

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

906. WRIT PETITION NO. 8648 OF 2016
WITH
CIVIL APPLICATION No. 12325 OF 2018
IN WRIT PETITION No. 8648 OF 2016

Shobhatai W/o Arvindrao Nalge,
age 60 years occupation household & Agri.
R/o Nalge Galli, Kandhar Taluka Kandhar Dist. Nanded.

...Petitioner

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
Department of Urban Development,
M.S., Mantralaya, Mumbai.
2. The Under Secretary,
Department of Urban Development,
M.S., Mantralaya, Mumbai.
3. The District Collector,
Nanded
4. The Chief Officer,
The Municipal Council, Kandhar
Taluka Kandhar District Nanded

Mr. R.S. Deshmukh, Advocate for petitioner.
Mr. A.R. Kale, Asstt. Govt. Pleader for respondents No. 1 to 3.
Mr. V.D. Hon, Senior Advocate, I./by Mr. A.M. Gaikwad,
Advocate for respondent No.4

CORAM : S. V. GANGAPURWALA
AND
A. M. DHAVALA, J J.

DATE : 25th APRIL, 2019

ORAL ORDER:

1. The petitioner assailed the letter dated 23rd May 2016. Under the said letter, the Government has changed the purpose of sanction of the amount under the *Vaishishtya purna* Scheme.

2. The Municipal Council, Kandhar, was sanctioned total amount of Rs. 11,25,00,000/- under *Vaishishtya purna* Scheme for the construction of shopping complex. It appears that the purpose of said *Vaishishtya purna* scheme is to give amount so that the Municipal Councils can enrich themselves and they would become self sufficient. It was with that view amount of about Rs. 11,25,00,000/- was sanctioned to the Municipal Council and the same was also paid in stages. From the amount of Rs. 11,25,00,000/- Municipal council, Kandhar, purchased the land for the purpose of constructing shopping complex for Rs. 3,25,00,000/-. Under the impugned letter the purpose has been changed from construction of shopping complex to developmental works within the limits of Municipal Council for gardening and fitting of LED lights.

3. Mr. Deshmukh, learned Counsel submits that the petitioner is ex-President of the Municipal Council, Kandhar. Local Member of the Legislative Assembly without any concern and authority impressed the Hon'ble Chief Minister to change the

purpose. It was made to represent by the local Member of Legislative Assembly to the Hon'ble Chief Minister that the Municipal Council has passed resolution to change the purpose, it appears that the Hon'ble Chief Minister granted sanction to the changed purpose. According to the learned Counsel, the local M.L.A. and interested persons had even taken steps to disqualify the President of the Municipal Council. Learned Counsel submits that the petitioner had applied to the Municipal Council to give the copy of the resolution purportedly passed to divert the amount allotted/distributed to the Municipal Council under *Vaishishtya purna* scheme from the Government of Maharashtra for purchase of land. The reply is received from the Municipal Council that no such resolution has been passed. Said reply is received on 22nd February 2019. According to the learned Counsel, the beautification work, garden and fitting of LED lamps would not enrich the Municipal Council nor it would give permanent source of income to the Municipal Council and the purpose for which funds were provided would be frustrated.

4. Mr. Hon, learned Senior Advocate for the Municipal Council submits that the resolution certainly is not passed with regard to the change of the purpose, however, resolution is passed by the Municipal Council to construct the shopping complex on

Build, Operate and Transfer basis. The amount that is received under *Vaishishtya purna* Scheme would not be sufficient to construct the shopping complex and, as such, it was decided to construct the shopping complex on B.O.T. basis. Copy of the resolution is placed on record and the same is dated 6th March 2016 and thereafter the decision has been taken to change the purpose by the State whereby the Municipal Council was permitted to utilize the funds sanctioned by the government for beautification work, such as, construction of chowk, gardening, fitting of LED lights and other developmental works, which would be useful.

5. The learned Assistant Government Pleader submits that the funds were provided to be utilized in the financial year 2016-2017 by the end of March 2017. Unutilized amount of Rs. five crores has been returned by the Municipal Council to the State. Because of the interim order passed, remaining amount could not be taken back by the State. According to the learned Assistant Government Pleader, the change of purpose is under the sanction of the Hon'ble Chief Minister. No illegality is committed in the same.

6. It appears that because of the existing dispute between the members of the Municipal Council, the amount which has been received, has remained unutilized. The purpose of *Vaishishtya*

Purna Scheme under Govt. Resolution dated 18th November 2015 appears to be that the amount is to be provided for new innovative scheme that may be undertaken by the Municipal Council. The work under the said scheme should be for public purpose to provide basic amenities to citizens and the work that is to be undertaken should be such that in future the Municipal Council would become self sufficient and the same would be source of income in future.

7. It is with this purpose, amount of Rs. 11,25,00,000/- was sanctioned under different resolutions to the Municipal Council, Kandhar, for construction of the shopping complex. From the amount of Rs. 11,25,00,000/-, an amount of Rs. 3,25,00,000/- was also spent for purchase of the land so as to construct the shopping complex. The funds were utilized for the purpose for which it was sanctioned. However, it appears that on the basis of representation of the local Member of Legislative Assembly, the purpose was changed under letter dated 23rd May 2016. There appears to be a resolution dated 6th March 2016 that the shopping complex should be constructed on B.O.T. basis.

8. During the interregnum, an amount of Rs. five crores has been returned back to the State on account of its non-utilization. It is unfortunate that even though funds were given to

the Municipal Council, same were not utilized by the Municipal Council and the amount had to be returned back to the State. For such state of affairs, it is elected members of the Municipal Council that are responsible. Once amount was received, it was their duty to see that the amount is utilized for the purpose for which it was given immediately. Now because of the interim orders passed, it appears that only amount of Rs. three crores remains with the Municipal Council. Said amount will not further the said purpose.

9. Everything would depend on future contingencies of the Government taking decision to re-sanction the said amount.

10. Construction of the shopping complex of the Municipal Council from the funds that have been received would have enriched the Municipal Council and the same would have been the permanent source of income to the Municipal Council. If some short fall remained for construction of the shopping complex, same could have been raised from the public funds or otherwise. It is because of not taking proper action on the part of the members of the Municipal Council, the Municipal Council as on today lost amount of Rs. five crores.

11. Considering the above that the change of the purpose by the State with respect to sanction of amount of

Rs.11,25,00,000/- to the Municipal Council, was without any resolution by the Municipal Council and the allotment of said amount was under the orders of the Governor, the purpose could not have been changed under letter dated 23rd May 2016 issued by the Addl. Secretary, Urban Development Department, Mumbai - respondent No.1. The impugned communication is set aside. It is for the Municipal Council now to take steps to approach the Government for the purpose of getting back the funds. Amount of Rs. three crores today lying with the Municipal Council shall remain for three months, subject to further decision taken by the Government. The Government is at liberty to take decision in the matter considering the proposed needs of the Municipal Council.

12. The writ petition is accordingly disposed of. No costs.

13. In view of disposal of the writ petition, the civil application stands disposed of.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE