

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11356 OF 2015

Shaikh Akhtar Haji Sikandar,
age: 44 years, Occ: Agril. &
Social Work, R/o Shrigonda,
Tq. Shrigonda, Dist.Ahmednagar.

Petitioner

Versus

01 The State of Maharashtra,
through the Secretary,
Urban Development,
Maharashtra State,
Mantralaya, Mumbai-32.

02 The District Collector,
Ahmednagar.

03 Shrigonda Municipal Council,
Shrigonda, Dist. Ahmednagar,
through its Chief Officer.

04 M/s. R.R.Kapoor,
Prena Arcade, 204, 1st floor,
Opp. Bus Stand,
Ahmednagar.

Respondents

Mr.N.V.Gaware, advocate for the petitioner.

Mr.A.R.Borulkar, A.G.P. for Respondents No.1 & 2.

Mr.V.J.Dixit, Senior Counsel i/by Mr.V.P.Latange, advocate for
Respondent No.3.

Mr.J.N.Singh, advocate for Respondent No.4.

**CORAM : R.M.BORDE &
A.I.S.CHEEMA, JJ.
DATE : 18th December, 2015**

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Leave to amend. Amendment to be carried out

forthwith.

2 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

3 Petitioner is objecting to the order passed by the Collector, Ahmednagar, on 18.11.2015, thereby directing rejection of the complaint/application tendered by the petitioner and issued further directions to the Municipal Council to implement Resolution No.144 adopted by the Municipal Council in its meeting dated 28.09.2015. The Municipal Council has adopted a Resolution awarding contract in respect of construction of works to Respondent No.4, who had participated in the bidding process along with other bidders. It is not necessary to go into merits of the contentions raised by the petitioner except suffice it to note that the petitioner tendered an application to the Collector objecting to the Resolution adopted by the Municipal Council under Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 (for short, "Act of 1965"). Petitioner is Vice President of the Municipal Council and in his capacity as a Vice President, he raised an objection to the resolution by tendering an application to the Collector. The District Collector, on receipt of the application, initially restrained the Municipal Council from implementing the Resolution, by issuing order of stay on 28.10.2015. The Collector, however, in disregard to the provisions of Section 308 of the Act of 1965, proceeded to consider objections and by issuing a speaking order on 18.11.2015, rejected the application/complaint lodged by the petitioner and directed the Municipal Council to implement the

impugned Resolution.

4 The procedure adopted by the Collector is contrary to the provisions of Section 308 of the Act of 1965. Section 308 reads thus:

308 Powers to suspend execution of orders and resolution of Council on certain grounds:

(1) If, in the opinion of the Collector, the execution of any order or resolution of a Council, or the doing of anything which is about to be done or is being done by or on behalf of a Council, is causing or is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof.

(2) When the Collector makes any order under his signature, he shall forward to the Council affected thereby a copy of the order, indicating therein the reasons for making it and also submit a report to the Director, alongwith a copy of such order.

(3) Within thirty days from the receipt of such order of the Collector, the Council shall, if it so desires, forward a statement to the Director indicating therein why the order of the Collector should be rescinded, revised or modified. If no such statement is received by the Director within time, the Director shall presume that the Council has no objection if the order of the Collector is confirmed.

(4) On receipt of such report from the Collector and the Council's statement referred to in sub-section (3), if any, the Director may within a period of six months, from the receipt of such report or within such period beyond six months as may, on the

request of the Director, be extended by the State Government rescind the order or may revise or modify or confirm the order or direct that the order shall continue to be in force with or without modifications:

Provided that, the Director shall take into account the statement of a Council, if received, before such an order is made by him.

5 In view of sub-section (2) of Section 308, after making an order under his signature, the Collector is required to forward copy of the order to the Council indicating therein the reasons for making it and also required to submit a report to the Director, alongwith copy of such order. The Municipal Council, in view of sub-section (3) of Section 308 has liberty to tender a statement to the Director either justifying the Resolution and stating therein as to why the order passed by the Collector should be rescinded, revised or modified. On failure of the Municipal Council to tender statement to the Director within time stipulated, the Director shall have to presume that the Council has no objection if the order of the Collector is confirmed. On receipt of the report from the Collector and Statement of the Council, it is for the Director either to revise or modify or confirm the same or direct to continue the order in force with or without modifications.

6 In the instant matter, the Collector himself proceeded to adjudicate the matter and has dismissed the complaint lodged by the petitioner. It was not open for the Collector to examine correctness of the Resolution and it is the function of the Director, under the provisions of Section 308 of the Act of 1965. In this connection, reference can be made to a judgment of the Full Bench in the matter of **Sanjay Govind Sapkal & others Vs. Collector of**

Dhule & others, reported in 2003 (3) Bom. C.R. 550.

7 In this view of the matter, writ petition deserves to be allowed and same is accordingly allowed. The order passed by the Collector on 18.11.2015 is quashed and set aside and interim order passed by the Collector on 28.10.2015 is restored. The Collector shall forward copy of the order together with his comments to the Director of Municipal Administration for consideration. It would be open for the Municipal Council to tender a statement to the Director of Municipal Administration within contemplation of sub-section (3) of Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965, within fifteen days. On receipt of the copy of interim order dated 28.10.2015 together with comments of the Collector and statement of the Council, the Director shall proceed to take decision in respect of validity of the Resolution adopted by the Municipal Council. The Director shall take appropriate decision in the matter, as expeditiously as possible, preferably within a period of three months from today.

8 This Court, by order dated 20.11.2015, has already directed stay of operation of the order passed by the Collector on 18.11.2015. However, since aforesaid order has been directed to be quashed, there is no question of issuance of interim order, in that regard. It has also been observed in paragraph 5 of the order passed by this Court on 20.11.2015 that, further steps and progress of the work shall be subject to outcome of the petition. In this context, it is clarified that further steps and progress of the work in question shall be subject to the outcome of the order that

would be passed by the Director of Municipal Administration.

9 Rule is accordingly made absolute. There shall be no order as to costs.

A.I.S.CHEEMA
JUDGE

adb/wp1135615

R.M.BORDE
JUDGE