IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9621 OF 2017
WITH
CIVIL APPLICATION NO.2680 OF 2017
IN
WRIT PETITION NO.9621 OF 2017

M/s. Khalatkar Construction
and another … Petitioners.

Versus

State of Maharashtra
and others … Respondents.

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Mr. Amogh Singh a/w Mr. D.P. Singh for the Petitioners.
Mr. V.N. Sagare, AGP for Respondent-State.
Mr. Vijay D. Patil a/w Mr. S.R. Karpe for Respondent Nos. 2 and 3.
Mr. Vaibhav R. Gaikwad for the Applicant in CAW No.2680/2017.

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CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.

DATE : 07th December, 2017.

P.C. :

By this writ petition, the petitioner challenges the order of District Collector Satara dated 15.04.2017, allowing the application filed by Salim Bagwan and Chandrakant Jadhav, who are not joined as parties to this writ petition though they were the parties to the application before the District Collector.

The Mahabaleshwar Municipal Council had floated a tender on 26.09.2016 inviting applications from interested bidders in respect of the contract for collecting the tourist and pollution control tax while entering Mahabaleshwar. In pursuance of the tender, the petitioner, one Momin and Shri Chandrakant Jadhav, who had filed the application before the District Collector under Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 had submitted the bid. The financial bid of Chandrakant Jadhav was disqualified. Since Momin was the highest bidder and had offered the bid which was above the estimated price the Municipal Council decided to pass a resolution for accepting the bid of Mr. Momin. Being aggrieved by the proposal on the part of the Municipal Council of awarding the contract in favour of Momin, the petitioner had filed a civil suit in the civil Court at Mahabaleshwar. During the pendency of the suit, the Municipal Council had passed a resolution on 23.12.2016 that the Municipal Council would collect the toll tax on its own. On 11.01.2017 another resolution was passed for ensuring that the resolution dated 21.12.2016 should not be confirmed. In the meanwhile, Momin withdrew his bid. In view of the withdrawal of the bid by Momin, the Municipal Council passed a resolution on 01.02.2017, bearing resolution no.402 that the bid of the petitioner should be accepted. The petitioner was awarded the work order on 09.02.2017 and was asked to collect the toll from 10.02.2017. However, before the petitioner could collect the toll, in an application moved by Mr. Chandrakant Jadhav before the Collector under Section 308 of the

Act, an order granting stay was passed. In view of the grant of stay to resolution no.402 dated 01.02.2017, the petitioner could not collect the toll tax. The application of Mr. Chandrakant Jadhav was decided by the District Collector by the impugned order dated 15.04.2017 and the resolution was cancelled.

The learned counsel for the petitioner submitted that the Collector could not have entertained the application made by Mr. Chandrakant Jadhav under Section 308 of the Act as he did not have a *locus standi* to file the same. It is submitted that the Collector could have *suo motu* initiated the action under Section 308 of the Act. It is submitted that the resolution of the Municipal Council could be suspended only if the act which is done or being done by the Municipal Council would cause or likely to cause injury or nuisance to public or is against 'public interest' or is likely to lead ro breach of peace or is otherwise unlawful. It is submitted that the observation of the District Collector that the grant of work order in favour of the petitioner would be against public interest is incorrect. The learned counsel relied on the judgment reported in ***2004 (2) Mh.L.J. 874*** to substantiate his submission. Reliance is also placed on the judgment reported in ***2016 (8) SCC 622***, specially paragraph 43 thereof to submit that if the decision is not arbitrary, irrational, unreasonable, malafide or biased, the Court would not judicially review the decision. It is submitted that the finding of the District Collector that the work order could not have been awarded to the petitioner for a bid which did not match the estimated amount is liable to be rejected. It is submitted by placing reliance on the unreported judgment of this court in the Case of ***Sameer Jamadar Vs. State of Maharashtra*** that it would not be necessary that in every case the bid should be equivalent to the estimated cost. It is submitted that the estimated amount was Rs.3,79,00,000/- and the petitioner had offered the bid of Rs.3,56,00,000/- It is submitted that since the Municipal Council was suffering great losses by collecting the toll tax on its own and since the tender process had to be undertaken on two occasions without any success, the bid of the petitioner was accepted by passing the resolution that was cancelled by the District Collector.

The learned Assistant Government Pleader has supported the impugned order and has submitted that the District collector has considered the provisions of the Act and all the relevant aspects of the matter to record a finding that the resolution awarding the contract in favour of the petitioner was liable to be cancelled. It is stated that the findings recorded by the District Collector are just and proper and the same should not be interfered with.

Mr. Patil, the learned counsel for the Municipal Council submitted that the Municipal Council could not award the contract to any party though the tender was floated on two earlier occasions. It is stated that when Momin withdrew his bid, the Municipal Council, with a view that it should not suffer losses by collecting the toll tax on its own, decided to award the contract in favour of the petitioner. It is however fairly stated that after the impugned order is passed, the Municipal Council has passed a resolution that a fresh tender would be floated for inviting bids for the work of collection of tourist and pollution control tax.

On hearing the learned counsel for the parties and on a perusal of the impugned order, we find that there is no scope for interference with the impugned order in exercise of the writ jurisdiction. The order of the District collector is a reasoned one and the relevant provisions of the Act, the resolutions of the Council and all the other relevant aspects of the matter are duly considered by the District Collector before cancelling the resolution passed by the council for granting the work order in favour of the petitioner. The District Collector rightly held that the Municipal Council was not entitled to pass a resolution on 01.02.2017 (resolution no.402) for awarding the contract in favour of the petitioner as the same was passed in violation of the provisions of Section 81(15) of the Act. The District Collector rightly held that in view of the said provision, the Municipal corporation was not empowered to modify or cancel a resolution within three months after passing the same. The District Collector rightly considered that by passing resolution (resolution No.349) dated 21.12.2016, the Municipal Council had decided to collect the tax on its own. Without complying with the provisions of Section 81(15) of the Act, the Municipal Council had decided to award the contract in favour of the petitioner, within three months, by the resolution dated 01.02.2017, in total violation of the provisions of the Act. Apart from the fact that the action on the part of the Municipal council to pass the resolution dated 01.02.2017 bearing no.402 was violative of the provisions of Section 81(15) of the Act, the District Collector found that the resolution was liable to be cancelled for other reasons also. The District Collector observed that the contract was awarded to the petitioner by the resolution dated 01.02.2017 though the bid of the petitioner was lower than the estimated amount. The District Collector observed in the impugned order that it was necessary for the Municipal council to have at least called the petitioner for negotiations and should have asked him to submit a bid that could match the estimated amount, however, this was not done by the Municipal council for the reasons best known to it. The District Collector further observed that the Municipal Council did not take any action whatsoever against Mr. Momin to whom the contract was proposed to be awarded by the resolution dated 10.10.2016, after he withdrew his bid. The District Collector observed that it was not permissible for the bidder whose bid was sought to be accepted, to withdraw the bid without facing the consequences of withdrawing the bid. The District Collector observed that resolution no.402 was based solely on the advice of the legal adviser and the Municipal council did not consider the pros and cons of the matter before taking a decision of awarding the contract to the petitioner after it had decided only a couple of months earlier by its resolution dated 21.12.2016 that it would collect the tax on its own. It was observed by the District Collector that the Municipal Corporation had not applied its mind before passing the resolution that was cancelled. The reasons recorded by the District Collector for cancelling the resolution dated 01.02.2017 are based on the provisions of the Act and the well settled principles of law. While holding so, we are not inclined to accept the submission made on behalf of the Municipal Council that since on a couple of earlier occasions the Municipal Council could not award the contract of toll tax collection in the absence of competition, they had decided to award this contract to the petitioner by the resolution dated 01.02.2017. We do not appreciate the submission, as after Mr. Momin backed out from the contract and withdrew his bid, it was necessary for the Municipal council to immediately float a fresh tender and invite competition. We are in agreement with the view expressed by the District Collector that the passing of the resolution, dated 01.02.2017 was not in 'public interest'. While recording these findings, we are also not inclined to accept the submission made on behalf of the petitioner that Mr. Chandrakant Jadhav could not have filed the application before the District collector under Section 308 of the Act. There is nothing in the provisions of Section 308 of the Act that stipulates that the Collector could take only suo motu action under the said provision. For invoking the provisions of the Section 308 of the Act, the Collector is required to form an opinion. Such an opinion could be formed by the Collector by considering the record and proceedings, either suo motu or on an application made by an interested party. Under the provision of Section 308 of the Act, the Collector is empowered to suspend the execution of an order and resolution of the Municipal Council if the same is likely to cause injury or nuisance to public or is against the public interest or is unlawful. The power under Section 308 could be exercised by the Collector if it is pointed out to the Collector by any party concerned that the order or the resolution of the Municipal Council is likely to cause injury or nuisance to the public or is against public interest or is unlawful. The District

Collector would exercise the jurisdiction under Section 308 if he is of the opinion that the order or the resolution of the Council is against public interest or is unlawful. We find no wrong in the finding recorded by the District Collector that the resolution passed by the Municipal Council was against the public interest. We find that though Mr. Chandrakant Jadhav was one of the bidders and was a party to the proceedings before District Collector, Satara, the petitioner has not joined Chandrakant Jadhav as a party-respondent to this petition. The unreported judgment in the case of ***Sameer Jamadar*** would not be applicable to the facts of the case. The judgment reported in ***2016 (8) SCC 622*** and relied on by the counsel for the petitioner would also not be helpful to the petitioner in challenging the impugned order. It is laid down in the said judgment that if the administrative decision is not arbitrary, irrational, unreasonable, malafide or biased, the Courts would not judicially review the decision. In the instant case, if the contract was sought to be awarded to Mr. Momin and a resolution for awarding the same was proposed and the matter was pending for long, the Municipal Corporation could not have awarded the contract in favour of the petitioner without inviting fresh bids, without entering into negotiations with the petitioner to match the estimated price and in total disregard to the provisions of Section 81(15) of the Act. The judgment reported in ***2004(2) Mh.L.J. 874*** cannot be made applicable to the facts of the case, it is held in the said decision that the power under Section 308 could be exercised by the Collector if only one of the eventualities that are mentioned under sub section 1 of Section 308 are satisfied.

The District Collector observed and rightly so that the issuance of the work order in favour of the petitioner was against the 'public interest'. Since the order of the District Collector is just and proper, we dismiss the writ petition with no order as to costs. Needless to mention that the Municipal Council could float a fresh tender, as stated on behalf of the Municipal Council and the earnest money deposited by the petitioner should be refunded by the Municipal Corporation to the petitioner within two weeks. Order accordingly.

With a disposal of the writ petition, the civil application also stands disposed of.

(*Riyaz I. Chagla* J) **(*Smt. Vasanti A Naik, J*)**