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

**WRIT PETITION NO. 6010/2024
WITH
WRIT PETITION NO. 6009/2024
WITH
WRIT PETITION NO. 6233/2024
WITH
WRIT PETITION NO. 6234/2024
AND
WRIT PETITION NO. 6180/2024**

WRIT PETITION NO. 6010/2024

M/s. IT Services,
Having Office at Rajdeep Complex, Near Datey College, Yavatmal – 445001, through its Proprietor Shri Roshan Gadwe,
Aged about 52 years

.... **PETITIONER(S)**

// VERSUS //

(1) **Office of Chief Electoral Officer**, Maharashtra Through Joint Secretary and Additional Election Officer, General Administration Department, Hutatma Rajguru Chowk, Mantralaya, Mumbai 400032

(2) **District Election Officer and District Collector**, Yavatmal

.... **RESPONDENT(S)**

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Mr. F.T. Mirza, Sr. Adv a/b Ms. S.F. Mirza, Adv for Petitioner
Mr. S.V. Manohar, Sr. Adv a/b Ms. N.G. Chaubey, Advocate for the Respondent No. 1
Mr. D.V. Chauhan, GP a/b Ms. S.S. Jachak, Addl. GP for the Respondent/State

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WITH
WRIT PETITION NO. 6009/2024

M/s. Haresh CCTV Security Systems,
Having Office at Krishna Complex,
Near Kishan Pipe, Rallies Plot, Amravati – 444601,
Through its Proprietor, Shri Haresh Gurdasram
Udasi, Aged about 52 years

.... **PETITIONER(S)**

// VERSUS //

(1) **Office of Chief Electoral Officer**,
Maharashtra Through Joint Secretary
and Additional Election Officer,
Mada Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai

(2) **District Electoral Officer and District Collector**,
Akola

.... **RESPONDENT(S)**

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Mr. F.T. Mirza, Sr. Adv a/b Ms. S.F. Mirza, Adv for Petitioner
Mr. S.V. Manohar, Sr. Adv a/b Ms. N.G. Chaubey, Advocate for the Respondent No. 1
Mr. D.V. Chauhan, GP a/b Ms. S.S. Jachak, Addl. GP for the Respondent/State
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WITH
WRIT PETITION NO. 6233/2024

M/s. Haresh CCTV Security Systems,
Having Office at Krishna Complex,
Near Kishan Pipe, Rallies Plot, Amravati – 444601,
Through its Proprietor, Shri Haresh Gurdasram
Udasi, Aged about 52 years

.... **PETITIONER(S)**

// VERSUS //

(1) **Office of Chief Electoral Officer**,
Maharashtra Through Joint Secretary
and Additional Election Officer,

(2) **District Electoral Officer and District Collector**,
Amravati

.... **RESPONDENT(S)**

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Mr. F.T. Mirza, Sr. Adv a/b Ms. S.F. Mirza, Adv for Petitioner
Mr. S.V. Manohar, Sr. Adv a/b Ms. N.G. Chaubey, Advocate for the Respondent No. 1
Mr. D.V. Chauhan, GP a/b Ms. S.S. Jachak, Addl. GP for the Respondent/State

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WITH

WRIT PETITION NO. 6234/2024

M/s. Apex Computers,
Having Office at Plot No. 5, Sarkar Nagar,
Chavan Colony, Chandrapur 442401,
Through it's Proprietor Shri Chandrakant
Nandevrao Dhote, Aged about 48 years

.... **PETITIONER(S)**

// VERSUS //

(1) **Office of Chief Electoral Officer**,
Maharashtra Through Joint Secretary
and Additional Election Officer,

(2) **District Election Officer and District Collector**,
Chandrapur

.... **RESPONDENT(S)**

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Mr. F.T. Mirza, Sr. Adv a/b Ms. S.F. Mirza, Adv for Petitioner
Mr. S.V. Manohar, Sr. Adv a/b Ms. N.G. Chaubey, Advocate for the Respondent No. 1
Mr. D.V. Chauhan, GP a/b Ms. S.S. Jachak, Addl. GP for the Respondent/State

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AND
WRIT PETITION NO. 6180/2024

M/s. Shree Rajeshwar Agencies,
Through its Proprietor Shri Satish S/o Gokulji Sarafi, Aged about 47 years, Occ. Business, R/o. Gangadhar Tower, Jaihind Chowk, June Shahar, Akola 444002

.... **PETITIONER(S)**

// VERSUS //

(1) **The Office of Chief Electoral Officer**, Maharashtra Through its Secretary 1st Floor, Administrative Building, Madam Cama Road, Hutatma Rajguru Chowk, Mantralaya, Mumbai 400032

(2) **District Collector and District Election Officer**, Washim District, Collector Office, Washim

.... **RESPONDENT(S)**

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Mr. A. Mankar, Advocate for Petitioner
Mr. S.V. Manohar, Sr. Adv a/b Ms. N.G. Chaubey, Advocate for the Respondent No. 1
Mr. D.V. Chauhan, GP a/b Ms. S.S. Jachak, Addl. GP for the Respondent/State

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CORAM : AVINASH G. GHAROTE & SMT. M.S. JAWALKAR, JJ.
OCTOBER 18, 2024

WRIT PETITION NO. 6010/2024

ORAL JUDGMENT :- (PER: AVINASH G. GHAROTE, J.)

(1) Heard.

(2) Mr. F.T. Mirza, learned Senior Counsel appearing for the Petitioner in Writ Petition No. 6010/2024 seeks to replace the existing Rejoinder by a new one on account of the inaccuracies which according to him have crept up. The request is accepted. The Rejoinder dated 17/10/2024 is permitted to be replaced by the Rejoinder dated 18/10/2024.

(3) **RULE**. Rule made returnable forthwith.

(4) The Petition question the communication dated 09/09/2024 issued by the Respondent No. 1 – Chief Electoral Officer (Page 79) by which it has been communicated to all the Collectors in the Districts that the rate of webcasting per polling booth would not be more than Rs. 6,253/- and so also, the tender notice dated 03/10/2024 (Page 86-A) on the ground that, in pursuance to the earlier tenders issued on 22/02/2024 (Page 31), which was combined tender for the Lok Sabha and Vidhan Sabha Elections calling of offers for webcasting in the polling booths, the Petitioner was duly selected being the lowest, in pursuance to which, an agreement was entered into on 15/03/2024 between the Petitioner and the Collector, Yavatmal, in terms of which, the Petitioner was to supply

webcasting services for 50% poll booths identified by the Collector in Yavatmal District. It is contended that the agreement has been acted upon and webcasting services have been provided by the Petitioner in terms of the aforesaid agreement at the rates accepted therein, for the Lok Sabha Elections which are over. The same services in terms of the agreement dated 15/03/2024 are to be provided for the ensuing Vidhan Sabha Elections.

(5) It is contended that in view of the communication dated 09/09/2024 (Page 79) of the Respondent No. 1, the Respondent No. 2 by the communication dated 17/09/2024 (Page 80) called upon the Petitioner to intimate its consent for providing webcasting services at Rs. 6,253/- per polling booth. A tender has also been issued on 03/10/2024 (Page 86-A) by the Respondent No. 2 calling offers for the same work of providing webcasting services in the Yavatmal District at 50% of the polling booths.

(6) Mr. Mirza, learned Senior Counsel appearing for the Petitioner submits that once the Respondent No. 2 has entered into an agreement with the Petitioner for providing webcasting

services for the Parliamentary and Assembly Elections and the same has been acted upon, it is not permissible for the Respondent No. 2, for any reason whatsoever, to resile from the same, by asking the Petitioner to provide the services at a lower rate than what was agreed upon. He, therefore, submits that the action of the Respondent No. 2 in issuing the communication dated 09/09/2024 (Page 79) as well as issuance of the tender notice dated 03/10/2024 (Page 86-A) is clearly arbitrary and cannot be sustained and is required to be quashed and set aside. He further relies upon **Subodh Kumar Singh Rathour vs. Chief Executive Officer and others, 2024 SCC Online SC 1682 (Paragraph Nos. 110, 111 and 112)** to contend that mere possibility of the State receiving a service at a lower rate cannot be a ground to resile from the contract already entered into. It is, therefore, contended that the aforesaid actions are clearly unreasonable and arbitrary and are required to be quashed and set aside.

(7) Mr. Manohar, learned Senior Counsel appearing for the Respondent No. 1, while supporting the impugned action, contends that the original tender dated 22/02/2024 (Page 31)

itself contained Clauses 11, 12 and 13 which conferred power upon the Collector even of cancelling the tender and modification of its terms. He further relies upon Clauses 1 and 11 of the agreement dated 15/03/2024, which reserve the power in the Collector to modify or cancel any part or condition of the tender, and therefore, submits that since the Respondent No. 1 found that the rate of Rs. 6,253/-, was a rate reasonable calculated on the basis of rates in all the States, the issuance of the communication dated 09/09/2024 cannot be faulted with, which would also be the reason to sustain the issuance of the subsequent tender notice dated 03/10/2024 by the Respondent No. 2. He, therefore, submits that there is a reasonable cause for the action taken by the Respondent No. 1, on account of which, the Petition ought to be rejected.

(8) Mr. Chauhan, learned Government Pleader appearing for the Respondent No. 2 justifies the issuance of the tender notice dated 03/10/2024 on the basis of the communication dated 09/09/2024 by the Respondent No. 1 (Page 79) and reiterates the submissions made by Mr. Manohar, learned Senior Counsel for the Respondent No. 1.

(9) A perusal of the tender notice dated 22/02/2024 would indicate that the offers for providing webcasting services to 50% of the polling booths in each District were invited, in pursuance to which, the offer of the Petitioner being lowest, was accepted and an agreement for providing the services came to be entered between the Petitioner and the Respondent No. 2 (Page 49). It cannot be disputed that the tender notice dated 22/02/2024 was for providing the webcasting services for the ensuing Parliamentary and Assembly elections, as that is what is indicated in the nature of work as described in the said NIT (Page 32). This is also indicated from the agreement dated 15/03/2024 (Page 49). It is thus apparent that the NIT dated 22/02/2024 and the consequent agreement dated 15/03/2024 in pursuance thereto were both for the Parliamentary and Assembly Elections. It is equally a matter of fact that the agreement has been acted upon and webcasting services have been provided by the Petitioner to the Respondents for the Parliamentary Elections which are over, which would indicate that part of the agreement has already been acted upon. Though the terms of the NIT as well as the agreement reserve a right in the Respondent No. 2 to modify the tender or any part

of it or any terms and conditions therein, that by itself would not mean that the Respondent No. 2 would have the power to reduce the rates at which the tender was accepted and acted upon. What is also material to note is that, though a plea of the same services being available for lesser rate in terms of the communication dated 09/09/2024 by the Respondent No. 1 to the Respondent No. 2, is being cited as the reason for issuing the tender dated 03/10/2024, however, a perusal of the same does not indicate existence of any condition, capping the upper price limit at Rs. 6,253/-. Had there been any substance in this reason, there is no reason why such a Clause has not been inserted in the NIT dated 03/10/2024. The absence of such a clause, in substance, speaks for itself. It is also necessary to note that the agreement still continues to be in existence, on account of which, the Respondent No. 2, being an instrumentality of the State and having an obligation to act fairly and in a non-arbitrary manner, cannot be permitted to resile from the agreement in such a fashion.

(10) In **Subodh Kumar** (supra), while considering a plea of incurring a financial loss on account of the rate, this is what has been held:-

> *"110. Thus, the respondent's reasoning in the Notice of Cancellation dated 07.02.2023 that it was incurring financial losses from the aforesaid tender does not hold well either. It has been contended by the respondent that due to the ambiguity in tender as regards placement of advertisements, many interested bidders might not have been able to submit their bids. Thus, the respondent formed the view that if the ambiguity is corrected a higher license fee could be fetched.*
>
> *111. However, we are not impressed with the above submission. As discussed in the preceding paragraphs of this judgment, nothing to this effect is even remotely indicated from the internal file notings of the respondent or the materials on record. There is nothing to suggest that there was a technical fault in the tender resulting in financial losses or that there was a possibility of fetching higher license fees. On the contrary, it can be seen that the respondent itself was of the opinion that the tender for work was financially beneficial to it. This further undermines the claims of technical faults or potential financial losses, and suggests that the decision to cancel*

the tender was not based on genuine financial concerns but rather on other, possibly extraneous factors.

112. Even assuming for a moment that there was a technical fault in the tender, which if rectified had the possibility of generating more revenue, the same by no stretch could be said to be a cogent reason for cancelling an already existing tender. In this regard reference may be made to the decision of this Court in Vice Chariman & Managing Director, City & Industrial Development Corporation of Maharashtra Ltd. & Anr. v. Shishir Realty Pvt. Ltd. & Ors. reported in ***2021 SCC OnLine SC 1141*** *wherein it was held that mere possibility of more money in public coffers does not in itself serve 'public interest'. A blanket claim by the State claiming loss of public money cannot be used to forgo contractual obligations, especially when it is not based on any evidence or examination as the larger interest of upholding contracts is also in the play. The relevant observations read as under:-*

> *"58. When a contract is being evaluated, the mere possibility of more money in the public coffers, does not in itself serve public interest. A blanket claim by the State claiming loss of public money cannot be used to forgo contractual obligations, especially when it is not based on any evidence or examination. The larger public interest of upholding contracts and*

> *the fairness of public authorities is also in play. Courts need to have a broader understanding of public interest, while reviewing such contracts."*
>
> *(Emphasis supplied)*

114. We may again refer to the decision of this Court in M.P. Power Management Company Ltd. (supra) wherein this Court observed that merely because the rates embodied in a contract with the passage of time have become less appealing, the same cannot become a determinative criterion for either terminating the contract or for the courts to decline interference in such contractual disputes. The relevant observations read as under: -

> *"88. Therefore, on a conspectus of the case law, we find that the concept of overwhelming public interest has essentially evolved in the context of cases relating to the award of contract by the State. It becomes an important consideration in the question as to whether then the State with whatever free play it has in its joints decides to award a contract, to hold up the matter or to interfere with the same should be accompanied by a careful consideration of the harm to public interest. We do not go on to say that consideration of public interest should not at all enter the mind of the court when it deals with a case involving repudiation of a claim under a contract or*

<u>for that matter in the termination of the contract. However, there is a qualitative State enters into the contract, rights are created. If the case is brought to the constitutional court and it is invited to interfere with State action on the score that its action is palpably arbitrary, if the action is so found then an appeal to public interest must be viewed depending on the facts of each case. If the aspect of public interest flows entirely on the basis that the rates embodied in the contract which is arbitrarily terminated has with the passage of time become less appealing to the State or that because of the free play of market forces or other developments, there is a fall in the rate of price of the services or goods then this cannot become determinative of the question as to whether court should decline jurisdiction</u>. In this case, it is noteworthy that the rates were in fact settled on the basis of international competitive bidding and in which as many as 182 bidders participated and the rate offered by the first respondent was undoubtedly the lowest. The fact that power has become cheaper in the market subsequently by itself should not result in non-suiting of the complaint of the first respondent, if it is found that a case of clear arbitrariness has been established by the first respondent.

89. <u>In other words, public interest cannot also be conflated with an evaluation of the monetary gain or loss alone</u>.” (Emphasis supplied)

115. What can be discerned from the above is that this Court has consistently underscored that any decision to terminate a contract must be grounded in a real and palpable public interest, duly supported by cogent materials and circumstances in order to ensure that State actions are fair, transparent, and accountable. Public interest cannot be used as a pretext to arbitrarily terminate contracts and there must be a clear and demonstrable ramification or detriment on the public interest to justify any such action.

116. Considerations of public interest should not be narrowly confined to financial aspects. The courts must have a more holistic understanding of public interest wherever the fairness of public authorities is in question, giving due regard to the broader implications of such action on the stability of contractual obligations. Merely because the financial terms of a contract are less favourable over a period of time does not justify its termination. Such decisions must be based on a careful consideration of all relevant factors, including the potential harm to the integrity and sanctity of contractual relationships. The larger interest of upholding contracts *cannot be discarded in the name of monetary gain labelled as public interest.*

118. Thus, we are of the view that the respondent's stance of a mere possibility of fetching higher license fees was no ground to cancel the tender issued to the appellant for the purposes of rectifying it, especially when the respondent completely failed to demonstrate as to how there was a technical fault in the tender or how potential interested bidders did not participate due to it or how fetching higher license fees was more than a mere possibility.

(11) Thus, mere possibility of any financial loss which may accrue or the availability of a service at a lesser rate subsequent in point of time to the NIT and the execution of the contract, cannot be a ground to cancel the tender, which has already been acted upon.

(12) We, therefore, find that the action on the part of the Respondents in attempting to do so, is clearly contrary to what has been held in **Subodh Kumar** (supra) and cannot be permitted in law. In the result, the Writ Petition No. 6010/2024 is **allowed**. The communications dated 09/09/2024 and

17/09/2024 and the consequent tender notice dated 03/10/2024 all are hereby quashed and set aside.

(13) Writ Petition Nos. 6009/2024, 6233/2024, 6234/2024 and 6180/2024 also raise a similar grievance based on the same communications, and therefore, those communications and tender notice, in case such a tender notice is issued, are also hereby quashed and set aside and the said Petitions are **allowed** in terms of what has been held above.

Rule is made absolute in the above terms. Pending Application(s), if any, stand(s) disposed of.

(SMT. M.S. JAWALKAR, J.) **(AVINASH G. GHAROTE, J.)**

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