

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

PUBLIC INTEREST LITIGATION NO. 107 OF 2016

(Dr. Pandurang s/o Vithusa Dhole & Anr. vs. The District Collector, Amravati & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
ROHIT B. DEO, JJ.
JUNE 14, 2017.**

Heard Shri S.S. Joshi, learned counsel for the petitioners, Mrs. Kalyani Deshpande, learned AGP for respondent No. 1, Shri Abhay Sambre, learned counsel for respondent No. 2 and Shri Firdos Mirza, learned counsel for respondent No. 3.

2. The records show that the grievance about drastic reduction in the cost of LED lamps was made by the petitioners on 20.07.2015 itself. In proof thereof, they have also enclosed the quotations. In spite of that Respondent No. 2 – Municipal Council has proceeded further and issued work order on 27.10.2015.

3. According to the petitioners, reduction is from Rs.14,000/- per piece to Rs.3000 to 4000 per piece, depending upon the brand.

4. The Municipal Council has attempted to justify the action by pointing out that new CSR rates as per

reduced market rates have come into force from on 01.11.2015 and this transaction was complete before that. They also pointed out that the grievance was made under Section 308 of the Maharashtra Municipal Council, Nagar Panchayats and Industrial Townships Act, 1965, (hereinafter referred to as the Act) before Respondent No. 1 – Collector, Amravati, unsuccessfully. It is further urged that contract is not only to install LED lamps but also to maintain them for future period of five years.

5. Shri Mirza, learned counsel for respondent No. 3 – Contractor submits that there is no grievance about tender process as followed. Respondent No. 3 has taken loan of Rs.25 lakhs from the Bank and thereafter performed the work. He received work order on 27.10.2015 and as such rates then prevailing have been claimed. He further states that the additional work of supervision and maintenance of those bulbs/ lamps for future period is also entrusted to respondent No. 3.

6. According to him, Respondent No. 1 – Collector has vacated the stay order, initially granted under Section 308 of the Act and that order has become final. With the result, the grievance of present nature by the petitioners is by way of after thought and unsustainable. He points out that Respondent No. 3 has sought a direction to respondent No. 2 to clear his dues by moving Civil Application No. 289 of 2017.

7. Shri Mirza, learned counsel also submits that in the alternative, the petitioner should be directed to deposit that amount so that respondent No. 3 can discharge his loan liability. He points out that the loan account has been already declared NPA.

8. Shri Joshi, learned counsel for the petitioners points out that respondent No. 1 – an Ex-MLA has expired and CAW No. 691 of 2017 is filed seeking deletion of his name. He further states that when notice inviting tender was published, in that notice there was no scope of adding work of maintenance and supervision of LED after its installation. There is no such amendment to tender notice at any point of time and for the first time in agreement only, because of price difference, the arrangement has been made.

9. We allow CAW No. 691 of 2017 and name of petitioner No. 1 is, therefore, allowed to be deleted.

10. The facts noted supra clearly show that more than three months prior to issuance of work order, the petitioners have pointed out drastic reduction in cost of LED. No cognizance thereof has been taken by respondent No. 2 – Municipal Council.

11. It is no doubt true that Respondent No. 1 – Collector has initially granted stay in the matter on 13.07.2015, however, the stay was only to find out

possibility of getting the work done through the societies/institutes which would invest and then get themselves reimbursed through the savings in electricity consumption charges. The letter vacating stay has been issued on 20.10.2015. Respondent No. 1 – Collector only found that there was no interim order passed by the State Government (Hon'ble State Minister, UDD) and, therefore, has vacated the stay. No other reasons are recorded. The grievance by the petitioners about the huge difference in cost has been totally overlooked.

12. Respondent Nos. 1 & 2 were and are duty bound to act in public interest. Whey they found that the quotations mention reduced rates, they could have inquired into the matter and observed that LED lamps at those rates were not available. They could have also dropped entire tender process and floated new tender. All these steps necessary in public interest have been avoided by respondent No. 2. Respondent No. 1 – Collector under Section 308 of the Act could have directed respondent No. 2 – Municipal Council accordingly, but he has also not done so.

13. In this situation, we find that a case for ordering inquiry into the entire matter is made out. We accordingly direct the Divisional Commissioner of Amravati to look into the matter in the light of this order and to complete inquiry after giving necessary opportunity to petitioner No. 2 as also respondent No. 2 and Respondent No. 3, within a period of

three months from the date of communication of this order to it.

14. Civil Application No. 289 of 2017 is moved by respondent No. 3 seeking direction to the Municipal Council to release payment to him or in the alternative to petitioner No. 1 to deposit the amount.

15. Respondent No. 3 has not produced before this Court the documents to show the rates at which he has purchased LED lamps or then the mode and manner in which he has made payment to the Crompton company, which has supplied those lamps to respondent No. 3. Therefore, CAW No. 289 of 2017 is rejected.

16. At this stage, Shri Mirza, learned counsel submits that as dispute is only about the rate, respondent No. 2 should be asked to pay respondent No. 3 at CSR rate prevailing on 01.11.2015.

17. Shri Joshi, learned counsel submits that the market rates were even lesser than the rates prevailing on 01.11.2015 as per CSR.

18. The quotations placed on record by the petitioners show maximum rate of Rs.4,000/- for 48 Watt LED street light. We, therefore, direct Respondent No. 2 to work out total cost of LED lamps at the rate of Rs.4,000/- per piece and to deposit that amount through cheque in

loan account of Respondent No. 3 directly. This arrangement shall be without prejudice to the rights and contentions of the parties in the matter.

19. Writ Petition is thus partly allowed and disposed of. However, there shall be no order as to costs.

JUDGE

JUDGE

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