



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

WRIT PETITION NO.6193 OF 2024

ASPEN SYSTEM AND SOFTWARE, Thr. Mr Pralhad N. Lonare, Aurangpura, Amravati

-VS-

State of Maharashtra, Thr. Secretary, Urban & Development Dept. Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri S. K. Thengri, Advocate for petitioner.

Shri D. V. Chauhan, Senior Advocate/Government Pleader with Shri N. S. Rao,
Advocate for respondent Nos.1 to 5.

CORAM : NITIN W. SAMBRE AND MRS VRUSHALI V. JOSHI, JJ.

DATE : October 16, 2024

P. C.

1. The petitioner has sought issuance of direction to the respondent No.6 to cancel the E-tender dated 04/10/2024 for installation of CCTV network at Dhamangaon Railway, District Amravati.

The petitioner, a registered Company, claims to be dealing in the matter of installation of CCTV network at various places under the contract awarded by the Public Body.

2. According to the petitioner, grant of work of installation of CCTV network must precede with satisfaction of other conditions prescribed in the Government Resolution dated 25/01/2024 which contemplate approval of the Information and Technology Department as well as High Level Empowerment Committee constituted by the State Government under the aegis of the Home Department.

According to the learned counsel for the petitioner, tender notice in question dated 04/10/2024 prescribes that the tender document shall be opened after appropriate approval pursuant to the Government Resolution dated 25/01/2024 is received. In such an eventuality, his contention is that the tendering Authority ought to have first obtained the sanction/permission as contemplated in the Government Resolution dated 25/01/2024 so as to have the prior permission before issuance of the tender notice in question. It is claimed that the said condition prescribed in the Government Resolution dated 25/01/2024 is mandatory in nature and for want of such approval/sanction from the Information and Technology Department as well as Home Department, the issuance of tender notice has rendered the entire process illegal. That being so, it is claimed that the writ petition is very much maintainable under Article 226 of the Constitution of India even if the petitioner is questioning the tender process which is a contractual matter. The learned counsel for the petitioner would draw support from the observations made in paragraphs 51 and 52 of the judgment of Apex Court in case of *Subodh Kumar Singh Rathour vs. The Chief Executive Officer & Ors. (2024) 7 SCR 532* so as to substantiate the contention of maintainability of the petition which read thus :

“51. The decision of this Court in [ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.](#) reported in (2004) 3 SCC 553 is significant and was the turning point in the scope of judicial review in contractual matters. In this landmark ruling, this Court decisively laid down and approved that a relief against a State or its

instrumentalities in matters related to contractual obligations can be sought under the writ jurisdiction. The relevant observations read as under: -

“23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of [Article 14](#) of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of [Article 14](#), then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent.

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27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

- (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*
- (b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.*
- (c) A writ petition involving a consequential relief of monetary claim is also maintainable.” (Emphasis supplied)*

52. At the same time, this Court in [ABL](#) (supra) cautioned that the power to issue writs under [Article 226](#) being discretionary and plenary, the same should only be exercised to set right the arbitrary actions of the State or its instrumentality in matters related to contractual obligations. The relevant observations read as under: -

“28. However, while entertaining an objection as to the maintainability of a writ petition under [Article 226](#) of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under [Article 226](#) of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See [Whirlpool Corpn. v. Registrar of Trade Marks](#)) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its

instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of [Article 14](#) or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.” (Emphasis supplied)

3. As against above, Shri Rao, learned Assistant Government Pleader would raise a preliminary objection to the maintainability of the petition on the ground that the petitioner lacks locus as the petitioner-Company has neither participated in the tender process nor it is in any way connected with the work of the Municipal Council. That being so, dismissal of the petition is sought.

4. Since preliminary objection is raised by the learned Assistant Government Pleader, we are required to Rule on the locus of the petitioner.

If pleadings in the petition are perused, the petitioner claiming to be a registered Company is operating its business from Amravati. The petitioner has no remote connection with the working of the respondent No.6-Municipal Council. The petitioner has neither purchased the tender nor participated in the process and has questioned the tender process.

5. In the aforesaid backdrop, if we appreciate the law laid down by the Division Bench of this Court in ***Writ Petition (Lodging) No.4209/2023*** (*Gypsum Structural India Pvt. Ltd. And anr. vs. Brihanmumbai Municipal Corporation and ors.*), decided on

23/03/2023; particularly in paragraph 32. The fact remains that the petitioner has invoked the writ jurisdiction of this Court questioning the legality of the tender process on the ground of non-compliance of the policy decision as reflected in Government Resolution dated 25/01/2024 qua opening of tenders without prior approval/sanction from the Information and Technology Department as well as High Level Empowerment Committee constituted under the Home Department.

Fact remains that the petitioner, so as to establish his locus must demonstrate that his right is prejudiced in direct or indirect manner or his financial interest is adversely affected because of irregular procedure adopted by the respondent No.6-Municipal Council in the matter of the tender in question.

6. The petitioner is unable to satisfy this Court as to the prejudice caused to him because of the non-compliance of the mandatory condition incorporated in the Government Resolution dated 25/01/2024. The petitioner, in our opinion, lacks locus in the matter of preferring the present writ petition questioning the tender conditions but for his claim that he is also in the arena of executing the work of installation of CCTV network. However, it cannot be said that the petitioner without participating in the tender process can question the very tender notice without disclosing his intention of not participating because of non-compliance of the condition referred above.

Support can be drawn from the observations in paragraph 32 of

the judgment in Gypsum Structural India Pvt. Ltd. (supra) which reads thus :

“ 32. Another aspect which is required to be borne in mind is the fact that the petitioner has not submitted its bid in pursuance of the impugned tender process. It is not that petitioner cannot procure material/technology from respondent No.2 or from other entities who offer the same. Petitioner could have procured geopolymer trenchless technology from available sources and participated in the tender process. However, even after participating in the pre-bid meeting, it chose to stay away from the tender process. Having not participated in the tender process, petitioner is a stranger to the same. In such a situation, petitioner cannot be permitted to question the tender process. In this regard the reliance placed by Mr. Walwalkar on judgment of Division Bench of this Court in A.M. Yusuf (supra) is apposite. This court held in paragraph 14 and 15 as under:-

“14. The doctrine of Locus Standi is well established in administrative law, law of contract and other allied laws. A person prejudicially affected would have a cause of action while in the specified class of cases a third party may be able to bring an action in public interest despite the fact that he may not have personal interest. But in the cases of present kind, the cause of action would be personal to the aggrieved party and not a cause of action in rem. Even if Litmus Test Principle is not strictly applied keeping in view the developing law, still it is difficult for us to hold that th Petitioner without being an Applicant to the tender process could maintain the present Writ Petition, in the peculiar facts and circumstances of the case. As such an approach would neither subserve the public interest and would also hold in avoidance of public mischief.

15. Examined from the view of public interest, we see no infirmity. The Corporation has admitted to protect the larger interest by raising EMD deposit. The Petitioner having opted of his own accord not to participate in the tender process can hardly be permitted to challenge the said process now at this stage. It is expected of every vigilant litigant or whose rights are effected to approach the Court at an appropriate time. Firstly, there is no indefeasible right vested in the Applicant and secondly, even if right of participation/consideration was available to the

Petitioner, the Petitioner has voluntarily given up such right by his conduct. No reason whatsoever has been stated as to why the Applicant did not participate in the tender process or raise protest at an appropriate stage. Despite the fact that the concept of locus standi has since undergone a substantial change, still the basic rule that the person aggrieved or a person directly affected is the person who has right to invoke jurisdiction of the Court under Article 226 of the Constitution holds good. The impugned action normally should produce a change in the Petitioner's legal right and more particularly adversely. We have already discussed that the variation effected by Corrigendum dated 11th November, 2008 has no way prejudicially effected any of the applicants and it provided a fair and equal opportunity to the Applicants to participate in the tender process. The Petitioner having lost that opportunity of his own accord can hardly be permitted to raise a grievance now.

7. In this backdrop, it is held that the petitioner lacks locus and as such the petition is not maintainable at the behest of the petitioner. That being so, in our opinion, the petition can be dismissed and is dismissed accordingly.

We clarify that as the petitioner has claimed that the writ jurisdiction can be invoked in the tender matter, the learned Assistant Government Pleader Mr Rao appearing for the respondents has not disputed the aforesaid legal preposition, however, he has clarified about questioning the locus of the petitioner to initiate the proceedings for the present cause.

No costs.

(Mrs Vrushali V. Joshi, J.)

(Nitin W. Sambre, J.)