

(2011) 10 BOM CK 0064

In the Bombay High Court

Case No : Public Interest Litigation No. 74 of 2010

Dr. Surendra Ramlal Tiwari and Trimurty Nagar (N.I.T.)
Ground Bachav Kruti Samiti

APPELLANT

Vs

State of Maharashtra, Nagpur Improvement Trust, Nagpur
Municipal Corporation and Bhartiya Vidya Bhavan, Munshi
Sadan

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 22, 31(6), 37
Nagpur Improvement Trust Act, 1936 — Section 16(1)

Citation : (2012) 1 ALLMR 253 : (2012) 4 BomCR 231 : (2012) 114 BOMLR 343

Hon'ble Judges : B.P. Dharmadhikari, J; A. P. Bhangale, J

Bench : Division Bench

Advocate : A.S. Jaiswal, for the Appellant; D.M. Kale, Advocate for respondent
No. 1 Shri S.K. Mishra, Advocate for respondent No. 2 Shri C.S. Kaptan,
Advocate for respondent No. 3 Shri M.G. Bhangde with Shri V.V. Bhangde,
Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—By this petition, the challenge is to action of Respondent No. 2 in allotting land reserved for Primary School, Secondary School and Playground to Respondent No. 4 -Educational Institution/ Trust. The petition has been accepted as Public Interest Litigation as per orders of the learned Senior Judge on 02.12.2010 and on 06.12.2010 notices were issued to the other side.

2. The facts briefly stated are : The reservation is on Khasra No. 12 of Mouza - Bhamti included in Bhamti Parsodi Street Scheme of Nagpur Improvement Trust (respondent 2 herein) and as per Development Plan sanctioned in the year 2001, it has reservation No. SW 164 for Primary School on area 0.176 H. Reservation No. SW 165 is on Area 0.352 H. for secondary School and reservation No. MSW

16 for playground is 1.1136 H. The remaining reservation is for 9 mtrs. x 12 mtrs. wide road and residential purpose.

3. The prayers in the petition are to quash an advertisement dated 29.03.2010 with its corrigendum issued later and the subsequent tender notice similarly published in September 2010. The petitioners before this Court are the residents of the area. Petitioner No. 1 is a Lecturer while petitioner No. 2 is an association of local residents formed for saving the said playground.

4. One of the prayers in the petition also sought declaration that modification of reservations suggested by Respondent No. 3 - Nagpur Municipal Corporation vide notice dated 26.10.2010 u/s 37 of Maharashtra Recognition of Trade Practices Act, 1966, (hereinafter referred to as 1966 Act) by seeking deletion of reservation for Primary School and Secondary School and to add the land thereof to playground is legal and valid. It is not in dispute that during the pendency of this petition, Nagpur Municipal Corporation has considered said proposal and later on decided to withdraw it.. With the result, original reservation as given in Development Plan stands as it is. The position declared by Respondent No. 3 on record and vide affidavit dated 10.08.2011 and declaration that proposal for minor modification of Development Plan initiated u/s 37 of 1966 Act is dropped, has not been questioned in any way though thereafter CAO No. 1182 of 2011 has been moved by the petitioners on 24.08.2011 seeking leave to add para 16G to the petition. That amendment was allowed by this Court on 14.09.2011. Thus, the declaration that proposal to drop reservations for Secondary School and Primary School is valid. has not been pressed thereafter by the petitioners. Similarly, though there is a subsequent tender issued in September 2010, that second tender has also not been questioned before this Court specifically. However, it needs to be pointed out that resolution by Respondent No. 2 - Nagpur Improvement Trust passed on 07.01.2011 accepting the offer received in pursuance of that tender has been challenged by amending the prayer clause and by adding grounds on 25.03.2011 and thereafter on 14.09.2011.

5. We have heard Shri Jaiswal, learned counsel for the petitioner, Shri Kale, learned AGP for respondent No. 1, Shri Mishra, learned counsel for respondent No. 2, Shri Kaptan, learned counsel for respondent No. 3 Municipal Corporation and Shri M.G. Bhangde, learned Senior Advocate with Shri V.V. Bhangde, learned counsel for respondent No. 4.

6. After pointing out the facts in brief, Shri Jaiswal, learned counsel has urged that there are 20 Schools in the vicinity and hence there is no need of any new Primary and Secondary School in the area. He has contended that area is congested one and children are having no facility of playground and similarly elderly persons have no open space for their Morning or Evening walk and exercise. He, therefore, contends that the allotment of entire land with even reservation for playground to Respondent No. 4 is contrary to provisions of Act of 1966. He points out that in first tender notice inviting offers, the area declared for School was 3850 square meters and an obligation was cast upon successful

bidder to develop area ad- measuring 13666 sq. mtrs. as playground and garden. The aspirant was expected to have minimum annual turn over exceeding Rs. 10 crores in any three financial years and net worth of Rs. 5 crores. This could not materialize and then similar notice was again published in September 2010 and in this revised tender, the minimum annual turn over exceeding Rs. 10 crores was maintained as it is and net worth of Rs. 10 crores as on 31.03.2010 was asked for. The condition that bidder must have previous experience of running and managing or must own at least five Schools or Colleges over past 5 years was also put. He argues that as there was no response to March 2010 tender, the conditions needed to be relaxed but here in later invitation, conditions were made more stringent.

7. In this background, he has invited attention to clause 9 of the tender notice to urge that entire playground as also garden is to be used by the School and thus it no longer remains available for the children residing in the locality or for general public throughout the day. He contends that the conditions in the tender have also been modified later on to suit the Respondent No. 4 and allotment to it on 07.01.2011 is malafide. Attention is invited to admitted fact that the father of Chairman of Respondent No. 2 - Trust is on Local Executive Committee (for Nagpur) of Respondent No. 4. It is urged that because of this, the condition later published on 06.09.2010 show distinct changes to see that it can be allotted only to Respondent No. 4. The learned counsel has invited attention to provisions of Section 16 (1) (d) of Nagpur Improvement Trust Act, 1936, to contend that if really Chairman of Respondent No. 2 had abstained from meeting in which resolution in favour of Respondent No. 4 came to be passed by Respondent No. 3, it was obligatory for the Trustees to elect somebody as Chairman to preside over that part of meeting. He contends that declaration of interest has come at the end of business transacted and the Chairman of Respondent No. 2 has refused to participate only in decision on the subject and there is nothing on record to show that he did not participate in deliberations. It is contended that because of influence Respondent No. 4 and Chairman of Respondent No. 2, the condition to allot the reserved land to CBSE School or then stringent conditions like experience and minimum number of Schools etc. came to be added. The resolution dated 07.01.2011 passed by Respondent No. 2 is, therefore, challenged as invalid and unsustainable, as also illegal.

8. Our attention is invited to provisions of Section 22(c) of Act of 1966. The learned counsel states that reservation in Development Plan for playground is a separate entry and reservation for garden or park is an independent reservation. When the land in the lay out is reserved for playground, it cannot be permitted to be used as garden or park. The support is being taken from Division Bench judgment of this Court in the case of Sarvajanik Shri Ganeshotsav Mandal and Sanjay Sawant, President of Sarvajanik Shri Ganeshotsav Mandal Vs. Municipal Corporation of Greater Mumbai, State of Maharashtra and Chhatrapati Shivaji Maharaj Smarak Samiti, , particularly paras 13, 14 & 20 for this purpose. It is reiterated that because of congested position and availability of large number of

schools in the locality, the petitioners need a playground. That need is rightly recognized in Development Plan and hence the playground cannot be allowed to be put to any other use and cannot be allowed as a playground to Respondent No. 4 - School.

9. Shri Mishra, learned counsel for Respondent No. 2 states that the petition as filed is not a bonafide or genuine attempt to redress public grievance. He points out that petition has been filed on 01.12.2010 i.e. long after second invitation dated 06.09.2010, and still it does not contain any challenge or reference to that tender notice. The effort in the petition was to have entire ground for playground without any reservation for school and this was after Nagpur Municipal Corporation passed a resolution to propose modification u/s 37 of Act of 1966 for this purpose. Respondent 3 Nagpur Municipal Corporation has dropped that proposal and as petition seeks something which is contrary to Development Plan, it is not in public interest. He further contends that proposed reservation in Development Plan exists since the year 2000 and it is nowhere the case of the petitioner that reserved land is the only playground available in the locality. He contends that because of Section 31(6) of Act of 1966, Development Plan is binding on Nagpur Improvement Trust. As reservation is for School, the condition that such School has to be recognized by CBSE is good and valid. He points out that no objection was raised by petitioners or any residents before Development Plan was finalized. In Writ Petition, there is only challenge to tender as published on 29.03.2010 and though it has been amended subsequently twice, there is no express challenge to tender as published on 06.09.2010.

10. In response to earlier tender dated 29.03.2010, the only offer of Rs.1.08 Crores was received whereas an amount of Rs.2.5 Crores was needed for playground development. Hence, that tender notice was cancelled and fresh tender was published on 06.09.2010. In fresh tender, Rs.2.5 Crores are stipulated for the School plots. He contends that the project is Public Private Participation Project (PPP) and there is no question of any loss to public revenue. Though two tenders were received, only one continued its offer on 20.10.2010 when tenders were opened. Offer of Respondent No. 4 was found above upset price and Respondent No. 4 had offered Rs. 5.31 Crores. These developments are not being questioned in writ petition. It was amended in March 2011 to incorporate challenge to resolution dated 07.01.2011 and thereafter in September 2011. In this background, it is contended that Section 16(1)(d) of NIT Act is not attracted in present facts. There were total 78 different subjects before trustees on 07.01.2011 and only one valid offer was available for consideration. There is no prejudice to anybody because of that grant. He has invited attention to photograph placed on record to point out how four play-courts are to be developed in playground within 18 months. Respondent No. 4 has agreed to pay Rs. two lakh per year for maintenance of playground. It is further stated that the Chairman of Respondent No. 2 (Shri Sanjay Mukherjee) against whom allegations of bias are made, was transferred in June 2011 and he has not been joined in person. Attention is invited to reply of Respondent No. 2

to amendment effected by the petitioners to point out how the playground is to be used. He further points out that tender also permitted consortium to be formed and hence it cannot be alleged that conditions in it were tailor-made.

11. Shri Bhangde, learned Senior Advocate for respondent No. 4 has assailed the bonafides of the petitioners. According to him, petition is not filed in public interest but the petitioners are actually puppets in the hands of other School managements in the area. He points out that cost of each tender notice was Rs.10,000/- and here though the petitioners have annexed both these tenders, they have not disclosed the source from which they got its copy. He contends that the petitioners have not purchased the same. Similarly, attention is invited to communication/ letters dated 25.11.2008, 07.05.2010, 07.04.2010, resolution dated 12.04.201, copy of note sheet produced as Annexure P-10 and also copy of impugned resolution dated 07.01.2011 to contend that the same could not have become available to the petitioners in normal course. The impugned letter of intent dated 18.01.2011 is also pointed out to be of similar nature. Attention is invited to reply filed to CAW No. 1182 of 2011 to contend that appropriate stand in this respect is already taken by Respondent No. 4 on record and the petitioners have not chosen to explain the position. The judgment of the Hon''ble Apex Court in the case of Dr. B. Singh Vs. Union of India (UOI) and Others, , is pressed into service to urge that in such circumstances, no cognizance of the controversy can be taken as PIL and the petition needs to be dismissed with heavy costs.

12. The recent judgment delivered by the Hon''ble Apex Court in the case of Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, , is pressed into service to emphasize the need of correct pleadings in such challenge. It is contended that there is no challenge in entire matter to use of reserved land for the playground as garden. The use of portion of land reserved for playground as garden is not fatal and DP reservation cannot be said to be violative thereby as user substantially remains the same. Attention is invited to the judgment of the Hon''ble Apex Court in the case of Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, , to substantiate this contention.

13. The judgment of this Court in the case of Sarvajanic Shri Ganeshotsav Mandal, Mumbai & Anr. vs. Municipal Corporation of Greater Mumbai & Ors., (supra) relied upon by the petitioners is sought to be distinguished by pointing out that the judgment of the Hon''ble Apex Court relied upon by Respondent No. 4 was not required to be looked into in it. He further states that there plot reserved for playground was sought to be developed into swimming pool and sports complex and it was found contrary to Development Plan. Here, earlier user as per development plan substantially continues.

14. He further points out that there is no challenge even to second tender published on 06.09.2010 and there is no plea that the conditions therein are tailor-made to suit Respondent No. 4. The subsequent amendments effected by the petitioners show that they had an opportunity to challenge later tender also

but the same has not been availed. The condition to permit only CBSE School on reserved land is also not available. There is no argument and challenge pointing out any damage to public interest. In this connection, support is being taken from the judgment in the case of Jagdish Mandal Vs. State of Orissa and Others, . By pointing out para 21, it is urged that as a contract is entered into between Respondent No. 4 and Respondent No. 2, scope of judicial review under Article 226 of Constitution of India is very limited and challenge as raised does not call for any such interference.

15. The judgment of the Hon''ble Apex Court in the case of Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, , is also relied upon to show how terms and conditions of tender need to be appreciated and the limited role available to Courts of law in such matter. The learned counsel states that the entire challenge on this count is without any merit.

16. Inviting attention to proceedings of meeting of Respondent No. 2 dated 07.01.2011, it is contended that the relationship sought to be established between the Chairman of Respondent No. 2 and Respondent No. 4 Society is too remote. Again reply filed to CAW No. 1182 of 2011 is pressed into service for said purpose. Respondent No. 4 is old society registered at Bombay and subsequently under Bombay Public Trust Act. The resolution was passed on 15.10.2010 at Bombay to participate in tender process of Respondent No. 2 and letter of intent was also forwarded to Respondent No. 4 at Bombay. Respondent No. 4 has come into picture only after publication of tender notice and the decision to modify tender conditions. Similarly, decision to accept offer of Respondent No. 4 and to issue it a letter of intent is taken by Board of Trustees of Respondent No. 2 and not by its Chairman. These trustees are members of Respondent 2 and there is no allegation of malafides against any of them. It is urged that there were total six trustees. In this situation, it is contended that only for one subject for whom there was only one offer, complete & valid in all respect; it was legally not necessary for the Chairman of Respondent No. 2 to recuse himself. In any case, it was not necessary for other trustees to appoint any other person as the Chairman while considering the said subject. The judgment of the Hon''ble Apex Court in the case of Javid Rasool Bhat vs. State of Jammu & Kashmir, reported at (1984) 2 SCC 641 is pointed out to show how bias in such matter needs to be looked at. It is contended that here, the Chairman has not participated in deliberations and was not party to decision. His mere physical presence, therefore, was not sufficient and cannot be construed as a fact sufficient to influence the decision making process. The Full Bench judgment of Madhya Pradesh high court in the case of The State of M.P. and Others Vs. Beni Pd. Rathore and Others, , is pressed into service for evaluating presence of Chairman in meeting on 07.01.2011. The learned counsel states that in this situation, merely because another person is not elected as Chairman u/s 16(1) (d) of NIT Act that by itself is not sufficient to vitiate the resolution dated 07.01.2011.

17. Lastly, attention is invited to the fact that in the said area, there is no playground since last about 10 years and land though reserved, is having only shrubs and wild grass, it cannot be, therefore, used for any purpose. If the petitioners were/are really interested and acting in public interest, they must explain why they have not approached any of the authorities or this Court earlier in point of time for getting said land cleared and for its use as per development plan.

18. Shri Jaiswal, learned counsel, in reply, has contended that the residents of Trimurti Nagar are entitled to have playground and that playground cannot be used for School. The judgment of the Hon''ble Apex Court in the case of A. Abdul Farook Vs. Municipal Council, Perambalur and Others, , is relied upon to urge that in such matters, Court cannot take too technical approach. It is reiterated that in later tender, instead of relaxing the terms and conditions, same have been made more harsh only to favour Respondent No. 4. None of the documents produced on record by petitioners are pointed out as incorrect or false, & hence Respondent No. 4 should not hide behind technicalities. It is also argued that the Chairman of Respondent No. 4 duly communicated his interest in awarding tender to Respondent No. 4 on 07.01.2011 and his presence, therefore, has influenced the entire proceedings. He, therefore, sought for an order in favour of the residents of Trimurti Nagar.

19. Recent judgment on which Shri Jaiswal, learned counsel has placed reliance is in the case of A. Abdul Farook.vrs. Municipal Council, Perambalur (supra). Paragraph no.33 there contains observations of Hon''ble Apex Court that in a public interest of a nature as before it, it is not necessary for the Court to abide by strict rules of pleadings and even if it is found that petitioners are busy bodies, Courts while discharging them can proceed to deal with the public interest litigation suo motu. Earlier judgments have been also noted to show that the public interest litigation is inquisitorial in nature, while private litigation is adversarial. In public interest litigation Court is not supposed to strictly follow ordinary procedure. Hon''ble Apex Court finds permanent arches allowed to erected by municipal council in political interest and not in public interest.

20. Shri Bhangde, learned Senior Counsel has relied upon the later judgment of larger bench of Hon''ble Apex Court in the case of State of M.P.vrs. Narmada Bachao Andolan (supra), to urge that the law on pleadings is also applicable to public interest litigation. Perusal of paragraph nos. 8 to 11 of the said judgment show the purpose of pleadings and issues. The Hon''ble Apex Court has observed that if any factual or legal issue, despite having merit has not been raised by the parties, the Court should not decide the same, as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard and such a judgment may be violative of principles of natural justice. In paragraph no.12, the Hon''ble Apex Court has observed that every technicality in procedural law is not available as a defense in matters of grave public importance. In paragraph no.13, it is observed that there must be sufficient

material in petition on the basis of which the Court may proceed. Public interest litigation must have factual foundation to show basis on which litigant is claiming relief and information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of principles of natural justice. Even in public interest litigation, litigant cannot approach the Court to have a fishing and roving enquiry. In public interest litigation before the Hon''ble Apex Court, impression was given that some drastic steps would be taken by the authorities causing great hardship to large number of persons. The petition however, did not disclose the factum of number of persons who had already vacated their houses and handed over possession. Contention was urgent measures were required to be taken by the Courts and Hon''ble Apex Court has noted that there was no material to adjudicate upon the issue involved in the public interest litigation. High Court in this background had directed the Authority to submit report on rehabilitation work and authority vide its report then pointed out a huge amount of several thousand crores already invested and disbursed. Majority of the families had already shifted and amount of Rs. 9924 Crores was already disbursed amongst the claimants and sum of Rs. 589 Crores was only left to be disbursed. The Hon''ble Apex Court has noted that there were no pleadings before the High Court on the basis of which a Writ Petition could have been entertained and decided and it deserved rejection at threshold. It is also noted by the Hon''ble Apex Court that even in public interest litigation, in absence of such factual matrix, similar course can be followed by the Courts. This judgment therefore shows total absence of pleadings on facts vital for consideration & completion of more that 95% of rehabilitation has weighed with Hon. Apex Court. Such is not the position here.

21. In *Dr. B. Singh.vrs. Union of India and others* (supra), the Hon''ble Apex Court has considered the issue of bonafides of petitioner after observing that time has come to weed out the petitions which though titled as public interest litigation are in essence something else. The Courts at times entertain such private disputes which results in wasting of valuable judicial time. It has been noted that in service matters, public interest litigation are not entertained. The Hon''ble Apex Court has noted that such public interest litigation could have been thrown out by the High Court. Tendency growing slowly to permit setting in motion criminal law jurisdiction often unjustifiably just for getting publicity and giving adverse publicity to the opponent, is also noted. In the process it is also observed that official documents are being annexed without even indicating as to how the petitioner could possess them. The story of accidentally finding such documents was not believed. Where such petitioner does not have even a remote link with the issue involved, the Hon''ble Apex Court has stated that it becomes imperative for Court to lift the veil and uncover the real purpose of the petition and the real purpose of the petition and real person behind it. The issue before the Hon''ble Apex Court was about a petition purported to have been filed questioning the propriety of a person being considered for appointment as a Judge.

22. None of the respondents have contended that present issue cannot form a subject matter of scrutiny in Public Interest Litigation. The details of reservation with respective earmarked area are already mentioned by us above. It is the stand of Nagpur Improvement Trust that it is not required to obtain development permission from Nagpur Municipal Corporation in respect of developments undertaken by it as a development agency and State Government through its notification dated 27.02.2002 has clarified that it can continue functioning as Planning Authority for such developments undertaken by it. We find that notification issued continues Respondent 2 for limited purpose in areas transferred to Municipal Corporation. Present area i.e. Bhamti Parsodi area is one such area. Though petitioners have raised this issue in para 4 of their petition, no arguments about absence of authority in Respondent 2 are advanced by them. The Respondents like State of Maharashtra, Nagpur Corporation have also not argued any thing in this respect. However, in affidavit dated 11.08.2011 sworn by Ravindra Rambhau Kumbhare, Additional Municipal Commissioner, states that "The Nagpur Improvement Trust, which was planning and development authority in respect of these reserved lands prior to 27th February, 2002, had submitted objection to the proposed development plan". But none of the learned Counsel have thought it proper to invite our attention to it. We fail to understand whether use of past tense in this statement has any significance. The effort made by citizens to secure entire land from Khasra No. 12 as playground by deleting reservation of Primary School and Secondary School and for that purpose to seek minor modification in final Development Plan as per Section 37 of Act of 1966, could not succeed. But then details of those 20 schools in para 11 of the petition are not in dispute. The petitioners as also respondents have not invited attention of Court to proceedings of pre-bid meeting conducted by the Chairman of Respondent No. 2 on 17.09.2010. Two of the institutes interested in submitting tender are reported to have participated in it. However, minutes do not record their names. First clarification given by Respondent No. 2 is about area of land under School project. It is stated to be revised to 4125.50 sq. mtrs. or 1.02 Acres. This seems to be because of requirement of CBSE that plot of School to be recognized by it must have area above one Acre. The provision in clause 5.8(2) of the tender document has been amended accordingly and reserved price has also been modified to Rs.2.75 Crores. The timings for use of playground and garden for School are revised from Morning 8.30 to 4.30 in the evening. For general public time given is 5.00 AM to 8.00 AM and 5.00 PM to 9.00 PM. T.C. (Terms and Conditions) and charges for use of playground and garden for School are stated to be Rs.2 lakh per year with 5% increase per year over previous year and Respondent No. 2 has agreed for arranging maintenance of garden. Ownership of playground and garden is stated to be with Nagpur Improvement Trust. No ground floor construction is permitted except for staircase and lift. The requirement of 4.50 meter from Ground level to the beam soffit of stilt parking is also clarified. The question about grant of relaxation for marginal space for better planning of School is answered by stating that relaxation shall be allowed as per Development Control Rules. The detailed specification and estimate for the

development of playground and garden is stated to be enclosed along with some communication as Annexure Y & Z. One of the queries required Respondent No. 2 to specify timing of restaurant for general public. This timing is specified to be from 5.00 PM onwards.

23. The perusal of tender document vide clause 5.5.2(xi) shows that 10 seats in the School every year are to be filled in exclusively on recommendations of Chairman of Respondent No. 2. The tender document states playground and garden as Project A and Primary and Secondary School as Project B. The perusal of clause 5.5.2 (xii) shows that if bidder fails to comply (Garden project), it would be considered as major breach of terms and conditions. Thus, failure to comply with playground part perhaps is not a major breach.

24. This perusal of minutes of pre-bid meeting with tender document, therefore, reveals a further reduction in the area of playground. The area for school is increased and some area of playground is also allowed to be developed as a garden. In Section 22(c) of Act of 1966, playground is an independent reservation implying thereby that it cannot be construed to mean reservation for park or garden. In other words, it may require minor modification u/s 37 of the Act of 1966. The garden as also playground is to be used by School during day time and it becomes available to public only after 5.00 PM. Thus, children in the locality who are beneficiaries of that Development Plan reservation are supposed to play between 5.00 AM to 8.00 AM and 5.00 PM to 9.00 PM. Insofar as garden is concerned, very same time limits apply. Not only this, but indirectly a commercial user is also permitted and a restaurant is allowed to come up either in playground or in garden. That facility perhaps is to be used by School and person running it can cater to general public after 5.00 PM. Such person will obviously be a contractor as Respondent 4 or School will not run a restaurant for general public. Such commercial user and such exploitation of property or garden has not been communicated to general public as there is no such mention in documents inviting offer. Clause 5.3 of tender describes the entire area to be purely residential area. Not only this, but availability of area as per CBSE requirement is also not disclosed to general public. It cannot be presumed that other institutions having CBSE affiliation and running Schools in the Country would not have been interested in opening a School in the city, had they known that land as required by CBSE with such facilities is available for them. It is equally important to note that this meeting dated 17.09.2010 has been chaired by the Chairman of Nagpur Improvement Trust against whom there are allegations of bias and partiality. As per tender document, cost of project A (playground & garden) to be borne by Respondent 4 is Rs. 2.50 Crores minimum & it is as per NIT's 2008-09 CSR. But then offer on that basis & for that sum is being accepted in 2010-2011 i.e. almost 2 years later. No pains are taken to point out CSR rates for 2010-2011. It also needs mention that last date of E-submission of tender was 05.10.2010 & opening has been on 05.10.2010. But then body of Respondent 4 at Mumbai did resolve to participate in tender on 15.10.2010.

25. Shri Jaiswal, learned counsel has relied upon the Division Bench judgment of this Court in the case of Sarvajanik Shri Ganeshotsav Mandal, Mumbai vs. Municipal Corporation of Greater Mumbai, (supra) In this judgment, open space reserved for Development Plan or playground was being put to use as park. The Hon"ble Division Bench has noted that ordinary meaning of playground is a outer area for children to play on or on piece of land set up for open air recreation, specially for children or then one connected with School. The judgment of learned Single Judge of this Court in the case of C.R. Dalvi and Ors. vs. Municipal Corporation of Greater Bombay and Ors., reported at 1986 Mh. L.J. 373, holding that such land reserved in Development Plan cannot be utilized for any purpose other than play of children and similar recreational activities is also noted by Division Bench. In para 20, the Division Bench then notices that playground, swimming pool, gymnasium and park even though covered under the head (Recreational grounds and facilities) is a separate and distinct "use" category and cannot be put to interchangeable use wholly or partly. The Division Bench, therefore, found that swimming pool can never be covered by expression playground or vice versa. The Division Bench concluded that land reserved for playground cannot be permitted for the purpose of swimming pool and sports complex.

26. Shri Bhangde, learned counsel has relied upon the judgment in the case of Forward Construction Company vs. Prabhat Mandal (Regd.) Andheri, (supra), where the reservation was for bus depot and the land was sought to be put to use by compounding bus depot with commercial activity of a shopping complex. The plot was in commercial road and was acquired by Municipal Corporation for bus depot and ultimately was used for bus depot with commercial purpose. The Hon"ble Apex Court held that it did not constitute "change". It is noted that general meaning of word change is "to make or become different, to transform or convert". If the user was to be completely or substantially changed, only then the prior modification of Development Plan was necessary. In facts before the Hon"ble Apex Court, user of plot was not changed. It was being used as a bus depot with commercial use to augment income of corporation for public purpose. It is, therefore, obvious that a plot in commercial area acquired for bus depot was being used not only for bus depot but also for commercial purpose. Both user were legal and also possible.

27. The judgments on which respective counsel have placed reliance show that where original reservation is not in any way increased and an activity incidental thereto is taken up, the Hon"ble Apex Court has found that such activity is not in violation of Development Plan reservation. Here, Respondent No. 2 has limited powers of continuing with development already undertaken and in case, area of respective reservation i.e. under DP reservation is to be changed, it must obtain previous approval of Respondent No. 3 - Nagpur Municipal Corporation. Similarly, its changing purposes by putting part of land to use as garden or then for commercial purpose as restaurant, the object behind providing entire land for playground is definitely frustrated. For use of certain facilities in playground, the

children/ their parents are supposed to pay. Charges for use of tennis court, throw ball, basket ball, skating rink, table tennis, craft etc. for equipments & maintenance of these Courts are to be worked out by Respondent No. 2. Only playground to be handed over and available to children free of costs. It does not speak anything about restaurant. In facts before this Court, the area of playground is being reduced, a garden though not envisaged in DP is introduced & is proposed in part of playground. Similarly, commercial user by allowing restaurant open to public is also permitted. The area for school is also increased. It is, therefore, obvious that all these changes cannot be viewed as residential and in this situation, test of substantial user cannot be applied.

28. This brings us to question of the presence of the Chairman of Respondent No. 2 during the meeting. The proceedings no doubt record that the interest which Chairman of Respondent No. 2 had in the subject was disclosed by him and thereafter on 07.01.2011 the decision has been taken. The minutes record the history and in the meeting of trustees nobody appears to have either moved that subject or seconded it. None of the parties had raised any contention in this respect and hence we are also not basing our adjudication upon this aspect. But at the end of minutes, the fact of disclosure of interest is recorded. The Chairman had disclosed that his father is a Committee Member of Respondent No. 4 for Nagpur area. Hence, the Chairman would not participate in taking decision and the Trustees, therefore, had to take appropriate view on merits. It is further recorded that this fact was noted by trustees and then approval was given to allotment of 4125.50 sq. mtrs. of land on premium of Rs.281 lakh to Respondent No. 4. This also shows that there was no discussion at all.

29. The perusal of judgment in the case of Javid Rsool Bhat vs. State of Jammu and Kashmir, (supra) reveals that there contention was that the selection of candidates was vitiated because of presence of father of one of the candidates on Selection Committee. The Principal of Medical College, Srinagar, whose daughter was a candidate for admission to Medical College had informed Selection Committee at the very outset about it and had also stated that he would not be concerned with written test and would not be present at the time of interview of his daughter. The other members of Selection Committee accepted and did not think it necessary to advise Government to appoint a substitute member of Selection Committee. The Hon''ble Apex Court has noted that the procedure adopted by Selection Committee and members concerned was not in accordance with well known and accepted procedure. It is also noted that in the absence of malafides, it would not be right to set right the selection merely because one of the candidates happened to be related to Member of Selection Committee. In para 14, the Hon''ble Apex Court has noted facts in case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , and then concluded that in facts before it when other candidates were interviewed, Principal was not aware of marks obtained either by his daughter or by any other candidate and there was no occasion to suspect his bonafides even remotely. There was not even a suspicion of bias and hence there was no violation of principles of natural justice.

30. In State of M.P. Through Local Self Govt. Department, Bhopal vs. Beni Pd. Rathore, (supra), Full Bench of Madhya Pradesh has considered similar aspect but in case of meeting of no confidence and then noted that requirement of a law to preside over meeting if President is present, contemplated not mere physical presence but presence coupled with readiness to preside over the meeting and in the absence of President or in the event of his declining, it was for Vice President to preside.

31. In facts which we have noticed, the decision as to area under reservation was taken at the time of pre-bid meeting. But then it was not made known to general public. The premium amount was proportionately raised but it was not communicated to public. That meeting was conducted by the Chairman himself. The material changes and diversions from development plan are already noted by us above and absence of any details on the issue is also noted by us. We, therefore, find that in such situation, it was obligatory for Respondent No. 2 as also Respondent No. 4 to bring on record the circumstances in which the changes were brought and accepted. Respondent No. 2 has remained satisfied by throwing burden on the shoulders of the petitioners and by contending that as necessary details are not pleaded, this Court cannot take cognizance of the matter as Public Interest Litigation. There bonafides have been questioned by pointing out the production of documents which normally could not have reached them. In these facts, we do not find that production of documents by itself show any oblique motive. The issue brought by them before Court is in public interest and they have succeeded in pointing out how a development plan reservation is being violated.

32. The judgment of the Hon"ble Apex Court in the case of Dr. B. Singh vs. Union of India, (supra) considers the filing of PIL in service matters. We find observations therein not applicable directly in present facts. In any case, we are not in a position to find out any oblique motive with the petitioners who are residents of the area. The existence of about 20 Schools in the vicinity and, therefore, no need of any other School is already on record. Therefore, only Planning authority had proposed minor modifications u/s 37 of Act of 1966 by deleting reservation for School by adding said land to playground. However, later on the said authority viz., Respondent No. 3 has gone back on its proposal.

33. State of Madhya Pradesh vs. Narmada Bachao Andolan, (supra) shows the application of law of pleadings. In present matter, necessary material is already on record and the petitioners have sufficiently pleaded their case of violation of development plan reservation. The first question which arises for consideration is whether in such circumstances when several Schools are available in the vicinity, the State Government or any other authority which has to permit the School to be open, is duty bound to grant permission to Respondent No. 4 merely because of Development Plan reservation. The other question is whether Planning Authority in the light of provisions of Section 31 (6) of Act of 1966 can alter the area of land under reservation and whether Respondent No. 2 - who has been

given limited role, can do so without recourse to provisions of Section 37 thereof. It is also not understood how a public authority like Respondent No. 2 can seek reservation of 10 seats from Respondent No. 4 in such matters. All these issues definitely are issues in larger public interest.

34. Shri Bhangde, learned Senior Advocate has contended that courts have limited jurisdiction while appreciating the terms and conditions of the tender. The perusal of judgment in the case of Directorate of Education vs. Educomp Datamatics Ltd., (supra), particularly paras 11 & 12 show that terms and conditions are prescribed by competent authority bearing in mind the nature of contract and such authorities are best judges to prescribe the same. It is not for the courts to comment whether better conditions and terms could have been prescribed. In such matters, such authorities need to be given a free hand. The State Government can choose its own method to arrive at a decision and fix its own terms of invitation to tender and that is not open to judicial scrutiny. However, the Hon''ble Apex Court has also found that Court can examine decision making process.

35. In A. Abdul Farook vs. Municipal Council, Perambalur, (supra), the Hon''ble Apex Court has held that in public interest litigation, it is not necessary for courts to abide by strict rules of pleadings and such litigation is inquisitorial in nature. The question before the Hon''ble Apex Court was regarding erection of arches and no objection certificate issued by Municipality to construct the same on the condition that there would be no hindrance to traffic. The Secretary of District Consumer Council had filed writ petition for issuance of writ of mandamus forbearing the respondents from putting up such arches. There was also challenge to a Ward Member, who sought certiorari for quashing no objection certificate. The learned Single Judge dismissed that writ petition. In turn, appeal was preferred. The Division Bench of High Court dismissed that appeal as also writ petition and then the Secretary of District Consumer Council and Ward Member approached the Hon''ble Apex Court. The Apex Court allowed the appeal. It is noted by the Hon''ble Apex Court in para 37 that though the authorities may grant permission to construct such permanent structure, there must be public interest in carrying it out not in private interest or interest of any political party. The judgment, therefore, shows that whenever a public interest is found, the Court can interfere in public interest litigation without bothering for technical objections as attempted to be raised by the respondents.

36. We find it necessary to mention State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , where Hon''ble Apex Court has laid down certain norms and important out of it are :--

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L. (4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL. (5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition. (6) The court should ensure that the petition which

involves larger public interest, gravity and urgency must be given priority over other petitions.(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation. (8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

While tracing history of PIL in country, Hon''ble Apex Court noted that the public interest litigation is an extremely important jurisdiction exercised by the Supreme Court and the High Courts. The Courts in a number of cases have given important directions and passed orders which have brought positive changes in the country. The Courts'' directions have immensely benefited marginalized sections of the society in a number of cases. It has also helped in protection and preservation of ecology, environment, forests, marine life, wildlife etc. etc. The court''s directions to some extent have helped in maintaining probity and transparency in the public life. Hon''ble Apex Court while exercising its jurisdiction of judicial review realized that a very large section of the society because of extreme poverty, ignorance, discrimination and illiteracy had been denied justice for time immemorial and in fact they have no access to justice. Predominantly, to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the society, Hon''ble Court has initiated, encouraged and propelled the public interest litigation. The litigation is upshot and product of Hon''ble Apex Court''s deep and intense urge to fulfill its bounded duty and constitutional obligation. The courts expanded the meaning of right to life and liberty guaranteed under Article 21 of the Constitution. The rule of locus-standi was diluted and the traditional meaning of "aggrieved person" was broadened to provide access to justice to a very large section of the society which was otherwise not getting any benefit from the judicial system. In paragraph 36, Hon''ble Apex Court observes that little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. Hon''ble Court states that the narrow concepts of "cause of action", "person aggrieved" and individual litigation are becoming obsolescent in some jurisdictions.

37. Thus there can not be any estoppels or acquiescence in such matters by local residents when this Court has found the cause presented to it as public cause & cognizance is taken in larger public interest. The limitations laid by Hon''ble Apex Court can not enable the wrongdoers & manipulators to hide behind the technicalities or by continuing to indulge in activities prejudicial to public at large. In Mohd. Aslam @ Bhure Vs. Union of India (UOI) and Others, , Hon''ble Apex Court has considered the technical objections raised in situation when it has treated letters, telegrams or postcards or news reports as writ petitions. In such

petitions, on the basis of pleadings that emerge in the case after notice to different parties, relief can be given or refused. Therefore, Court should not approach matters where public interest is involved in a technical or a narrow manner. Particularly, when Court has entertained the petition, issued notice to different parties. It would not be appropriate for the Court to dispose of the petition on such grounds. In proceeding before Hon''ble Apex Court initiated as a public interest petition, several reliefs were claimed but after the interested parties were impleaded and their pleadings were put forth, Hon''ble Apex Court gathered what crystallized there from as the controversy involved. Jagdish Mandal vs. State of Orissa, (supra) laying down scope of judicial review in award of contracts is therefore not attracted & decisive in present facts.

38. In this situation, we find that respondents 2 & 3 have not made clean breast of matter. These Respondents along with last Respondent are trying to take shelter behind technicalities. Violation of final development plan and injury to rights of local residents for whose benefit the reservation exists is sufficiently established and needs redress in public interest. Respondent no. 1 State of Maharashtra has not found it necessary to clarify the position. We find that E-tender floated by Respondent 3 does not depict clear position which said Respondent has revealed in pre-bid meeting on 17/9/2010. We therefore quash the entire process undertaken by Respondent 3 including allotment effected in favour of Respondent 4 on 07.01.2011.

39. Petition is accordingly allowed, however, without any order as to costs.

JUDGE JUDGE

At this stage, Shri Bhangde, learned counsel for Respondent No. 4 states that the position prevailing today should be continued for a period of six weeks so as to enable Respondent No. 4 to take further appropriate steps in the matter.

Shri Jaiswal, learned counsel for the petitioner is opposing the request.

However, in the interest of justice and looking to the nature of controversy, we direct parties to maintain status quo as on today for a further period of six weeks. The said order shall cease to operate automatically thereafter.