

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

W.P.Nos.38886 of 2014 and 473 of 2015

Date: 02-06-2015

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W.P.No.38886 of 2014

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Between:

The Greater Visakhapatnam Municipal Employees
Union (Regd. No.3392/1969) Visakhapatnam,
Represented by its President M. Ananda Rao

.. Petitioner

AND

The Greater Visakhapatnam Municipal Corporation,
Represented by its Commissioner and another

.. Respondents

W.P.No.473 of 2015

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Between:

VMC Staff & Workers Union, represented by its
Secretary General V.V. Vaman Rao

.. Petitioner

AND

The Greater Visakhapatnam Municipal Corporation,

Represented by its Commissioner and 2 others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

W.P.Nos.38886 of 2014 and 473 of 2015

COMMON ORDER:

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Since the issue involved in both the writ petitions is similar and identical, they are being disposed of by this common order.

2. W.P.No.38886 of 2014 is filed declaring the action of the respondents in entrusting the total sanitation packages to the 2nd respondent Union contrary to the resolution passed by the Municipal Corporation vide CR.No.42 of 2007, dated 03-07-2007.

3. The case of the petitioner is that the petitioner Union is recognized vide Regd. No.3392 of 1969 and till 29-11-2014 the petitioner Union is the majority Union in GVMC, elections were conducted by the Deputy Commissioner of Labour, Visakhapatnam on 29-11-2014 and the 2nd respondent Union declared as elected as the respondent is majority Union since the 2nd respondent union has secured 1630 votes and whereas the petitioner union secured 1477 votes and 36 votes were declared as invalid and that the 2nd respondent Union was declared as majority Union vide Letter No.C/4144/214, dated 09-12-2014. It is stated that when the petitioner-union was the majority union, the 1st respondent council passed a resolution vide CR.No.79/2007, dated 30-07-2007 to allot sanitation work based on the votes polled in the elections and accordingly the notice Rc.No.2153/2007/F3, dated 19-03-2008 is issued allotting sanitation packages basing on the votes polled and that the Union does not execute the works, but proposes and recommends some societies for allotment of sanitation works and this was evolved as the regular employees are better equipped to handle the supervision etc., and that the payments are made directly to the respective workers accounts and the unions do not handle the

money. It is further stated that the role of union is to recommend and see that the works are properly executed. The petitioner union challenged the said proceedings dated 19-03-2008 through W.P.No.6831 of 2008 wherein no interim orders are granted. Subsequently, the Municipal Corporation filed counter affidavit stating that as per the council resolution, the sanitation packages were allotted basing on the votes polled and in view of the said counter, the said writ petition was dismissed on 01-04-2014. Now, contrary to the said resolution passed by the 1st respondent Corporation and the averments made in the counter in W.P.No.6831 of 2008, the 1st respondent Corporation is trying to allot the sanitation work to the 2nd respondent Union. Aggrieved by the same, the present writ petition is filed.

4. The 1st respondent Corporation filed the counter stating that the Government of Andhra Pradesh had issued G.O.Ms.No.30 M.A., Municipal Administration and Urban Development (02) Department, dated 18-01-2000 requesting all the Municipal Corporations and Municipalities to take necessary steps for entrustment of the portion of sanitation work to the societies formed by the sanitary workers unions without participating in the tenders, pursuant to which, the 1st respondent Corporation has been adopting entrusting 45% of sanitation work to the union societies and remaining 55% of sanitation work had been allotting by way of tenders by issuing tender notification. That being so, the 2nd respondent union filed W.P.No.15054 of 2001 and sought for a direction to entrust the portion of sanitation work to the society formed by the 2nd respondent workers union proportionately to the members strength proved in the elections alleging that the 2nd respondent union was also entitled for entrustment of portion of the work and the said writ petition was dismissed upholding that the decision of the respondent Corporation in entrusting portion of sanitation work to the majority union. While that being the position, the Visakhapatnam Municipal Corporation (VMC) passed resolution under resolution No.456 of 2004, dated 20-08-2004 resolving that pursuant to G.O.Ms.No.581 M.A. Municipal Administration and Urban Development (G2) Department, dated 06-11-1996 and G.O.Ms.No.30, dated 18-01-2000 sanitation works would be entrusted to the societies basing on the votes secured by the contested unions in the elections proportionately ignoring the earlier orders

passed in W.P.No.15054 of 2001, dated

24-07-2001. It is further stated that the 2nd respondent filed W.P.No.15930 of 2004 challenging the resolution No.456 of 2004, dated 20-08-2004 and the same was suspended vide orders dated 07-09-2004. As such, pursuant to the orders passed by this Court, the resolution No.456 of 2004 dated 20-08-2004 has not been given effect to. It is further stated that the petitioner union has filed W.P.No.6831 of 2008 challenging the proceedings dated 19-03-2008 proposing to entrust 50% of sanitation work out of 45% to the winning unions remaining 50% to the second and third unions proportionately to the votes polled by them pursuant to the Adhoc Committee decision dated 30-08-2007 and pursuant to the status quo orders passed by this court in W.P.No.6831 of 2008, the petitioner Union had been allotted total 45% i.e. 10 packages and enjoyed 45% of the sanitation work and the same was continued for a period of two years i.e. from 2008 to 2010, as the petitioner was elected in the elections and the same practice was continued for a period of two years from 2010 to 2012 and since the petitioner was elected again, the same practice was continued from 2012 to 2014, as such, the decision of Adhoc Committee dated 30-08-2007 has not been implemented.

5. The 1st respondent Corporation further stated that in the elections conducted in the month of December, 2014, the 2nd respondent union has been declared as majority union as it secured more votes than the petitioner's union and as such, 45% of sanitation work has been allotted to the 2nd respondent union, which has been adopting by the 1st respondent Corporation since 2001 and accordingly, 45% sanitation work i.e. 10 packages were entrusted to the 2nd respondent union through the proceedings in RC.No.2153/2007/PH/CMOH, dated 29-12-2014 and the 2nd respondent union have engaged the workers and executed the sanitation work. While the things stood thus, the petitioner union filed the present writ petition and sought for direction to entrust the sanitation packages in terms of council resolution No.42 of 2007 as it was done through earlier proceedings dated 19-03-2008. It is also stated that having challenged the resolution dated 03-07-2007 and having enjoyed the allotment of work, now the petitioner cannot turn down and say that the resolution No.42 of 2007, dated 03-07-2007 have to be implemented and the petitioners have to be allotted work

proportionately. It is also stated that the petitioners cannot blow hot and cold when once it is elected as majority union and otherwise when it is not elected as majority union. It is also stated that the petitioner union approached the court with unclean hands and the writ petition is liable to be dismissed on that ground alone. It is also stated that the petitioners has not challenged the proceedings dated 29-12-2014 entrusting the sanitation work to the 2nd respondent union and sought for dismissal of the writ petition.

W.P.No.473 of 2015:

6. This writ petition is filed by the petitioner union who is arrayed as 2nd respondent union in W.P.No.38886 of 2014 seeking a mandamus declaring the decision taken by the Adhoc Committee on 30-08-2007, which was approved by the Greater Visakhapatnam Municipal Corporation in its resolution No.79 of 2007 dated 30-11-2007 deciding to allot 50% of the works out of 45% reserved under G.O.Ms.No.30, dated 18-01-2000 to the winning Union and the remaining 50% to the other unions, which have secured second and third positions in union elections, proportionate to the votes polled by them and the notice issued by the 1st respondent in Rc.No.2153/07/F3/PH, dated 03-01-2015 proposing to implement the said resolution as illegal, arbitrary and without jurisdiction and for a consequential direction to the respondents to strictly implement G.O.Ms.No.30, dated 18-01-2000 by continuing the sanitation works allotted to the societies formed by the petitioner/Majority Union in proceedings issued by the 1st respondent in Rc.No.2153/07/F3/ PH/CMOH, dated 29-12-2014.

7. The case of the petitioner herein is that the petitioner Union is registered under the provisions of Indian Trade Union Act bearing Regn. No.D/948/87, dated 11-12-1987 and that there are about 1700 employees on the rolls of the petitioner as on this date and in the elections conducted by the 1st respondent Corporation on 29-11-2014, the petitioner union was declared as majority union vide proceedings in Rc.No.2758/2000/C5/C6, dated 18-12-2014 and the Government of Andhra Pradesh issued G.O.Ms.No.581 M.A., dated 06-11-1996 deciding to entrust sanitation work in the Municipalities/Corporations to the societies formed with retired public health workers or their dependents and badili workers. Thereafter, the said G.O. was amended vide G.O.Ms.No.30, M.A., dated 18-01-2000 directing all the Municipalities and Corporations to

entrust a portion of sanitation work to the societies formed by Sanitary Workers Unions without participating in the tenders i.e. nomination basis with a view to improve the efficiency in the sanitation and the said G.O.s are issued by the Government in exercise of power conferred under Section 679-E of the Greater Hyderabad Municipal Corporation Act, 1955, as such, the same are statutory in nature. By virtue of said G.O. No.30, dated 18-01-2000, the Corporation has reserved 45% out of 26 packages i.e. 10 packages for allotment on nomination basis to the societies formed by the Majority Union, which procedure was followed from 2001 and allotted 10 packages to only the societies formed by the Majority Union, as such, the petitioner union was recognized as the Majority Union in the elections held on 29-11-2014 and the 1st respondent issued proceedings in Rc.No.2153/2007/PH/ CMOH, dated 29-12-2014 allotting 10 reserved packages as per G.O.Ms.No.30 dated 18-01-2000 to the societies formed by the petitioner with effect from 01-01-2015 and in pursuance of the same, three societies are doing sanitation work continuously with effect from 01-01-2015. If that being the case, the 2nd respondent herein filed W.P.No.38886 of 2014 for allotment of the works as per the resolution No.79 of 2007 dated 30-11-2007 approving the decision of Adhoc Committee of the Corporation taken on 30-08-2007 and an interim order was granted directing the Corporation to entrust the sanitation work in terms of the said decision dated 30-08-2007. It is also stated that when similar resolution No.456 of 2004, dated 20-08-2004 was passed, the petitioner filed W.P.No.15054 of 2001, dated 24-07-2001 and the said resolution is contrary to Rule 11 (2) (vi) of the M.C.H. Tender Rules, 1970 and the same cannot be given effect to. In spite of the said orders, the Corporation once again passed impugned resolution No.79 of 2007 dated 30-11-2007 approving the Adhoc Committee decision dated 30-08-2007 deciding to allot 50% of the works out of 45% reserved under G.O.Ms.No.30 to the winning Union and the remaining 50% to the second and third unions proportionate to the votes polled by them with effect from 01-04-2008. In pursuance of the same, the 1st respondent issued proceedings in Rc.No.2153/2007-F3, dated 19-03-2008 and the same was challenged by the 2nd respondent Union in W.P.No.6831 of 2008 in which status quo was granted and the petitioner was allotted entire work meant for societies on nomination basis. Having enjoyed the said benefits even after dismissal of the writ petition

and having challenged the said resolution, the 2nd respondent union filed W.P.No.38886 of 2014 once again to implement the said resolution. This writ petition is filed challenging the decision taken by the Adhoc Committee dated 30-08-2007 as approved by the Greater Visakhapatnam Municipal Corporation vide Resolution No.79 of 2007 dated 30-11-2007 and also the notice issued by the 1st respondent in Rc.No.2153/07/F3/PH, dated 03-01-2015 proposing to implement the said resolution as unconstitutional and without jurisdiction.

8. The 1st respondent Corporation filed counter raising almost all similar and identical contentions in the counter filed in W.P.No.38886 of 2014, which need not be repeated herein again.

9. The 2nd respondent union filed its counter stating almost all the similar and identical contentions as raised in the writ affidavit in W.P.No.38886 of 2014. It is stated that before conducting Union elections in the month of 2014 a committee is constituted by the Municipal Corporation with the recognized Unions including the petitioner's herein and the 2nd respondent union and it is held that a decision was taken and the petitioner union agreed to allot 45% of sanitation work to the trade unions which are participated in GVMC elections as per ratio of votes polled to the respective Unions as resolved in C.R.No.120 of 2001, dated 19-06-2001 in terms of G.O.Ms.No.581 and G.O.Ms.No.30 and the same was signed by the Commissioner, GVMC, Special Officer, GVMC, Chief Medical Officer, the petitioner and ADC on 19-04-2014. As such, the petitioner has no right to insist for entrustment of total 45% sanitation work to the petitioner society. It is also stated that G.O.Ms.No.30, M.A., dated 18-01-2000 does not indicate that the majority union alone is entitled for entrustment of sanitation work.

10. Heard Sri K.S. Murthy, learned counsel for the petitioner in W.P.No.38886 of 2014 and the 2nd respondent in W.P.No.473 of 2015, Sri P. Govind Reddy, learned counsel for the petitioner in W.P.No.473 of 2015 and the 2nd respondent in W.P.No.3886 of 2014 and Sri S. Lakshminarayana Reddy, learned standing counsel for the 1st respondent Corporation in both the writ petitions.

11. The petitioner in W.P.No.38886 of 2014 challenged the proceedings vide Rc.No.2153/2007/F3, dated 19-03-2008 in W.P.No.6831 of 2008, which were issued pursuant to the Council Resolution No.42 of 2007, dated 03-07-2007 for allotment of sanitation works based on the votes polled in the elections, on the ground that the entire sanitation works to be allotted to the workers unions should be allotted to majority unions. The petitioner specifically pleaded that no interim orders are granted in that writ petition, but in the counter, the 1st respondent Corporation clearly stated that status quo orders were granted and the petitioner union was allotted 100% of the sanitation work meant for allotment on nomination basis to the workers unions without going for tenders and even after dismissal of the writ petition and thereafter also till 2014. The petitioner union in W.P.No.38886 of 2014 enjoyed 100% of the allotment of sanitation work meant for allotment to the workers union on nomination basis. The Court granted interim orders to allot sanitation work as per resolution No.79 of 2007 dated 30-11-2007, but the petitioner union in W.P.No.38886 of 2014 suppressed the said fact of grant of interim orders in its favour on 30-11-2008 in W.P.No.6831 of 2008 and on the sole ground, the W.P.No.38886 of 2014 is liable to be dismissed. Even otherwise, the stand of the writ petitioner in W.P.No.473 of 2015 that the decision taken by the 1st respondent Corporation awarding 45% of entire sanitation work of the Corporation in favour of majority recognized union was upheld by the decision in W.P.No.15054 of 2001 by order dated 24-07-2001 and now the petitioner in W.P.No.38886 of 2014 cannot turn round saying that the sanitation work meant for allotment to workers unions should be distributed proportionately and the petitioner in W.P.No.38886 of 2014 cannot blow hot and cold and the 2nd respondent, who is the petitioner in W.P.No.473 of 2015 has taken the same plea in the counter in W.P.No.38886 of 2014 and relied on the orders in W.P.No.15054 of 2001 wherein decision of the 1st respondent Corporation for awarding entire sanitation work for majority union was upheld by this court in W.P.No.15054 of 2001 and it is consistent stand of the petitioners herein that the sanitation work meant for allotment to the workers union, the 1st respondent Corporation allotted the same to majority union only and the so-called resolution upon which a reliance was placed in this writ petition was never implemented and even the petitioner in W.P.No.38886 of 2014, in the earlier writ petition in W.P.No.6831 of

2008 has also taken similar and identical plea to that of the present one taken by the petitioner in W.P.No.473 of 2015. The decision relied on by the learned counsel for the petitioner in W.P.No.38886 of 2014 in **Dalitjathi Labour Contract Co-op. Society, Hyderabad v. Commissioner, L.B. Nagar Municipality, Ranga Reddy District** wherein this court held that as per G.O.Ms.No.30, dated 18-06-2000, even though it does not specifically mention 15% reservation for labour contract societies of Scheduled Castes, Scheduled Tribes and sanitation workers, the Municipality can reserve at least 15% of the sanitation works for entrustment to labour contract societies like the petitioner union without participating in the tenders. As such, the said decision is not relevant to the present case. This Court in W.P.No.15054 of 2001 held as follows:

“.....in the circumstances, the decision of the corporation to entrust a portion of the work to a society formed by the sanitary workers union commanding majority amongst the sanitary workers does not suffer from any irregularity. The decision making process by the Commissioner cannot be said to be an arbitrary one.....”

12. Therefore, the stand taken by the 1st respondent Corporation for allotment of 45% portion of the work earmarked for allotment to the workers union of the majority union is upheld.

13. In view of above facts and circumstances of the case, W.P.No.38886 of 2014 is liable to be dismissed and W.P.No.473 of 2015 is to be allowed.

Accordingly, W.P.No.38886 of 2014 is dismissed and W.P.No.473 of 2015 is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

Date: 02-06-2015

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