IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2966 OF 2016

1. Dara Mohammad Jafar Mohammad,
Age-57 years, Occupation-Agriculture &
Corporator, Municipal Council Raver,
R/o. Immamwada Taluka Raver,
Dist. Jalgaon.

2. Asif Mohammad Dara Mohammad
Age-38 years, Occu-Agriculture &
Corporator, Municipal Council Raver,
R/o. Immamwada, Raver, Tq.Raver,
Dist. Jalgaon

3. Pralhad s/o. Ramdas Mahajan,
Age-60 years, Occu-Agriculture &
Corporator, Municipal Council Raver,
R/o. Mahatma Phule Chowk Raver,
Tq. Raver, Dist. Jalgaon

4. Sow. Shakuntala Ramesh Mahajan
Age-50 Years, Occu-household &
Corporator, Municipal Council Raver,
R/o. Swami Vivekanand Chowk, Raver,
Tq. Raver, Dist. Jalgaon.

5. Sow. Chhayabai Dnayeshwar Mahajan
Age-50 years, Occu-Household &
Corporator, Municipal Council Raver,
R/o. Near Datta Mandir Raver,
Tq. Raver, Dist. Jalgaon

6. Hamidabi Ayyub Khan
Age-40 years, Occu-Household &
Corporator, Municipal Council Raver,
R/o. Immamwada Raver, Tq.Raver,
Dist. Jalgaon.

7. Shabanabi Asif Mohmmad
Age-28 years, Occu-Agril. &
Corporator, Municipal Council Raver,
R/o. Immamwada Raver, Tq.Raver,
Dist. Jalgaon.

8. Gopal s/o. Ratnakar Birpan
Age-36 years, Occu-Agril &
Corporator, Municipal Council Raver,
R/o. Sambhaji Nagar, Raver, Tq.Raver,
Dist. Jalgaon. **PETITIONERS**

VERSUS

1. The State of Maharashtra,
Through the Collector,
Jalgaon

2. The Chief Officer,
Municipal Council, Raver,
Tq. Raver, Dist. Jalgaon

3. Raver Municipal Council,
Raver through
Sow. Riya Shital Patil,
Age- 30 years, Occu-Service,
President, Municipal Council, Raver
R/o. Station Road, Raver,
Tq. Raver, Dist. Jalgaon

4. Janhit Foundation
Through Sanjaykumar Thakur,
26/248, Plot No.834,
Kranti Chowk, Jalgaon
Dist. Jalgaon.
(Amended as per Court's order
dtd.12.04.2016) **RESPONDENTS**

...

Mr.Sanket S.Kulkarni, Advocate for petitioners
Mrs.M.A.Deshpande, Addl.G.P. for Respondent no.1.
Respondent nos.3 & 4 served.

...

WITH

WRIT PETITION NO.2967 OF 2016

1. Dara Mohammad Jafar Mohammad,
   Age-57 years, Occupation-Agriculture &
   Corporator, Municipal Council Raver,
   R/o. Immamwada Taluka Raver,
   Dist. Jalgaon.

2. Asif Mohammad Dara Mohammad
   Age-38 years, Occu-Agriculture &
   Corporator, Municipal Council Raver,
   R/o. Immamwada, Raver, Tq.Raver,
   Dist. Jalgaon

3. Pralhad s/o. Ramdas Mahajan,
   Age-60 years, Occu-Agriculture &
   Corporator, Municipal Council Raver,
   R/o. Mahatma Phule Chowk Raver,
   Tq. Raver, Dist. Jalgaon

4. Sow. Shakuntala Ramesh Mahajan
   Age-50 Years, Occu-household &
   Corporator, Municipal Council Raver,
   R/o. Swami Vivekanand Chowk, Raver,
   Tq. Raver, Dist. Jalgaon.

5. Sow. Chhayabai Dnayeshwar Mahajan
   Age-50 years, Occu-Household &
   Corporator, Municipal Council Raver,
   R/o. Near Datta Mandir Raver,
   Tq. Raver, Dist. Jalgaon

6. Hamidabi Ayyub Khan
   Age-40 years, Occu-Household &

Corporator, Municipal Council Raver,
R/o. Immamwada Raver, Tq.Raver,
Dist. Jalgaon.

7. Shabanabi Asif Mohmmad
Age-28 years, Occu-Agril. &
Corporator, Municipal Council Raver,
R/o. Immamwada Raver, Tq.Raver,
Dist. Jalgaon.

8. Gopal s/o. Ratnakar Birpan
Age- 36 years, Occu-Agril &
Corporator, Municipal Council Raver,
R/o. Sambhaji Nagar, Raver, Tq.Raver,
Dist. Jalgaon. **PETITIONERS**

VERSUS

1. The State of Maharashtra,
Through the Collector,
Jalgaon

2. The Chief Officer,
Municipal Council, Raver,
Tq. Raver, Dist. Jalgaon

3. Raver Municipal Council,
Raver through
Sow. Riya Shital Patil,
Age- 30 years, Occu-Service,
President, Municipal Council, Raver
R/o. Station Road, Raver,
Tq. Raver, Dist. Jalgaon

4. Ashok N. Sonawane
Age Major Occ:Business,
R/o. 30, Madhuban Colony,
Jalgaon Road, Jamner,
Tal.Jamner, Dist.Jalgaon
(Amended as per Court's order
dtd.12.04.2016) **RESPONDENTS**

...

Mr.Sanket S.Kulkarni, Advocate for petitioners
Mrs.M.A.Deshpande, Addl.G.P. for Respondent no.1.
Mr.M.M.Patil (Beedkar) Advocate for respondent no.2
Mr.Rajendra S. Deshmukh, Advocate for respondent no.4.
Respondent no.3 served.

...

WITH

WRIT PETITION NO.2968 OF 2016

1. Dara Mohammad Jafar Mohammad,
   Age-57 years, Occupation-Agriculture &
   Corporator, Municipal Council Raver,
   R/o. Immamwada Taluka Raver,
   Dist. Jalgaon.

2. Asif Mohammad Dara Mohammad
   Age-38 years, Occu-Agriculture &
   Corporator, Municipal Council Raver,
   R/o. Immamwada, Raver, Tq.Raver,
   Dist. Jalgaon

3. Pralhad s/o. Ramdas Mahajan,
   Age-60 years, Occu-Agriculture &
   Corporator, Municipal Council Raver,
   R/o. Mahatma Phule Chowk Raver,
   Tq. Raver, Dist. Jalgaon

4. Sow. Shakuntala Ramesh Mahajan
   Age-50 Years, Occu-household &
   Corporator, Municipal Council Raver,
   R/o. Swami Vivekanand Chowk, Raver,
   Tq. Raver, Dist. Jalgaon.

5. Sow. Chhayabai Dnayeshwar Mahajan
   Age-50 years, Occu-Household &
   Corporator, Municipal Council Raver,

R/o. Near Datta Mandir Raver,
Tq. Raver, Dist. Jalgaon

6. Hamidabi Ayyub Khan
Age-40 years, Occu-Household &
Corporator, Municipal Council Raver,
R/o. Immamwada Raver, Tq.Raver,
Dist. Jalgaon.

7. Shabanabi Asif Mohmmad
Age-28 years, Occu-Agril. &
Corporator, Municipal Council Raver,
R/o. Immamwada Raver, Tq.Raver,
Dist. Jalgaon.

8. Gopal s/o. Ratnakar Birpan
Age- 36 years, Occu-Agril &
Corporator, Municipal Council Raver,
R/o. Sambhaji Nagar, Raver, Tq.Raver,
Dist. Jalgaon. **PETITIONERS**

VERSUS

1. The State of Maharashtra,
Through the Collector,
Jalgaon

2. The Chief Officer,
Municipal Council, Raver,
Tq. Raver, Dist. Jalgaon

3. Raver Municipal Council,
Raver through
Sow. Riya Shital Patil,
Age- 30 years, Occu-Service,
President, Municipal Council, Raver
R/o. Station Road, Raver,
Tq. Raver, Dist. Jalgaon

4. Jitendra Jagannath Patil
Age: Major, Occ:Business,
At & Post Khirdi (Khund),

Tal.Raver, Dist. Jalgaon 425 507.
(Amended as per Court's order
dtd.12.04.2016) **RESPONDENTS**

...

Mr.Sanket S.Kulkarni, Advocate for petitioners
Mrs.M.A.Deshpande, Addl.G.P. for Respondent no.1.
Mr.M.M.Patil (Beedkar), Advocate for respondent no.2.
Mr.Rajendra S. Deshmukh, Advocate for respondent no.4.
Respondent no.3 served.

...

CORAM: S.S.SHINDE &
P.R.BORA,JJ.

Reserved on : 28.07.2016
Pronounced on : 05.08.2016

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard.

2. These Petitions take exception to the orders dated 06.02.2016 and 02.02.2016 passed by the Collector, Jalgaon, bearing Case No. PLIKA-1/ KAVI/SR-4/2016, case No. PLIKA-1 / KAVI /SR-2/2016 and case Nos. PLIKA-1/KAVI/SR-3/2016 respectively, under Section 308 of the Maharashtra Municipal

Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short 'the Act of 1965'), and further seeks directions to respondent no.3 to accept the suggestion for re-tender given by passing Resolution nos.7, 5 and 4 respectively, in the General Body Meeting of the Municipal Council, Raver, District Jalgaon, held on 17.12.2015.

3. The learned counsel appearing for the petitioners submits that the District Collector, in pursuance of the letter written by respondent no.2 dated 08.09.2015, issued an order to respondent no.2 Chief Officer, Municipal Council, Raver, thereby granting the permission for construction of work of public toilets at three places within the jurisdiction of Municipal Council, Raver, on certain conditions. As per the order passed by the District Collector, respondent no.2 issued a letter to the Editor of 'Dainik Divya Marathi' on 23.09.2015 for publication

of tender notice in the news paper, and accordingly, the tender notice was published in the news paper Dainik Divya Marathi, and the tenders were invited for construction of the aforesaid work. In response to the tender notice, four persons have filed their quotations for the tender work to construct the work at serial no.1 which is mentioned in the tender notice and out of them, the quotations of respondent no.4 (in all three Petitions) was 1% less of the total estimated cost.

4. It is further submitted that respondent no.3 President of Municipal Council, Raver, by its notice dated 02.11.2015, called a general meeting of the Municipal Council, Raver, on 17.11.2015. The general body meeting was held on the said date at about 1.00 p.m. It was decided in the said meeting that the tenders which are received of respondent no.4 are little less

than the estimated cost and hence it was decided to call respondent no.4 for negotiation in the interest of Municipal Council. The said suggestions were put before the Councillors and the appellants given consent in favour of the suggestions, and the 7 councillors including respondent no.3 President casted their votes against the suggestions given by the petitioners. Since the suggestions given by the petitioners were approved by majority, it was decided to call respondent no.4 for negotiation. Accordingly, notice was issued on 20.11.2015 to the respondent no.4 for negotiation, and accordingly, respondent no.4 appeared on 26.11.2015 and by the letter dated 26.11.2015 shown willingness to complete the work 1.02% less than the estimated cost. Respondent no. 3, vide its notice dated 09.12.2015, called general body meeting on 17.12.2015 for discussion about the resolution no.15 of the

General Body Meeting dated 17.11.2015 along with the noting of the meetings, and accordingly, the general body meeting was held on 17.12.2015 and in that meeting discussion has taken place about Resolution Nos.7, 5 and 4, which was already passed.

The petitioner nos.1, 5 and other councillors did file applications to the President of Municipal Council and requested for calling the tender holders for negotiations. Accordingly, on 26.11.2015 the concerned tender holders were called, however, they agreed for reduction of very less amount than the estimated cost, and hence, the petitioner no.1 and five others suggested to re-tender the work, as the financial condition of the Municipal Council is weaker and hence re-tender be issued. The said suggestion was opposed by the some of the councillors and hence the President decided to take voting on the said

suggestion. Accordingly 8 councillors out of 15 cast their votes in favour of suggestion and 7 councillors including respondent no.3 President cast their votes against the suggestion. Hence, respondent no.3 decided to send suggestions made by the present petitioners for further proceedings. The general body meeting dated 17.12.2015 approved suggestion given by the petitioners and the same was forwarded for further sanction of the respondent no.1 i.e. Collector and to respondent no.2 Chief Officer by its letter dated 17.12.2015. It is submitted that respondent Collector, by its orders dated 06.02.2016 and 02.02.2016, quashed and set aside the suggestion given by the petitioners without assigning any reasons. Being aggrieved by the said orders passed by the Collector, the petitioners preferred Appeals before the Divisional Commissioner, Nashik Division, Nashik.

However, the said Appeals also came to be dismissed. Hence these Petitions.

5. The learned counsel appearing for the petitioners invited our attention to the impugned orders passed by the Collector and submits that while passing the impugned orders not a single reason is assigned by the Collector, thereby violating the mandate of the provisions of Section 308 of the Act of 1965. Therefore, the learned counsel submits that on this ground alone, the Petitions deserve to be allowed. The learned counsel further submits that the Commissioner, without appreciating the legal contentions raised by the petitioners, mechanically confirmed the orders passed by the Collector.

6. On the other hand, the learned counsel appearing for the respective respondents submits that in pursuance of the orders passed by the Collector, the tender

was given and the work of construction of toilets has been completed, therefore, the adjudication of these Petitions will be exercised in futility and may be only for the academic interest.

7. The learned AGP invited our attention to the averments in the affidavit-in-replies and submits that these Petitions deserve to be dismissed.

8. The learned counsel appearing for the other respondents submit that the petitioners have not challenged the orders passed by the Commissioner and in absence of challenge to the said orders, the Petitions cannot succeed since the orders passed by the Collector have merged into the orders passed by the Divisional Commissioner.

9. We have given careful considerations to the rival submissions of the learned counsel appearing for the parties. With their

able assistance, perused the pleadings in the Petitions, grounds taken therein, annexures thereto and the impugned orders passed by the Collector and in particular the provisions of Section 308 of the Act of 1965. It is true that the Collector was supposed to give reasons while passing the impugned orders in consonance with the mandate of Section 308 of the Act of 1965. However, the Collector has not assigned any reason in the impugned orders. The said orders were challenged before the Commissioner by the petitioners and the same have been confirmed by the Commissioner. Admittedly, orders passed by the Commissioner are not under challenge in the present Petitions. However, considering the subsequent events occurred after filing these Petitions, and the fact that the work of construction of toilets was alloted and the same has been completed, and the entire exercise of completion of tender work has

been complete, in our opinion, no purpose will be served by setting aside the impugned orders. Therefore, in view of the subsequent events occurred after filing these Petitions, and the entire tender work is over, leaving open the question of law raised in these Petitions, we decline to interfere in the impugned orders, the Writ Petitions stand disposed of.

Sd/-
[P.R.BORA]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

DDC