

Sharayu.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9873 OF 2017

MIC Electronics Limited

...Petitioner

Versus

**The Commissioner
Nasik Municipal Corporation & Ors.**

...Respondents

Mr. Ashok B. Tajane, for the Petitioner.

Mr. Vaibhav P. Patankar, for the Respondent No. 1.

Mr. A.P. Vanarase, AGP, for the Respondent NO. 3.

Mr. Hena Desai, i/b Singhi & Co., for Respondent NO. 5.

**CORAM : SMT. VASANTI A NAIK AND
RIYAZ I. CHAGLA, JJ.**

DATE : 12 October 2017

ORDER :

By this petition, the petitioner seeks a direction against the Nasik Municipal Corporation to extend full cooperation in implementing the LED project as per the terms and conditions of the agreement executed between the petitioner company and the Nasik Municipal Corporation on 25th February 2013. The petitioner has also sought a direction

against the respondent No. 4 Bank to honour the irrevocable bank guarantee without causing any hurdle.

The petitioner company had entered into an agreement with the Nasik Municipal Corporation for supplying 69541 street lights with modern LED street lighting systems on BOT basis. The total cost of LED project was Rs. 202 Crore. It is the case of the petitioner that certain municipal counsellors raised objection to the award of contract to the petitioner company and filed writ petitions but the said writ petitions were dismissed. The orders in the said writ petitions attained finality after the special leave petition filed by the counsellorss against the orders dismissing the writ petitions were also dismissed. According to the petitioner, the petitioner had despatched goods valued at Rs. 4.50 Crores to the Nasik Municipal Corporation but since the Nasik Municipal Corporation did not accept the same, they had to be stored in a private godown. According to the petitioner, the corporation had made a representation to the state government seeking the opinion of the state government in regard to the cancellation of the contract awarded to the petitioner. It is stated that the state government had, by the letter dated 18th May 2017 informed the corporation that the agreement executed between the parties could not be cancelled. Since the Nasik Municipal Corporation has floated a fresh tender in respect of the work for providing street lights at Satpur Division in the month of July 2017, the petitioner has

challenged the said tender.

The learned counsel for the respondent-corporation disputed the facts avered in the writ petition. It is stated that the corporation had not cancelled the contract and the petitioner company had by the communication/notice dated 20th May 2015 expressed its intention to terminate the contract. It is stated that for the reasons stated in the notice – communication dated 20th May 2015, the petitioner company had informed the corporation that the agreement would be terminated in view of Articles 12 and 13 of the agreement, due to the fault on the part of the Nasik Municipal Corporation. It is stated that after the said notice was received, the corporation sought to invoke the arbitration clause. It is submitted that since the matter pertains to the termination of the contract and breach of the terms of the same, this Court may not entertain the petition under Article 226 of the Constitution of India to consider granting the relief claimed. It is stated that since the petitioner company had assigned the bank guarantee to third parties, the Nasik Municipal Corporation has filed a suit against the petitioner company and the assignees and the said suit is still pending. It is stated that the dispute involved in the case is clearly of civil nature and instead of availing the appropriate remedy, the petitioner has rushed to this Court for seeking the relief in exercise of writ jurisdiction, though several disputed questions of facts are involved in the writ petition.

In the circumstances of the case, we are not inclined to entertain the writ petition and consider granting the relief claimed by the petitioners. The copy of the notice issued by the petitioner to the Nasik Municipal Corporation is annexed to the petition and the said notice clearly shows that the petitioner had sought to terminate the contract for the reasons stated in the said notice. We find that the petitioner is approbating and reprobating in the matter pertaining to the agreement and the issues involved in the writ petition cannot be decided in exercise of the writ jurisdiction. The petitioner is free to avail the appropriate remedy for seeking the relief claimed.

Since we decline to entertain the writ petition, the writ petition is dismissed with no order as to costs.

The points raised in the petition are however, kept open.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A NAIK, J.]