

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.867 OF 2024

Hemant Ashar

...Petitioner

V/s.

Nashik Municipal Smart City
Development Corporation Limited
and Ors.

...Respondents

Mr. Ashutosh Kulkarni i/b. Mr. Susmit S. Phatale for the
Petitioner.

Mr. Vishwajit Sawant, Senior Advocate with Mr. M.L. Patil and
Mr. Nikhil Patil for Respondent Nos.1 and 2.

Mr. Gaurav Joshi and Mr. Ashish Kamat, Senior Advocates
with Mr. Jaideep Singh Khattar, Ms. Trisha Desai, Mr. Huzan
Bhamgura and Ms. Janhavi Kalpesh Pise i/b. M/s. The Fort
Circle & Solicitors for Respondent No.3.

CORAM: CHIEF JUSTICE &

SANDEEP V. MARNE, J.

Dated: 13 June 2025.

Judgment: (Per: Sandeep V. Marne J.)

1) The Petitioner has filed the present Petition seeking termination of work order dated 29 December 2022 issued in favour of Respondent No.3 and for cancellation of

the tender process. Petitioner has also prayed for appointment of appropriate enquiry committee for conducting investigations into the entire tender process. He has also prayed for recovery of money paid to Respondent No.3 in pursuance of work order dated 29 December 2022.

2) Brief facts leading to the filing of the present Petition are as under:

Respondent No.1-Nashik Municipal Smart City Development Corporation Ltd. issued E-Tender for a proposal for implementation and maintenance of Integrated Surveillance and City Operations Platforms (ISCOP) for Emergency Operation Center (EOC) in Nashik on 5 July 2022. The timeline for completion of work under the tender was 12 months from the date of issuance of work order with operation and maintenance. Under the pre-qualified criteria specified in the Tender Notice, the bidder was supposed to possess average annual turnover of minimum Rs.35 crores in previous five financial years. The documents required to be submitted to satisfy pre-qualified criteria of turnover were either audited statements of five years or certificate from a Chartered Accountant. Several bidders submitted their bids in pursuance of the Tender Notice. According to the Petitioner, the entity with whom Petitioner used to work as a sub-contractor, also submitted its bid in pursuance of the Tender Notice. Petitioner relies upon email dated 22 July 2022 in support of an understanding between himself and the said entity to

indicate that he was also part of the tendering process. Respondent No.3 also submitted its bid against the Tender Notice. The bids of some of the bidders were rejected on account of failure to meet the eligibility criteria. Petitioner claims that several news items were published in local newspapers alleging deliberate rejection of bids of other bidders with a view to favour Respondent No.3. Respondent No.3 was selected as a successful bidder and accordingly work order dated 29 December 2022 was issued in favour of Respondent No.3. Petitioner has challenged the said work order by filing the present Petition alleging that Respondent No.3 had not only failed to qualify the eligibility criteria prescribed in the Tender Notice, but relied upon some forged documents.

3) After the Petitioner filed the present Petition on 18 January 2024, this Court passed interim order dated 30 January 2024 directing that no further payment be made to Respondent No.3 in relation to the work order issued to it. The said interim order was modified on 22 April 2024 directing that it would be open to the first Respondent-Corporation to release payment to Respondent No.3 and that such payment would be subject to final outcome of the Petition. The stay on payment was lifted by this Court in view of Affidavit-cum-Undertaking filed by Respondent No.3 for bringing back the amount received towards execution of the work order as and when directed by this Court.

4) Parties have completed the pleadings and with the consent of the learned counsel appearing for rival parties, the Petition is taken up for hearing and disposal.

5) Mr. Kulkarni, the learned counsel appearing for the Petitioner would submit that the work order has been secured by Respondent No.3 by committing fraud on the Respondent-Municipal Corporation. He would submit that the condition under PQ-2 required the bidder to submit either audited statements of five years or certificate of Chartered Accountant demonstrating annual turnover to minimum of Rs.35 crores in previous five audited statements. Respondent No.3 relied upon Chartered Account's certificate dated 21 July 2022, which was shown to have been signed by Ramdas Bhikaji Ugle, who had passed away on 18 April 2015, evidencing that certificate dated 21 July 2022 was forged. Knowing this position, Respondent No.3 voluntarily withdrew the Chartered Accountant's certificate after receipt of letter dated 2 August 2022 from Respondent-Corporation. That therefore forgery in the Chartered Accountant's certificate is writ large and on this ground alone, the work order issued in favour of Respondent No.3 deserves to be forthwith cancelled. He would submit that Respondent No.3 is otherwise ineligible to participate in the tender process even if the aspect of forgery is to be momentarily ignored. That the Respondent-Corporation allegedly relied upon unaudited financial statements of Respondent No.3 when tender condition mandated

submission of audited statements. That even going by the annual turnover figures relied upon by Respondent No.3, it is seen that it does not fulfill the mandatory turnover criteria. He would take us through various correspondences that ensued between the Respondent-Corporation and Respondent No.3 after detection of discrepancies. He would therefore submit that once the fraud is clearly established, the Respondent-Corporation ought to have withdrawn the work order issued in favour of Respondent No.3. In support of his contention that fraud would unravel all acts, he would rely upon judgment of Hon'ble Supreme Court in **S.P. Chengal Varaya Naidu (DEAD) by LRS. V/s. Jagannath (DEAD) by LRS. And others.**¹ He would also rely upon Division Bench judgment of this Court in **M/s. K.K. Vidut V/s. Union of India and Ors.**²

6) Mr. Kulkarni would submit that Petitioner has every right to maintain the present Petition challenging issuance of work order in favour of Respondent No.3. He would submit that Petitioner has also participated in the tender process as sub-contracting is permitted under the subject tender. Petitioner is a sub-contractor, who was already performing work for the Respondent-Corporation. That the entity on whose behalf the Petitioner was performing work of sub-contractor has participated in the tender process and therefore Petitioner's participation in the

¹ (1994) 1 SCC 1

² Writ Petition (L) No.35600 of 2024, decided on 19 December 2024.

tender must also necessarily be inferred. That the Petition was filed after discovery of fraud committed by Respondent No.3 and that therefore mere delay in filing the Writ Petition cannot be a ground for ignoring the fraudulent acts of Respondent No.3. He would strenuously rely upon interim orders passed by this Court on 25 January 2024 and 30 January 2024. That mere completion of substantial work by Respondent No.3 is no answer to the fraudulent acts committed by it as performance of contract and payment are subject to outcome of the present Petition. That Respondent No.3 has undertaken to refund the payments made to him as and when directed by this Court. In that view of the matter, while allowing the present Petition, all the payments made to Respondent No.3 be directed to be brought back. He would further submit that necessary enquiry deserves to be conducted into the manner in which the entire tender process is implemented as the same smacks of arbitrariness, favouritism and irrationality. He would accordingly pray for allowing the present Petition.

7) The Petition is opposed by Mr. Sawant, the learned senior advocate appearing for Respondent Nos.1 and 2-Corporation. He would submit that the Petitioner does not have *locus standi* to file the present Petition as he did not participate in the tender process. He would submit that the Petition suffers from gross delay and latches as the Petition is filed on 18 January 2024 challenging the work order issued on 29 December 2022. That the period of execution of work

was only one year and that substantial amount of work has already been completed. That it is too late in a day to interfere in the work order dated 29 December 2022 at this stage. Mr. Sawant would further submit that the tendering authority has satisfied itself on the eligibility criteria met by Respondent No.3. Even though the discrepancy is noticed in the certificate of Chartered Accountant, tendering authority considered other documents for assessing turnover of Respondent No.3 and satisfied itself that Respondent No.3 meets the prescribed criteria. That the financial statements of Singapore subsidiary of Respondent No.3 have also been taken into consideration. That the decision of the tendering authority does not suffer from any arbitrariness and that therefore no interference is warranted in award of contract to Respondent No.3. That in any case, since the work is almost complete, no purpose would be served in entertaining the present Petition. He would pray for dismissal of the Petition.

8) Mr. Joshi, the learned senior advocate appearing for Respondent No.3 would oppose the Petition. He would reiterate the objections of absence of *locus standi* and gross delay and laches in filing the present Petition. He would submit that the Petitioner is stranger to the tender process and cannot be permitted to maintain the present Petition. Findings recorded in interim orders dated 25 January 2024 and 30 January 2024 are *prima facie* and cannot bind this Court while finally deciding the Petition. That Petitioner has

met the financial criteria of turnover and the Petitioner cannot be permitted to take undue advantage of discrepancy in the certificate issued by the Chartered Accountant. He would submit that Respondent No.3 relied upon its global turnover comprising of the parent Company (Respondent No.3) and it is wholly owned by Singapore subsidiary-M/s. Secutech Automation PTE Ltd., which was incorporated on 17 February 2014. That alongwith the bid, Respondent No.3 submitted both Chartered Accountant's certificate and self certified average annual financial turnover. That the bidding authority sought clarification from Respondent No.3 as per the tender conditions between 28 July 2022 to 2 August 2022. That in pursuance of such clarifications, Respondent No.3 clarified that Chartered Accountant certificate was inadvertently issued and withdrew the same. That Respondent No.3 fulfilled the requisite condition of annual financial turnover of Rs.35 crores for previous five financial years. He would take us through figure of annual turnover of Respondent No.3 as well as its Singapore subsidiary to satisfy that the consolidated average turnover of Respondent No.3 is of Rs.52.29 crores during relevant financial years. He would therefore submit that Respondent No.3 has been rightly declared technically qualified in the tender process. He would rely upon judgment of this Court in ***Coastal Marine Construction & Engineering Limited and Anr. V/s. Bharat Petroleum Corporation Ltd. And Ors.***³ in support of his contention that power of judicial review cannot

³ Writ Petition (L) No.6003 of 2025 (OS), decided on 22 April 2025.

be exercised by this Court to protect private interest at the cost of public interest. He would submit that since Petitioner lacks very *locus* for maintaining the present Petition, no enquiry needs to be conducted into the procedure adopted by Respondent-Corporation at the instance of the Petitioner. He would accordingly pray for dismissal of the Petition.

9) Rival contentions of the parties now fall for our consideration.

10) Petitioner has questioned the validity of the tender process implemented by the Respondent-Corporation, under which Respondent No.3 has emerged as a successful bidder and the contract for execution of the work has been issued in its favour. The work order dated 29 December 2022 issued by the Respondent-Corporation in favour of Respondent No.3 has been assailed by the Petitioner in the present Petition. Respondents have questioned the *locus standi* of the Petitioner to file the present Petition on the ground that he did not participate in the impugned tender process. The Petitioner contests the said objection by contending that he has been party to the entire tender process as the entity for whom he acted as a sub-contractor had participated in the tender by submitting its bid. It is contended by the Petitioner that it is a sub-contractor of RailTail Corporation of India Limited, who had submitted the bid in response to the impugned tender process. That as a sub-contractor, Petitioner had participated in the pre-bid meeting and is thus

very much a part of the impugned tender process. It is further contended by the Petitioner that since sub-contracting is permitted for performance of subject work, Petitioner in his capacity as a sub-contractor, possesses the necessary *locus* to file the present Petition.

11) Petitioner describes himself as a partner of the Firm-M/s. Shreeji Network Solutions. Admittedly, the Petitioner by himself, or through the partnership Firm, did not submit any bid in pursuance of the impugned tender process. Even though the Petitioner may be a sub-contractor of another entity, who participated in the tender process by submitting the bid, the same would not *ipso facto* mean that Petitioner has participated in the tender process. Petitioner is thus totally stranger to the entire tender process. Merely because he has participated in the pre-bid meeting on behalf of his principal contractor, the same would not elevate Petitioner to the status of a bidder in respect of the subject tender process. We accordingly reject Petitioner's contention that he has participated in the tender process.

12) The next issue for consideration is whether Petitioner would have *locus* to maintain the present Petition questioning correctness of the tender process and seeking cancellation of work order issued in favour of Respondent No.3. For the purpose of seeking direction for termination of work order dated 29 December 2022 issued in favour of Respondent No.3, Petitioner has essentially invoked certiorari

jurisdiction of this Court. In order to invoke certiorari jurisdiction of this Court, Petitioner needs to satisfy that he is an 'aggrieved person'. The Apex Court, in its Four Judge Bench decision, in ***Jasbhai Motibhai Desai V/s. Roshan Kumar Haji Bashir Ahmed and Others***⁴ has dealt with the issue as to who can be considered as an 'aggrieved person' and what qualification such person must meet to secure such status. The Apex Court held in paragraphs 10 to 14 as under:

10. Article 226 of the Constitution empowers the High Court to issue to any person or authority, including the Government, within its territorial jurisdiction, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of fundamental rights and for any other purpose.

11. As explained by this Court in *Dwarkanath v. I. T. O., Kanpur*, the founding fathers of the Constitution have designedly couched the article in comprehensive phraseology to enable the High Court to reach injustice wherever it is found. In a sense, the scope and nature of the power conferred by the article is wider than that exercised by the writ courts in England. However, the adoption of the nomenclature of English writs, with the prefix "nature of" superadded, indicates that the general principles grown over the years in the English courts, can, shorn of technical procedural restrictions, and adapted to the special conditions of this vast country, in so far as they do not conflict with any provision of the Constitution, or the law declared by this Court, be usefully considered in directing the exercise of this discretionary jurisdiction in accordance with well recognised rules of practice.

12. According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and, in a case

⁴ (1976) 1 SCC 671

of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances.

13. This takes us to the further question: Who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi for 'standing to invoke certiorari jurisdiction.

14. We will first take up that line of cases in which an "aggrieved person has been held to be one who has a more particular or peculiar interest of his own beyond that of the general public, in seeing that the law is properly administered. The leading case in this line is *Queen v. Justices of Surrey* decided as far back as 1870. There, on the application by the highway board the justices made certificates that certain portions of three roads were unnecessary. As a result, it was ordered that the roads should cease to be repaired by the parishes.

13) After examining the judgments of Courts in UK and USA, the Apex Court concluded in paragraphs 37 to 39 as under :

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories (i) person aggrieved; (ii) 'stranger'; (iii) busybody or meddlesome

interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".

39. To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are **Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond**

some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals ?

(emphasis added)

14) Applying the tests discussed by the Hon'ble Apex Court in **Jasbhai Motibhai Desai** (supra) it is difficult to hold that Petitioner's legal right has been infringed or that he has suffered a legal wrong or injury in his personal capacity on account of implementation of the impugned tender process or on account of issuance of work order in favour of Respondent No.3. Similarly, he has not suffered a legal grievance since no decision has been pronounced, which has wrongly deprived him of something. In our view, therefore, Petitioner would not fit into the expression 'aggrieved person' for the purpose of conferment on him *locus* to maintain the present Petition questioning the implementation of the tender process or for challenging the work order issued in favour of Respondent No.3.

15) Even if the Petitioner succeeds in the present Petition, the subject work will not be issued to him. It is not the case of the Petitioner that he fulfills the eligibility criteria to participate in the fresh tender process and can participate

in the fresh tender process initiated after cancellation of the impugned tender process. Thus, Petitioner would gain nothing even if the present Petition is allowed. In our view, therefore Petitioner cannot be treated as a 'person aggrieved' and would lack *locus* to maintain the present Petition. The petition at the instance of the Petitioner is thus non-maintainable.

16) It is also well settled law that a non-participant in the tender process cannot challenge the same. Reference in this regard can be made to the Apex Court judgment in ***NHAI V/s. Gwalior-Jhansi Expressway Ltd.***⁵, in which it is held as under :

20. Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfilment or breach of any of the terms and conditions of the tender documents concerned. The respondent who chose to stay away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions. At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions. Thus, if the claim of the respondent was to be strictly adjudged on the basis of the terms and conditions specified in the subject tender document, the respondent has no case whatsoever.

⁵ (2018) 8 SCC 243

17) More recently, the Apex Court has held in ***Airport Authority of India V/s. Centre for Aviation Policy, Safety and Research***⁶ as under:

26. At the outset, it is required to be noted that respondent No. 1 claiming to be a non-profit organisation carrying out research, advisory and advocacy in the field of civil aviation had filed a writ petition challenging the tender conditions in the respective RFPs. It is required to be noted that none of the GHAs who participated in the tender process and/or could have participated in the tender process have challenged the tender conditions. It is required to be noted that the writ petition before the High Court was not in the nature of Public Interest Litigation. In that view of the matter, it is not appreciable how respondent No. 1 - original writ petitioner being an NGO would have any *locus standi* to maintain the writ petition challenging the tender conditions in the respective RFPs. Respondent No. 1 cannot be said to be an "aggrieved party". Therefore, in the present case, the High Court has erred in entertaining the writ petition at the instance of respondent No. 1, challenging the eligibility criteria/tender conditions mentioned in the respective RFPs. The High Court ought to have dismissed the writ petition on the ground of *locus standi* of respondent No. 1 - original writ petitioner to maintain the writ petition.

18) In our view therefore, Petitioner, who has not participated in the tender process, lacks the *locus standi* to maintain the Petition

19) It is also seen that Petitioner has approached this Court after substantial delay. The impugned tender process came to be finalised by issuance of work order in favour of the third Respondent on 29 December 2022 whereas the Petitioner has filed the present Petition after delay of more than one year on 18 January 2024. Time limit for completion

⁶ 2022 SCC Online 1334

of work awarded in favour of Respondent No.3 vide work order dated 29 December 2022 was for 12 months with operation and maintenance for five years after *go live*. It is the case of the Respondents that 85% work was completed by Respondent No.3 by the time the Petition was filed and it is submitted across the Bar that the entire work since been completed by Respondent No.3 and now Respondent No.3 is merely looking after operation and maintenance of the work in question. Petitioner has thus, chosen to approach this Court after completion of substantial portion of the work. Petition thus, suffers from gross delay and more importantly laches on the part of the Petitioner. Petitioner himself has averred in the Petition that he was associated with the tender process and had attended pre-bid meetings on behalf of his principal contractor. If that is the case, Petitioner must be aware about all the events occurring during implementation of tender process and particularly about issuance of work order dated 29 December 2022. However, no satisfactory explanation has been put forth by the Petitioner justifying the gross delay and laches in approaching this Court. Mere allegation of fraud cannot be a ground for ignoring the objection of delay and laches on the part of the Petitioner, particularly considering the fact that the Petition involves challenge to implementation of the tender process. In tender matters it is all the more necessary that challenges are raised in a timely manner so that the public work is not hampered. In our view, delay of more than one year in filing the present Petition is clearly fatal and this is yet another reason why we

are not inclined to entertain challenge on behalf of the Petitioner.

20) The third reason which dissuades us from entertaining the present Petition is completion of entire work by Respondent No.3 by the time the Petition is taken up for hearing. Since the work is complete, we are not inclined to entertain prayer for cancellation of work order issued in favour of Respondent No.3. Respondent-Corporation has implemented the tender process for execution of public work of Integrated Surveillance and City Operations Platforms for Emergency Operation Center in Nashik city. Timely execution of such work was and is in the public interest. Now that execution of the work is complete, it would be futile to entertain the prayer of the Petitioner for withdrawal /cancellation of work order dated 29 December 2022.

21) However, while we are not inclined to entertain the present Petition on account of absence of *locus standi* for the Petitioner, delay and laches and completion of the work, we do find that Petitioner has levelled serious allegations in the Petition about submission of fictitious documents and lack of transparency in the implementation of the tender process. The allegation of submission of certificate of Chartered Accountant, who was already dead, is not really denied by Respondent No. 3, who has chosen to subsequently withdraw the said certificate. While not examining

correctness of allegations levelled by the Petitioner, we consider it appropriate that an enquiry be conducted by Respondent Nos.1 and 2 into the allegations levelled in respect of the tender process for the purpose of taking such action as may be considered appropriate. Such enquiry shall also ensure that deficiencies, if any, in implementation of the tender process are not repeated in future tender processes. Therefore, while disposing of the present Petition, we consider it expedient to direct conduct of an enquiry by Respondent Nos. 1 and 2 in the implementation of subject tender process.

22) Since we have not entertained the present Petition, we are not considering the allegations levelled by the Petitioner about forgery in submitting the Chartered Accountant's certificate or Respondent No.3 not meeting the turnover criteria on the basis of financial statements submitted by it. Therefore it is not necessary to consider ratio of the judgment in **S.P.Chengalvaraya Naidu** and **M/s. K.K. Vidyut** (supra) relied upon by the Petitioner.

23) For the reasons above mentioned, we are not inclined to entertain the present Petition at the instance of the Petitioner. However, we direct that Respondent Nos.1 and 2 shall conduct enquiry into the manner in which the tender process has been implemented and if any discrepancy is noticed, they would be free to take appropriate action in that regard. No opinion on merits of the allegations levelled in the

Petition is however expressed and all contentions of the parties are expressly kept open.

24) With the above directions, the Petition is **disposed of**.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

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signed by
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PARAB
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