

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

109 WRIT PETITION NO.1250 OF 2019

AMALNER MUNICIPAL COUNCIL AMALNER THROUGH COUNCILOR
KUMAR RAMKRUSHINA BAPURAO PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Sr. Advocate for Petitioner : Mr. R.N. Dhorde a/w. Dhorde Vikram R
AGP for Respondents/State : Mr. S.G. Karlekar

...

**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE : 20.08.2019

PC. :-

The petitioner is assailing the resolution dated 11.04.2018 issued by the respondent no.1 appointing the respondent no.3-P.W.D. Amalner as implementing agency.

2. Mr. Dhorde the learned senior advocate submits that on or about 17.11.2017 the Government Resolution was issued providing guidelines for Vaishisthapurna Yojana. Under the said Yojana the Municipal Councils are entitled to receive the funds under the said scheme to carry out the works. On or about 20.11.2017, the Government Resolution was issued by the State sanctioning an amount of Rupees Two Crores in favour of the petitioner-

Municipal Council. The petitioner was appointed as the implementing agency. On or about 17.01.2018, the petitioner-Municipal Council passed a resolution deciding the works to be carried out under the said scheme. The necessary proposal was submitted to the Collector. On or about 28.03.2018, the respondent no.2-Collector issued order thereby giving administrative sanction to carry out sixteen different works amounting to Rs. 1,61,73,344/-. On or about 06.04.2018, the petitioner-Municipal Council issued e-tender notice for allotting sixteen works sanctioned by the Collector. On or about 12.04.2018, the Collector issued administrative sanction for the three works costing Rs. 64,83,771/-. Thereafter, on 20.04.2018 the Municipal Council issued e-tender notice allotting three works sanctioned by respondent no.2-Collector. The work order was issued on 14.05.2018 for the sixteen works and the said work has commenced. On or about 21.05.2018, the District Planning Officer issued the impugned corrigendum on 11.04.2018 transferring the funds of Rupees Two Crores allotted to the petitioner to the respondent-P.W.D.

3. The learned senior advocate submits that this has been done at the behest of the local M.L.A. without any authority. The learned senior advocate submits that pursuant to the administrative sanction given by the Collector, the Municipal Council has allotted the work to the Contractor and some of the works have been completed up to 40 to 60%. The corrigendum

could not have been issued on 11.04.2018 thereby changing the implementing agency, the same is violative of Article 14 and 243-W read with 12th Schedule of the Constitution of India. The said action is *mala fide*. It is only because the local M.L.A. is of a ruling party the said action has been initiated. If the implementing agency is changed and the works are also changed it will lead to an irreparable loss. The Collector has also represented to the Government that 50 to 60% work has already been completed by the Contractor appointed by the Municipal Council and at this stage, it would not be possible to revoke the said work and sought for the funds to continue the work. The report is also submitted about the extent of the work completed.

4. Mr. Karlekar the learned A.G.P. submits that it is within the domain of the State Government to earmark the implementing agency. The Municipal Councils are eligible to receive the funds under the Vaishisthapurna Yojana, however right to decide the implementing agency is reserved by the State Government. Considering the nature of the work the State Government has allotted the amount of Rs. Two Crores and has transferred the same in the accounts of the P.W.D. to carry out different works for the Amalner Municipal Council. The petitioner has wrongly interpreted Clause-3 of the Government Resolution dated 20.11.2017 by contending that the Municipal Council would be the implementing agency. The process of technical sanction in respect of

the works undertaken by the Municipal Council is meaningless until and unless list of works is finalised and sanctioned by the Competent Authority by the State Government. The Municipal Council ought to have forwarded the list of works to the State Government before executing the same. The petitioner-Municipal Council flouted the guidelines and the procedure contemplated in Government Resolution dated 17.11.2017 and issued the work order. The list of work has to be finalised at the state level. The P.W.D. has been declared the implementing agency instead of Amalner Municipal Council under Government Resolution dated 11.04.2018 much prior to the issuance of the work order by the petitioner-Municipal Council. The Municipal Council ought to have cancelled the tender process. The administrative sanction is given by the Collector on 12.04.2018 and prior to that e-tender notice has been issued on 11.04.2018. There is no merit in the petition.

5. We had directed the learned A.G.P. to take instructions from the P.W.D. as to the extent of the work carried out by the Municipal Council pursuant to the work order issued by it. We had also adjourned the matter on three to four occasions. The learned A.G.P. submits that he has not received any instructions in this regard.

6. The chronology of events as has been narrated above is not a matter of dispute.

7. It is also a fact that administrative sanction has been issued by the Collector for proceeding ahead with the work undertaken by the Municipal Council under its resolution. The petitioner has placed on record the details of the extent of work undertaken by it. It is clear from the chart given by the petitioner that some of the major works are completed up to 90%, 82%, 67% and so on. As per the report of the Collector 50 to 60% work has been completed by the Municipal Council through the Contractor appointed pursuant to the tender process.

8. The propriety of the petitioner-Municipal Council issuing the work order would become secondary in view of the facts and the circumstances appearing herein. The work admittedly even as per the report of the Collector is completed more than 50 to 60%. At this stage, it would not be appropriate to change the nature of the work, if that is done the work undertaken till this date would go waste. It would be a loss of the public exchequer. The administrative sanction issued by the Collector is on record. It is pursuant to the administrative sanction the work order has been issued to the Contractor.

9. There cannot be any dispute with the proposition that it is the prerogative of the State Government to appoint the implementing agency under the Vaishisthapurna Yojana, but before the State Government could clarify that P.W.D. would be the implementing agency the resolution was already passed by the Municipal Council about the different works to be undertaken. The Collector had accorded administrative sanction for the same, even the e-tender was issued, it is only after all this process was undertaken the Government issued a resolution appointing P.W.D. as the implementing agency. The same would be too late in the day.

10. Considering the extent of work that has already been performed and undertaken, we are not entering into the technical glitches of the matter.

11. The interest of justice would require that the remaining work is completed otherwise the work undertaken which as per the report of the Collector is more than 50 to 60% would go waste.

12. Keeping the aforesaid in view, we set aside the impugned corrigendum dated 11.04.2018 and the subsequent letters issued pursuant to the said corrigendum. Writ petition accordingly disposed of. No costs.

13. Needless to state that the funds which are sanctioned and the works that are undertaken by the Municipal Council, the amount shall be paid to the Contractor carrying out the work after confirmation of the quantum of work carried out by the contractor and his entitlement.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]