

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12595 OF 2017

Aquacon Solutions,
Flat No. 1, B-10,
Shramik Housing Society,
Unit No.5, Gangapur Road, Nashik-422013
Through its Proprietor
Rahul S/o. Vithal Suraywanshi
Age 32 years, Occu. Business,
(Proprietor of Aquacon Solutions)
R/o Flat No. 1, B-10, Shramik Housing
Society, Unit No. 5, Gangapur Road,
Nashik – 422 013

.. Petitioner

Versus

- 1] Swaroopsingh Rajpalsingh Hajari,
Age 56 years, Occu. Medical Practice,
R/o C/o Hajari Hospital, Dharur,
Tq. Dharur, Dist. Beed
- 2] The Director,
The Directorate of Municipal Administration,
Warli, Mumbai – 32.
- 3] The Additional Commissioner,
Aurangabad Division, Aurangabad
- 4] The District Collector,
Beed, Tq. & Dist. Beed
- 5] The Chief Officer,
Dharur Municipal Council, Dharur,
Tq. Dharur, Dist. Beed
- 6] The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai

.. Respondents

...
Mr. S.S. Jadhavar, Advocate for petitioner
Mr. R.S. Deshmukh, Advocate for respondent no.1
Mr. S.P. Tiwari, AGP for respondent-State
Mr. V.B. Dhage, Advocate for respondent no.5
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 05-09-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties, finally.

2. The petitioner takes exception to order dated 21-06-2017 passed in appeal bearing no. अपिल नस्ती क्र. न्यायाप्र-२०१६/३९०/प्र. क्र. ८६८/नवि-१७, whereunder the decision in revision by Additional Divisional Commissioner, Aurangabad dated 19-12-2015, as well as resolution bearing no. 114 dated 15-09-2015 of Nagar Parishad, Dharur, have been set aside.

3. Learned counsel Mr. S.S. Jadhavar for the petitioner submits that petitioner had been engaged as Private Management Consultancy (PMC) by respondent no. 5 - municipal council in implementation of *Maharashtra Sujal Nirmal Abhiyan Scheme* in the Municipal Council, Dharur.

4. He submits, pursuant to resolution, bids were called by inviting tenders and petitioner's bid had been selected and accordingly agreements have been entered into between petitioner and the municipal council. Work pursuant to the agreements, had been under progress and incidental resolution bearing no. 114 came to be passed on 15-09-2015 and further allocation of work accordingly had been made to petitioner. However, respondent no. 1, who had been in opposition then, purportedly had taken objection to the resolution which had been turned down by the collector and in revision by the divisional commissioner.

5. Learned counsel for petitioner submits that against decision in revision, an appeal had been preferred which according to learned counsel is not maintainable and same came to be cursorily considered and the orders passed by authorities, including the resolutions have been set at naught. He submits that the order depicts non application of mind to the background, nature and the work and present day progress in the same. He further makes a grievance that under the politics, petitioner's major payments have been detained.

6. Learned counsel Mr. R.S. Deshmukh appearing for respondent no. 1 submits that the objection was required to be

raised since the resolution had been festured with illegalities. However, despite substance in the grievances made in the objections, the district collector and later, the additional divisional commissioner have failed to appreciate the substance in the objection and its far reaching disastrous economic consequences. He submits that subsequent to the decision by the Hon'ble Minister, there had been a fresh resolution taken and accordingly, the work has already been allotted to the government organization, namely, *Maharashtra Jeevan Pradhikaran* and said *Pradhikaran* is making progress. He submits that looking at the decision of the collector and the additional divisional commissioner, it would be seen that both the authorities have cursorily gone about the matter and have declined to consider the objections. Learned counsel *inter-alia*, has contended that appeal is maintainable.

7. Learned counsel appearing for respondent no. 5 - Mr. V.B. Dhage, supporting the order of the Hon'ble Minister, submits that the decision has been taken by the Hon'ble Minister having regard to that the procedure, as referred to under resolution of the government dated 04-03-2014 had not been followed under which it had been obligated to issue E-tender and without following the procedure prescribed therein, an agreement

had been entered into between petitioner and the municipal council, which had not been proper and, therefore, the order is proper. He submits that all this has been taken into account while cancelling resolution dated 15-09-2015. It was thus necessary to follow the proper procedure.

8. Perusal of impugned order dated 21-06-2017 at Exhibit - "L" shows that the events as they have occurred, have been referred to in paragraph no. 3. The response thereto on behalf of the collector is contained in paragraph no.4. Contentions of petitioner have been referred to in paragraph no. 5 and under paragraph no. 6, it has been observed that it appears that municipal council has not followed the prescribed procedure of engaging services by issuing E-tenders in accordance with government resolution dated 04-03-2014 and the resolution has been passed on 15-09-2015 and, therefore, order of collector, Beed dated 19-12-2015 and resolution bearing no. 114 dated 15-09-2015, have been set aside.

9. Perusal of the documents annexed with the writ petition or for that matter, the ones with the reply did not contain copy of said government resolution dated 04-03-2014. Neither the narration in the impugned order nor the orders passed by the collector and the additional divisional commissioner, refer to said

resolution. It is weird, as to how the Hon'ble Minister has taken into account the said resolution. It also does not appear that petitioner had any opportunity to deal with the said aspect being considered by the Hon'ble Minister while passing the order, which is one of the submissions on behalf of the petitioner.

10. Having regard to the circumstances, it appears that the order thus appears to be a non-speaking order and it would be expedient that the parties should have proper opportunity to deal with the matter before the Hon'ble Minister. The Hon'ble Minister as well has not given any reflection upon the other aspects involved in the matter. In view of the same, it would be expedient to set aside the impugned order and restore the matter, to the position as had been subsisting immediately before 21-06-2017.

11. Writ petition is allowed. Impugned order dated 21-06-2017 passed by respondent no. 6 herein is set aside. Appeal bearing no. अपिल नस्ती क्र. न्यायाप्र-२०१६/३९०/प्र. क्र. ८६८/नवि-१७ is restored to the position, as had been subsisting immediately before 21-06-2017.

12. Parties to appear before the Hon'ble Minister without requiring any notice from the office of Hon'ble Minister. The Hon'ble Minister may proceed with the matter accordingly and

dispose of the proceedings, as early as possible. All the points are kept open, including the one about maintainability of the appeal.

13. Rule made absolute accordingly.

[SUNIL P. DESHMUKH]
JUDGE

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