR, J.)

Since common issues arise in these writ petitions, they are being decided together by this common judgment. **RULE.** Rule made returnable forthwith and heard the learned counsel for the parties.

2. The facts in brief relate to a condition in the contract entered into by the respondent no.1-Amravati Municipal Corporation with the petitioner-Societies who are the registered firms undertaking work of clearing city waste within the jurisdiction of the Municipal Corporation. On 23.08.2018, the Municipal Corporation published an E-Tender notice inviting bids for carrying out the work of cleaning in twenty two Prabhags, each work being liable to be rendered for one Prabhag. In the E-Tender notice it was stated that initially the work would be granted for a period of three years with a further extension of one year each on two occasions. In other words, a successful bidder was entitled to carry out the works for a total period of five years subject to satisfactory performance. Each Society being successful bidder has been awarded such work by separate agreements entered into with the Municipal Corporation. After completion of the initial period of three years each

Society was permitted to carry out the said work for the fourth year. When the Societies were expecting further continuation of the work in the fifth year, the Municipal Corporation published another E-Tender notice on 04.03.2023 inviting bids to carry out the work of cleaning by dividing the Municipal Corporation into five zones. Being aggrieved by the action of the Municipal Corporation in not allotting the work for the fifth year, the aggrieved Societies have filed these writ petitions.

3. Shri Anand Jaiswal, learned Senior Advocate for the petitioner-Societies invited attention to various clauses of the E-Tender notice alongwith the terms and conditions of the work order. As per the relevant terms and conditions the initial work was to be carried out for a period of three years from the date of issuance of the work order and subject to the satisfactory completion of such work further extension of one year each was liable to be granted. As per Clause 75 of the terms and conditions a third party audit was required to be carried out by a Committee headed by the Deputy Commissioner. Such third party audit was to be undertaken every six months. The Society was required to purchase six mini Tippers that were manufactured in the year 2017-18 alongwith Ground Positioning System (G.P.S.) system. According to the petitioners on satisfactory completion of the work of cleaning for three years, the Municipal Corporation had granted an extension of one year which came to an end by 31.12.2022. Without any legal justification the Municipal

Corporation proceeded to issue a fresh E-Tender notice changing the manner of allotment of the work by re-structuring twenty two Prabhags with five Zones. Without any justification and despite the fact that each Society had satisfactorily completed the works, there was no reason for the Municipal Corporation to have issued a fresh E-Tender notice. The Societies had not been penalized for any major default and penalties if any had been imposed for minor defaults. It was urged that on the doctrine of 'Promissory Estoppel' the Municipal Corporation was precluded from issuing a fresh E-Tender notice especially when the Societies were given to believe that on satisfactory completion of the works, they were entitled to carry out such works for a total period of five years. The reply filed by the Municipal Corporation did not indicate what was the public interest involved so as to issue a fresh E-Tender notice and discontinue the contracts in favour of the Societies. Attention was invited to the provisions of Sections 63, 66A and Section 290 of the Maharashtra Municipal Corporations Act, 1949 to urge that it was a statutory duty of the Municipal Corporation to undertake the work of cleaning within the limits of the Municipal Corporation. In that regard, the learned Senior Advocate placed reliance on the decisions in *Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. & Another Versus Shishir Realty Private Limited & Others* [2021 SCC OnLine SC 1141], *Mihan Indid Ltd. Versus GMR Airports Ltd. & Others* [2022 SCC OnLine SC 574], *Union of India & Others Versus*

Tantia Construction Private Limited [(2011) 5 SCC 697] and *M.P. Power Management Company Limited Jabalpur Versus SKY Power Southeast Solar India Private Limited & Others [(2023) 2 SCC 703]*. It was thus urged that on consideration of the aforesaid facts and the doctrine of 'Promissory Estoppel' the issuance of fresh E-Tender notice by the Municipal Corporation was liable to be quashed.

4. Shri Chandrashekhar Kaptan, learned Senior Advocate for the respondent-Municipal Corporation opposed aforesaid submissions. At the outset he submitted that under the terms and conditions on which the work orders were issued, Clause 95 contained an arbitration clause wherein it was stated that with regard to any dispute arising under the contract the same would be referred for arbitration to be undertaken by a retired Judicial Officer. The terms and conditions relied upon by the Societies as annexed to the writ petitions were without reference to Clause 95 and the said terms and conditions placed on record indicated the terms and conditions only till Clause 94. In view of the fact that a specific remedy of invoking the arbitration clause was provided in the terms and conditions and as it was the case of the Municipal Corporation that the work for the fifth year had not been allotted for that reason, it was open for the Societies to have this aspect adjudicated by taking recourse to Clause 95. It was submitted that the Municipal Corporation had acted in a *bona fide* manner under the terms of the agreement and

hence no fault could be found with the issuance of a fresh E-Tender notice. Under Clause 72 of the terms and conditions, a provision for imposing penalties in the contingencies stipulated was made and penalties had been imposed on the Societies. The specific stand taken in this regard in paragraph 4 of the affidavit-in-reply filed by the Municipal Corporation had not been denied by the Societies. Despite the fact that minor penalties had been imposed upon the Societies it was being urged by them that the action of the Municipal Corporation was unjustified. Though under the terms and conditions a successful bidder was required to purchase new vehicles the same would not mean that satisfactory performance of the cleaning work could be dispensed with. The extension of the contract after expiry of three years was dependent upon satisfactory completion of such works. Since the works were found to be satisfactory at the end of three years, an extension for a period of one year was granted. It was thus submitted that in absence of the Municipal Corporation being satisfied with the discharge of contractual obligations, no relief could be granted to the petitioners. Inviting attention to the decision in *Deepak Misrimal Jain Versus Municipal Corporation of Greater Bombay & Others* [2001 (3) Mh.L.J. 651], it was submitted that the work in question could not be stated to be statutory in nature. The same was non-statutory and the obligations were contractual in nature. It was thus submitted that no relief could be granted to the petitioners and the writ petitions were liable to be dismissed.

5. Having heard the learned counsel for the parties and having perused the documents on record, we find that under the terms and conditions of the contract, a successful bidder is entitled to carry out the work of cleaning initially for a period of three years and thereafter on satisfactory completion of that work he is entitled to an extension of one further year. Subject to completion of satisfactory work for the extended period, another extension of one year is permissible. Each Society has been granted the first extension after completion of three years and hence such works have been carried out for a period of four years. According to the Municipal Corporation since it imposed penalties on the Societies and it was not satisfied with the manner in which the work was carried out, the extension for the fifth year has not been granted. On the other hand, according to the Societies even assuming that some minor penalties were imposed on the Societies, the same did not prevent the Municipal Corporation from granting extension for the fifth year. It is thus clear that the Societies seek extension of the contracts for the fifth year in view of the terms of the contract. It is precisely in such situation that Clause 95 of the terms and conditions would be attracted since there is a dispute that has arisen with regard to extension of the contract for the fifth year. In our view, Clause 95 of the terms and conditions would be attracted in the given facts since the Societies seek extension for the fifth year based on the terms and conditions itself while the Municipal Corporation seeks to justify the non-grant of extension for the fifth year on the ground that

it was required to impose penalties on the Societies as the work discharged was not satisfactory. This dispute can be raised in arbitration proceedings by the Societies by invoking Clause 95 of the terms and conditions.

6. It is urged on behalf of the Societies that under the doctrine of 'Promissory Estoppel' having purchased new vehicles on issuance of the work order, the Societies were entitled to continuation of the contract for a total period of five years. It may however be noted that such continuation is subject to satisfactory discharge of contractual obligations. The right to extension for the fifth year being dependent upon satisfactory completion of the work in the previous year, the said aspect cannot be ignored while applying the doctrine of 'Promissory Estoppel'. The said doctrine would be subject to the terms and conditions of the contract that has been agreed by the parties. With regard to the stand of the petitioners that the contract was entered into for the discharge of statutory obligations of the Municipal Corporation, we may note that in *Deepak Misrimal Jain* (supra) a similar contract for supply of lorries with labourers for removal of silt, debris, household waste materials, etc. to the Municipal Corporation was considered by the Division Bench. It was held that on entering into such contract for the work in question relations between the parties were governed by the contract and not by any constitutional provisions. Such contracts were stated to be non-statutory and the rights of the parties were governed by the terms of the contract.

We find that even in the present matter, the rights of the parties would be governed by the terms and conditions of the work order. Since Clause 95 thereof provides the mode of resolution of such disputes by having a reference to arbitration it would be necessary for the aggrieved parties to invoke such clause. We do not find that there is any arbitrariness in the action of the Municipal Corporation in issuing a fresh E-Tender notice in the aforesaid backdrop. In fact, in paragraph 82.8 of the decision in *M.P. Power Management Company Limited, Jabalpur* (supra) relied upon by the learned Senior Advocate for the Societies, the Hon'ble Supreme Court has held that existence of a provision for arbitration is viewed as a near bar to the entertaining of a writ petition. Moreover, the question whether the Societies carried out the works in a satisfactory manner or not would be a disputed question of fact which cannot be resolved in exercise of the writ jurisdiction.

7. For all aforesaid reasons, we decline to entertain the writ petitions since the terms and conditions of the work order provide for resolution of the disputes arising out of the contract by having recourse to process of arbitration under Clause 95 as provided. By clarifying that the observations made in the judgment are only for considering the question as to whether the writ petitions should be entertained or not, it is held that the petitioners are free to invoke the arbitration clause under Clause 95 of the terms and conditions of the work order.

8. The writ petitions are thus dismissed. Rule accordingly. No costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

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