



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.67 OF 2023

Hemant s/o Yashwant Dhage

... Petitioner

VERSUS

The State of Maharashtra & Others

... Respondents

.....
Shri G.V. Mohekar, Advocate for Petitioner

Mrs. P.J. Bharad, A.G.P. for respondents – State

Shri K.N. Lokhande, Advocate for respondents No.5 & 6
.....

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
KISHORE C. SANT, J.**

DATE: 27th AUGUST, 2024.

P.C. :

1. This petition under Article 226 of the Constitution of India has, ostensibly, been filed in public interest, with a prayer to quash the Resolution dated 12/01/2022, passed by the respondent Corporation, whereby the decision was taken to construct a hospital along with upgraded/ modern facilities for the poor and downtrodden people in the city of Ahmednagar, at Survey No.46/1, Chahurana, Ahmednagar. The other prayers made by the petitioner is that the approval

granted by the Collector on 2/3/2024 for construction of the said new hospital may also be quashed. A further prayer made in the petition is to set aside, the resolution No.37 dated 10/6/2022 said to have been passed by the respondent Corporation thereby resolving to grant 4% increase in the estimated cost, to be paid to the contractor.

2. This Court, passed an order on 23/2/2024 specifically denying entertaining the Writ Petition in respect of the prayers made for quashing the sanction etc. granted for construction of the hospital. The petition was entertained by the said order only in respect of the issue relating to the alleged hike of 4% to the estimated cost to be paid to the contractor for completion of the project. The order dated 23/2/2024 passed by this Court is extracted hereinbelow :

- "1. The project work is completed beyond 35% as per the admission of the Petitioner.
2. We are not entertaining this Public Interest Litigation as construction of a charitable hospital is involved.
3. A sudden hike of 4% immediately after tenders were opened, is the only issue to be considered, in

this PIL. Shri Lokhande, learned Advocate for the Corporation, seeks time to take instructions.

4. Stand over to 7th March, 2024.”

3. After the said order was passed, Civil Application No.3561/2024 has been moved seeking amendments in the petition as per proposed paragraphs 25-A, 25-B and 25-C. These averments have been sought to be inserted in the petition along with certain ground.

4. By a separate order passed by us today we have already rejected the said Civil Application. Thus, the only challenge made in the Writ Petition to be considered now by the Court is in respect of the prayer made by the petitioner for quashing the decision for granting 4% hike to the estimated cost, to be paid to the contractor on completion of the work.

5. A detailed affidavit-in-reply has been filed by the respondent Corporation wherein it has clearly been stated that in the bid process two tenderers namely M/s Spectrum Infrastructures and M/s Gandhi Construction were technically qualified and on opening of the financial bid, the financial bid

quoted by M/s Spectrum Infrastructures was found to be 15% higher than the estimated cost of the project which as per the tender document is Rs.23,84,34,238/-.

6. As compared to the rate quoted by Spectrum Infrastructures the other qualified bidder M/s Gandhi Construction – respondent No.7 quoted the financial bid which was only 9.99% over and above the estimated cost and accordingly, as submitted by learned counsel representing the respondent Corporation, the respondent No.7 – M/s Gandhi Construction was invited for negotiations.

7. In the negotiations held with M/s Gandhi Construction, the said bidder agreed to carry out the entire work only at a hike of 4% to the estimated cost. Thus, the amount to be paid to the contractor in terms of the subject bid was brought down by 5% in comparison to what was quoted by the respondent No.7.

8. Learned counsel for the petitioner has, however, submitted that, the said hike of 4% was over and above the rate quoted by the respondent No.7 which fact is absolutely incorrect and is not borne out of the record. Learned counsel

representing the petitioner has utterly failed to establish that 4% hike was to the rate quoted by the respondent No.7, to the contrary as is revealed from the record available on this Writ Petition, 4% hike was granted to the respondent No.7 over and above the estimated cost and accordingly, in fact the rate quoted by the respondent No.7 was reduced by 5%.

9. In the aforesaid view of the matter, there is nothing on record to establish the submissions made by learned counsel for the petitioner. If we see the prayer clauses B(iii) and B(iv) in the Writ Petition, what we find that the petitioner has described the resolution dated 14/6/2023 as 4% increase in the estimated cost and not 4% increase in the rate quoted by respondent No.7. Thus, the submissions made by learned counsel for the petitioner runs contrary to the averments in the Writ Petition itself.

10. For the reasons aforesaid, we are not inclined to entertain the Writ Petition. It is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand) which shall be paid by the petitioner with Government Cancer Hospital, Aurangabad. He will file a receipt thereof in the registry of this Court within a period of eight weeks from today. If the petitioner fails to

tender the receipt of deposit under this order, the Registrar (Judicial) of this Court shall proceed to recover the costs as arrears of land revenue through the Collector/ District Magistrate concerned.

(KISHORE C. SANT, J.)

(CHIEF JUSTICE)

fmp/-