



AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17075 OF 2024

ATUL
GANESH
KULKARNI
Digitally signed by
ATUL GANESH
KULKARNI
Date: 2024.12.16
18:41:18 +0530

Shriraj Nageshwar Aepurwar ... Petitioner

V/s.

The State of Maharashtra, through
its Secretary ... Respondent

Mr. Anand Jondhale (through V.C.) with Mrs. Medha Jondhale, Ms. Rajnandini Jondhane and Mr. Harshvardhan Shinde for the petitioner.

Mr. O.A. Chandurkar, Additional G.P. with Mrs. G.R. Raghuwanshi, AGP for the respondent No.1-State.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ &
AMIT BORKAR, J.

DATED : DECEMBER 16, 2024

P.C.:

1. Heard Mr. Anand Jondhale, learned counsel representing petitioner and Mr. Chandurkar, learned Additional G.P. appearing for respondent No.1-State of Maharashtra.

2. This civil writ petition invoking our jurisdiction under Article 226 of the Constitution of India has been filed with the assertion, *inter alia*, that by awarding the contract in question (supply of 6600 MW of renewable and thermal power to Maharashtra) to the respondent No.2, petitioner's fundamental right of having access to electricity supply at reasonable rate which emanates Article 21 of the Constitution of India has been violated. The petitioner has stated that the

petition is maintainable even under Article 227 of the Constitution of India.

3. Certain vague and unsubstantiated assertions have been made describing the award of the subject contract as a “scam” involving government authorities. Averments have been made without any supporting material even against the former Chief Minister of the State leveling allegations of him resorting to corrupt practices and being in hands in glove with the respondent No.2 while awarding the contract.

4. The writ petition, in our opinion, is highly misconceived being based on completely unsubstantiated assertions which are not supported by any material/document. The petitioner is not a participant in the tender process which culminated in award of contract to the respondent No.2; however, he has instituted the instant petition as a civil writ petition and not as a public interest litigation which, accordingly, is not maintainable.

5. When inquired as to on what basis averments have been made in respect of the former Chief Minister of the State in paragraph 19 of the writ petition, learned counsel for the petitioner has drawn our attention to an order dated 15 September 2021 passed by this Court in a PIL petition filed by an organization, namely, GTL Mahavitaran Bhrashtachar Viruddh Samiti, Aurangabad (Public Interest Litigation No.88 of 2021) wherein notices have been issued to the respondents. He has stated that once notices in the said PIL petition were issued and a civil application was filed; however,

ignoring pendency of the said PIL petition and the civil application, the subject contract has been awarded to the respondent No.2 which, according to the petitioner, is enough proof of indulgence of the former Chief Minister into corrupt practices in awarding the contract.

6. Merely on account of the order dated 15 September 2021 whereby notices were issued in the Public Interest litigation No.88 of 2021, the averments made in paragraph 19 of the writ petition do not get substantiated.

7. Learned counsel for the petitioner has, today, tendered a document which is not on affidavit and is dated 24 October 2024. The said document is taken on record. The document described as "indictment" appears to contain some charges against certain individuals which is said to have been filed in Clerk's Office, US District Court, E.D.N.Y., Brooklyn Office. Drawing our attention to paragraph 48 of the said document, it has been stated that the contents of the document itself would suffice to infer, at least prima facie, that the said contract was awarded to the respondent No.2 not only unlawfully but in a corrupt manner.

8. Learned counsel for the petitioner has utterly failed to clarify as to the exact nature of the document presented today before us. The document appears to contain certain charges filed in some District Court in the United States of America. On the basis of such document, in our opinion, the submissions made by the learned counsel for the petitioner in respect of the subject contract cannot be accepted.

9. Though the instant petition has been filed by the petitioner as a civil writ petition, however, even if we treat it to be a PIL petition, it will not absolve the PIL petitioner of the legal duty cast on such petitioner to institute proceedings of a PIL with adequate material/document/evidence to substantiate averments, especially in case the averments relate to certain charges against the individuals holding government offices. If we peruse the entire writ petition, what we find is that except for leveling allegations and making reckless statements, the writ petition does not contain any substantiating or supporting material. The writ petition even does not contain the exact description of the contract said to have been awarded to the respondent No.2.

10. In our opinion, filing of such a petition/public interest litigation containing unsubstantiated and unsupported reckless averments runs the risk of some times even the good cause being lost.

11. The Hon'ble Supreme Court while noticing the entire development of the jurisprudence surrounding the evolution of PIL, in case of ***State of Uttaranchal v. Balwant Singh Chaufal & Ors.***, (2010) 3 SCC 402 has, on one hand, observed that Courts should entertain the PIL petitions bringing genuine causes seeking to espouse public interest; however, in the same breath the Hon'ble Supreme Court has also cautioned that while entertaining PIL petitions, the Court should be cautious not to entertain frivolous petitions or petitions filed for extraneous purposes such as seeking publicity etc.

12. The instant petition, if scrutinized closely, appears to us to be bereft of any substantiating and supporting material; further the petition contains absolutely bald and vague allegations which, in our opinion, does not persuade us to entertain the same.

13. However, we make it clear that any observations made in this judgment are confined to the adjudication of present writ petition and shall not be construed as an expression of opinion on the merits of underlying issues, the claims raised by parties, or the material relied upon by the petitioner. These observations are solely for the purpose of deciding the present petition and shall not prejudice the rights of the parties in any future proceedings, if initiated, before the competent forum.

14. The writ petition is, thus, dismissed with costs of Rs.50,000/- to be paid by the petitioner to the Maharashtra State Legal Services Authority (Account Details: High Court Legal Aid Fund, Account No.60045304283, IFSC MAHB0000002 of the Bank of Maharashtra, Branch-Fort, Mumbai – 400 032, maintained by the High Court Legal Services Committee, Mumbai, Room No.105, 1st Floor, PWD Building, High Court, Mumbai) within a period of six weeks from today, failing which the costs shall be recovered from the petitioner as arrears of land revenue.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)