

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 573 OF 2015

Atirikt Shukla S/o Shiv Krishna Shukla, aged about 44 years, R/o High School Road, Ward No. 10, Jagdalpur, District Bastar, Civil and Revenue District Bastar, (Chhattisgarh)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Urban and Rural Administration Development, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. Municipal Corporation, Jagdalpur, through its Commissioner, Municipal Corporation, Jagdalpur, District Bastar, Chhattisgarh.
3. Mayor, Municipal Corporation, Jagdalpur, District Bastar, Chhattisgarh.

... Respondents

For Petitioner	:	Mr. Malay Shrivastava, Advocate.
For Respondents No.2 & 3 :		Mr. A.S. Kachhawaha and Ms. Pushpa Dwivedi, Advocates.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

07/05/2015

1. The Petitioner runs the business of advertisement hoardings at Jagdalpur. Pursuant to a tender floated by the Respondents for installation of hoardings in four zones of the Municipal Corporation, Jagdalpur, it is his claim that he was the successful bidder. On 16.2.2015, the tender allegedly was arbitrarily cancelled.

2. In Writ Petition (C) No.411 of 2015 assailing the cancellation, liberty was granted to avail statutory remedy of appeal under Section 403 of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter referred to as the Municipal Act). The appeal has been rejected on 25.3.2015 as communicated on 25.3.2015. Despite adjournments granted on two occasions, no counter-affidavit has been filed on behalf of the Corporation. We are not persuaded to grant any further indulgence to Corporation.

3. Learned Counsel for the Petitioner submits that under Section 403 of the Municipal Act, the order for cancellation passed by the Commissioner was amenable to challenge before the Appeal Committee appointed by the Corporation under sub-clause 3. Sub-clause 4 prescribes that the Appeal Committee shall consist of the Mayor and four elected Councillors elected by the Corporation in accordance with the system of proportional representation

by means of single transferable vote, in the meeting called under sub-section (1) of Section 18. The Mayor shall be *ex-officio* Chairman of the Appeal Committee. Sub-clause 4-A provides that the term of Appeal Committee shall be coterminous with the term of the Corporation. The impugned order dated 25.3.2015 has not been passed by the Appeal Committee but by the Mayor sitting alone. It acknowledges that the Appeal Committee has not been constituted and wrongly seeks shelter under the order of the Court dated 9.3.2015 in Writ Petition (C) No.411 of 2015. The order on the face is not sustainable and is fit to be set aside. The Court may therefore set aside the order of cancellation of the tender itself as the Petitioner is being subjected to unnecessary harassment by abuse of powers.

4. Learned Counsel for the Corporation only sought further adjournment.

5. We have considered the submissions on behalf of the parties. Section 403 (3) of the Municipal Act provides that appeal against the order of the Commissioner cancelling the contract was required to be heard by the Appeal Committee appointed by the Corporation. Sub-section 4 provides for the constitution of the Appeal Committee which is to consist of the Mayor and four elected Councillors. There is no provision in Section 403 what shall be the minimum quorum for the Appeal Committee. Therefore, hearing by the Appeal Committee has to be by the full quorum of five persons.

6. In Writ Petition (C) No.411 of 2015, the Court directed the Appeal Committee to consider the grievance in accordance with law. We are constrained to observe that the Mayor acted in excess of his authority by usurping statutory powers of the Appeal Committee. The Appeal Committee was a separate statutory body distinct from the Mayor of which he was only a part. The Mayor himself did not constitute the Appeal Committee. We disprove of this usurpation of powers by the Mayor in the garb of the need for compliance of the Court order. No Court of law can pass an order contrary to the law and neither did the Court give any direction to the Mayor to disobey the law.

7. We are further satisfied to observe that the present litigation was completely avoidable and has been generated at the behest of the Municipal Corporation burdening the Court unnecessarily. We were inclined to impose heavy costs against the Corporation but refrain from doing so at present with the hope that the Corporation shall realize its folly and ensure that in future it acts in accordance with law and does not burden this Court with unnecessary litigation by abuse of statutory powers.

8. The order dated 25.3.2015 is set aside. Mandamus is issued to the Municipal Corporation to constitute the Appeal Committee within two weeks of the receipt and/or presentation of a copy of this order before it and the appeal of the Petitioner to be heard within two weeks thereafter and disposed in accordance with law by a reasoned and speaking order.

9. The Writ Petition is allowed.

(Navin Sinha)
Chief Justice

(P. Sam Koshy)
Judge

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