

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1213 of 2015

1. Bedu Ram Sahu S/o Shri Nanku Ram Sahu, Aged About 33 Years Presently Working As Vice President, Nagar Panchayat, Sargaon, District- Mungeli (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, Police Station- Rakhi, District- Raipur (Chhattisgarh)
2. The Nagar Panchayat, Sargaon/Council, Through : Chief Municipal Officer, Nagar Panchayat Saragaon, District- Mungeli (Chhattisgarh)
3. Avinash Buildcon, Through : Its Proprietor, Avinash Tiwari, Vaishali Nagar, Phase-II, Bilaspur, District-Bilaspur (Chhattisgarh)
4. Vinay Kumar Gupta, R/o Ward No. 1, Bilha, District-Bilaspur (Chhattisgarh)

---- Respondent

For Petitioner	Shri Sudeep Agrawal, Advocate
For Respondent/State	Shri Bhaskar Payasi, PL
For Respondent No.2	Shri U.K.S. Chandel, Advocate
For Respondent No.3&4	Shri V.K. Tekam, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

05/01/2016

1. The petitioner has assailed the legality and validity of the resolution dated 3-7-2015 passed by the Nagar Panchayat, Sargaon (henceforth 'the Council'), approving the tender and awarding of contract to various tenderers for the total work of Rs.1.00 crore under the infrastructure head.
2. The petitioner is the Vice President of the Council. The Council held its meeting on 20-3-2015 & 26-3-2015 for approval of the tenders, however, the Chief Municipal Officer (henceforth 'the CMO') fell sick on 20-3-2015 and no decision could be taken on 26-3-2015 also. The next meeting took place on 3-7-2015, however, in the meanwhile, the President-in-Council (henceforth 'the PIC') of the Council of which the petitioner is a Member, convened a meeting on 11-6-2015 and decided to cancel the tender and to invite fresh tenders on the ground that higher rates have been quoted by the successful tenderers.
3. The question as to what rate was prevalent as per the market condition on a particular date is not to be gone into by this Court in writ jurisdiction because it depends on several factors like price of the cement, steel and other commodities at the relevant time as well as location of the place where the work is to be carried. Moreover, the petitioner participated in the meeting on 20-3-2015 and 26-3-2015, however, he did not object to the approval of the tender. It is a different issue that the resolution passed on

20-3-2015 was not given effect to because the CMO failed to attend the meeting on the ground of ill health on the said date.

4. Be that as it may, there is a dispute about the financial powers of the PIC and the Council. While the petitioner contends that the subject work of infrastructure head is divided into different works each having less than Rs.10.00 lacs, PIC has the financial power, the Council contends that the total work to be carried out being of the value of Rs.1.00 crore, it is the Council which has the financial power to approve the tenders.
5. Section 323 of the Chhattisgarh Municipalities Act, 1961 (henceforth 'the Act') provides thus :

323. Power to suspend execution of orders, etc., of Council.--(1) If in the opinion of the Divisional Commissioner, the Collector, or any other officer authorized by the State Government in this behalf, the execution of any order or **resolution of a Council**, or of any of its Committee or any other authority or officer subordinate thereto, or the doing of any act which is about to be done or is being done by or on behalf of the Council, is not in conformity with law or with the rules or bye-laws made thereunder and is detrimental to the interests of the Council or the public or is causing or is likely to cause injury or annoyance to the public or any class or body of persons or is likely to lead to a breach of the peace, he may, by order in writing under his signature, suspend the execution of such resolution or order or prohibit the doing of any such act.

(2) When any order under sub-section (1) is passed the authority making the order, shall forthwith forward to the State Government and

to the Council affected thereby a copy of the order with a statement of reasons for making it; and it shall be in the discretion of the State Government to rescind the order, or to direct that it shall continue to be in force with or without modification, permanently or for such period as it thinks fit:

Provided that the order shall not be revised, modified or confirmed by the State Government without giving the Council reasonable opportunity of showing cause against the order.

6. Considering all the aforesaid aspects of the matter and the provisions contained in Section 323 (1) of the Act, it would be appropriate that the issue is considered by the Collector, Mungeli. Let the petitioner move an application before the concerned Collector within a week and, thereafter, the Collector shall hear the parties and decide the matter, in accordance with law and on its own merits, at the earliest preferably within a period of one month.
7. Till the Collector takes final decision in the matter, the interim relief granted by this Court on 16-7-2015 shall remain in operation.
8. Accordingly, the writ petition stands disposed of. No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri