

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****WRIT PETITION NO. 28 OF 2018**

Global Hospital and Research Centre,)
(A Trust registered under the)
Bombay Public Trust))
Bhramkumari's Raj Yoga Centre,)
“Om Shanti”, 48, Swastic Centre,)
N.S.Road No.3, Juhu Scheme,)
Vile Parle (West), Mumbai – 400 056) Petitioner

Versus

1. Municipal Corporation of Grt. Mumbai)

Established under M.M.C.Act, 1888,)
Mahapalika Marg, Chatrapati Shivaji)
Terminus, Mumbai – 400 001)

2. The Municipal Commissioner,)

Municipal Corporation of Grt. Mumbai)
Mahapalika Marg, Chatrapati Shivaji)
Terminus, Mumbai – 400 001)

3. Bombay Suburban Electric Supply Lt.,)

A Company Incorporated under the)
provisions of The Indian Companies Act, 1913)
And having its registered office at)
Nagin Mahal, Veer Nariman Road,)
Mumbai – 400 020) Respondents

Mr.Vineet Naik, Senior Advocate, a/w. Ms.Vaishali Sanghavi,
Mr.Simerpreet Singh Chabra, i/b. M/s.Solicis Lex for the Petitioner.

Mr.Joaquim Reis, Senior Advocate, a/w. Mr.Abhijeet Joshi, Ms.Sheetal Metakari, i/b. Mr.Jernold Joseph Xavier for the Respondent nos. 1 and 2.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 14th JUNE, 2019
PRONOUNCED ON : 23rd JULY, 2019

JUDGMENT :

By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 10th October, 2017 passed by the learned Municipal Commissioner, Municipal Corporation of Greater Mumbai terminating the agreement dated 3rd April, 2002 executed between the petitioner, Municipal Corporation of Greater Mumbai and Bombay Suburban Electric Supply Limited and directing the petitioner to remove itself along with staff employed by it from the hospital premises situated at S.V.Road, Opposite Andheri Railway Station within 15 days from the receipt of the said order and handover the management and maintenance of the hospital to the respondent no.1. It is further directed that the petitioner failing to handover the management and maintenance of the hospital to the respondent no.1. the Municipal Commissioner (EH) is authorized to take possession thereof from the petitioner without any further notice. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioner is a charitable organization registered under the provisions of Maharashtra Public Trust Act, 1950. Sometime in the year 2001, the Bombay Suburban Electric Supply Limited had constructed a building for Municipal General Hospital at CTS NO.439, S.V.Road, near Andheri Railway Station, Andheri (West), Mumbai – 400 058 which land was owned by the respondent no.1. The

respondent no.1 was desirous of handing over the said building to a reputed organization to control the management and maintenance of the hospital. It is the case of the petitioner that the petitioner showed its willingness to take up the maintenance and management of the said building in order to provide charitable services to the poor and needy by running a hospital on 'No Profit No loss' basis.

3. On 3rd April, 2002, the petitioner, the respondent nos.1 and 3 entered into a Tripartite Agreement named as 'Maintenance And Management Agreement For BSES Municipal General Hospital' on various terms and conditions set out therein. The said agreement was for a period of 30 years.

4. It is the case of the petitioner that the petitioner had received the said constructed building without any infrastructure. The petitioner had constructed a modern hospital with 13 bed Intensive Care Unit, 5 Bed Neo-natal Intensive Care Unit, 14 Bed Intensive Coronary Care Unit, 10 Bed Dialysis Centre, 24*7 Blood Bank, Pathological Laboratories, Surgical Pathological Laboratory, Micro Biology Unit, 5 Surgical Suites including Cardiac Surgical Unit, 24 hours Casualty Department, CT Scan Centre, Dental Care, ENT, Ophthalmic, Orthopaedic (including joint replacements), Endoscopic Centre and Cancer Services, Comprehensive Cleft Centre, modern Cardiac Cathlab and spiritual service.

5. It is the case of the petitioner that it has spent about Rs.20 crores by raising funds from all over India in order to create a multi-specialty

hospital. It is the case of the petitioner that it is providing free medical camps and treatment to the needy and poor and also treating senior citizens at a discounted prices and also runs general and cardiac ambulances and mobile van services. According to the petitioner, about more 500 people are working in the said hospital including doctors, staff, nurses who are dedicated to treat the poor and needy and being a part of Brahmakumari's World Spirituality University, which has over 8500 centres in over 140 countries, who works for peace. The petitioner is associated for providing the needy at their best possible ways. The petitioner trust also runs 120 bed general hospital in Mount Abu, 50 bed Eye hospital, 30 bed Trauma hospital and a Rural hospital in Abu Talheti. All these hospitals are in backward areas of Sirohi District in Rajasthan.

6. It is the case of the petitioner that the respondent no.1 cancelled a spiritual function organized by the petitioner proposed to be held on 13th March,2011, on a complaint from some suspicious and fictitious entity by making some officials of respondent no.1 to visit the hospital on 12th March,2011 which function was proposed to be held on a very next day. The petitioner thereafter received a notice dated 24th August,2011 making certain baseless allegations of violations of terms of the Tripartite Agreement. The petitioner replied to the said notice vide letter dated 17th September,2011 denying the said allegations. There was no response from the respondent no.1 to the said reply dated 17th September,2011. The petitioner was once again served with the notice dated 31st May,2012 alleging breach of contract on the part of the petitioner. The petitioner vide its reply dated 22nd October,2012

denied the said allegations. The Head Office of the petitioner thereafter received an undated notice repeating the same allegations made in the notice dated 24th August,2011. The petitioner responded to the said notice by letter dated 17th September,2011 and requested for a personal hearing.

7. On 5th July, 2013, the respondent no.1 issued another notice alleging breach of contract by the petitioner by allegedly carrying out additions or alterations and calling upon the petitioner to show cause within 14 days by invoking clause 21 of the said agreement. The petitioner vide letter dated 30th August,2013 replied to the said notice dated 5th July, 2013 and contended that the inspection was conducted by the Architect and Chief Fire Officer of the respondent no.1 with reference to the amended plan of the hospital of December 2005. The said architect submitted a report where no adverse observations or remarks were found against the petitioner.

8. On 5th July, 2014, the petitioner was served with a termination notice by the respondent no.1. The petitioner vide its letter dated 11th July, 2014 replied to the said notice dated 5th July, 2014 and denied the allegations made therein. The petitioner thereafter filed a writ petition bearing lodging no.1900 of 2014 in this court. This court recorded the statement made by the learned senior counsel for the respondent no.1 that the respondent no.1 was withdrawing the impugned order and the petitioner would be given a fresh hearing. This court accordingly disposed of the said writ petition with liberty to the Corporation to issue fresh notice and give hearing to the petitioner.

9. On 7th October,2014, a personal hearing was scheduled to be held by the respondent no.1. The petitioner was directed to file its written submissions. On 20th October,2014, the petitioner filed its written submissions along with the audited accounts of the petitioner for the year 2013-2014. The petitioner was thereafter given hearing by the new Municipal Commissioner who took over the responsibility of the respondent no.2 on 30th April,2015. It is the case of the petitioner that whilst the petitioner was all set for hearing to be held on 8th July, 2015, a fresh show cause notice dated 2nd June, 2015 was received by the petitioner on 4th July, 2015. The petitioner filed written submissions on 15th September,2015 in response to the said show cause notice.

10. On 29th December,2015 the respondent no.2 passed an order against the petitioner. The petitioner filed a civil suit before the Bombay City Civil Court, Dindoshi Division. The Bombay City Civil Court however refused to grant any interim relief in favour of the petitioner. The petitioner therefore filed an appeal from order bearing no.271 of 2016 impugning the said order before this court. On 3rd May,2016, by consent of parties, this court disposed of the said appeal from order by directing the respondent no.1 to issue a fresh show cause notice to the petitioner based on the agreement dated 3rd April, 2002 entered into between the petitioner. It was stated in the said order that the show cause notice would be on the basis of the complaints, correspondence, annexed to the affidavit in reply of the Municipal Corporation filed in the said Appeal from Order No.271 of 2016 which

was containing pages 121 to 498 as well as any other additional documents till the date the show cause notice was issued which the Municipal Corporation may wish to rely upon.

11. The petitioner was granted liberty to take inspection of any additional documents other than the documents annexed at pages 121 to 498 of the appeal paper book within two days of the receipt of show cause notice. The Municipal Corporation was directed to grant inspection of such documents within a period of three days thereafter. The petitioner was directed to file its reply to the show cause notice within a period of three weeks after inspection of the documents, if any, or within a period of three weeks from the receipt of the show cause notice if no inspection of the documents was sought for. This court directed the Municipal Corporation to grant a personal hearing to the petitioner as expeditiously as possible and shall intimate the petitioner the date of hearing one week in advance.

12. It was directed that the Municipal Corporation shall pass appropriate order after hearing the petitioner. This court directed the Municipal Commissioner to decide the issue afresh. This court by the said order quashed and set aside the order dated 29th December, 2015 and directed the Municipal Commissioner to decide the show cause notice on its own merits without being influenced by the observations made in the order dated 29th December, 2015. This court kept all the contentions of the parties on merits of the matter open. The petitioner withdrew L.C.Suit No.97 of 2016 filed before the Bombay City Civil Court.

13. Pursuant to the said order passed by this court, the Municipal Commissioner gave a personal hearing to the petitioner on 8th May,2017. The Municipal Commissioner passed an order on 10th October,2017 terminating the Tripartite Agreement dated 3rd April,2002 and directed the petitioner to remove itself along with staff employed by it from the hospital premises within 15 days from the date of receipt of the said order and handover the management and maintenance of the hospital to the respondent no.1.

14. The petitioner has impugned the said order dated 10th October,2017 in this petition. On 31st October,2017, this court passed an *ad-interim* stay from taking forcible possession of the hospital premises against the respondents. On 6th November,2017, this court admitted this petition and granted interim relief in terms of prayer clause (iii). By an order dated 24th July, 2018 passed by this court, hearing of this writ petition came to be expedited in the Notice of Motion No.93 of 2018 filed by the respondent no.1 herein, *inter alia* praying for vacating the *ad-interim* under order dated 31st October,2017. This court refused to vacate the interim order dated 6th November,2017.

15. Learned counsel for the petitioner and the respondent no.1 commenced their arguments. On 13th June, 2019, when the arguments were commenced by the learned senior counsel for the petitioner, this court pointed out to the learned senior counsel for the parties about my visit to a Centre of Brahma Kumaris Head Quarters, Pandav Bhawan,

Mount Abu, Rajasthan as a tourist in the month of May 2019. Learned senior counsel for both the parties jointly stated that their respective clients have no objection if the matter is heard by this court. This court recorded the statement made by the learned senior counsel for the parties and heard this writ petition.

16. Mr.Vineet Naik, learned senior counsel for the petitioner invited my attention to various annexures to the writ petition and also to some of the documents forming part of the affidavit in reply filed by the respondent no.1 in Appeal from Order No.271 of 2016 and also some of the photographs. He invited my attention to various clauses of the agreement 'Maintenance And Management Agreement For BSES Municipal General Hospital' dated 3rd April, 2002 executed between the petitioner, respondent nos.1 and 3. He submits that under the said agreement, the respondent nos. 1 and 3 had granted rights in favour of the petitioner to maintain and manage the said hospital for an initial period of 30 years with a right to seek extension for such further period of sole discretion of the Municipal Commissioner.

17. It is submitted that the petitioner had received the said constructed building without any infrastructure from the respondent nos. 1 and 3. The petitioner had constructed various units referred to aforesaid in the said building by raising funds from all over India by way of donation and have spent about Rs.20 crores in order to create a multi-specialty hospital. He submits that more than 500 people are working in the said hospital including doctors, staff, nurses who are dedicated to treat the poor and needy. The petitioner runs thousands of

centres in all over 140 countries, who works for peace. The petitioner is also associated for providing needy at their best possible ways.

18. It is submitted by the learned senior counsel that till 2011, there were no complaints made by the respondents against the petitioner for running the said hospital. He submits that the notice dated 24th August, 2011 issued by the respondent no.1 alleging breaches was duly replied by the petitioner by letter dated 17th September, 2011. There was no response to the said reply dated 17th September, 2011. The notice thereafter was issued by the respondent no.1 on 31st May, 2012 alleging certain breaches which were denied by the petitioner vide letter dated 22nd October, 2012. Thereafter there was no response to the said reply dated 22nd October, 2012.

19. Learned senior counsel invited my attention to the show cause notice dated 22nd July, 2016, issued by the respondent no.1 to the petitioner. It is submitted that the said show cause notice was totally vague and not in compliance with the order dated 3rd May, 2016 passed by this court in Appeal from Order No.271 of 2016 filed by the petitioner before this court. He submits that insofar as alleged breach of clauses 10 and 11 of the agreement between the parties and more particularly non-allotment of 5% and 10% beds to preferential basis to respondent nos. 1 and 3 are concerned, it is submitted that at no point of time, the petitioner had refused to allot the beds to any of the patients referred by the respondent nos. 1 or 3. It is submitted that the petitioner was not required to reserve and keep 15% beds in the hospital vacant all the time.

20. It is submitted by the learned senior counsel that the respondent no.1 did not give any opportunity to the petitioner to remedy the alleged breaches complained by the respondent no.1 in compliance with clause 21 of the said agreement. It is submitted that though there is a reference made to some of the alleged complaints made by the local politicians and others in the show cause notice, the learned respondent no.2 in the impugned order has considered few other alleged complaints which were not referred in the show cause notice. The impugned order is not based on the alleged complaint referred in the show cause notice. There was thus no opportunity for the petitioner to deal with those three alleged complaints which are referred by the respondent no.2 in the impugned order.

21. It is submitted by the learned senior counsel that though the petitioner had filed a detailed reply to the show cause notice and also the written submissions before the respondent no.2, most of the submissions made by the petitioner and the documents produced have not been considered by the respondent no.2 in the impugned order. Learned senior counsel invited my attention to the detailed reply to the show cause notice filed by the petitioner and would submit that even in the said reply, the petitioner had shown its readiness and willingness to rectify any short coming/breaches if pointed out by the respondents to the petitioner.

22. It is submitted by the learned senior counsel that various allegations made in the compilation of various documents annexed to

the affidavit in reply filed by the respondent no.1 in the Appeal from Order filed by the petitioner could not have been relied upon by the respondent no.2 in the impugned order since those allegations carved out from those documents were specifically not included in the show cause notice and an opportunity to deal with those allegations specifically was not provided to the petitioner.

23. Mr.Naik, learned senior counsel in his alternate submission invited my attention to the some of such complains allegedly received by the respondent no.1 against the petitioner alleging higher rates charged by the petitioner in respect of some of the reports or medicines allegedly charged by the petitioner over and above the rate prescribed in the said agreement and complaints relating to alleged additions/alterations made by the petitioner. He submits that all such complaints made were at the instance of some of the local politicians against the petitioner with ulterior motives, without any basis and without any supporting documents.

24. Learned senior counsel dealt with the complaint of one Mr.Mohsin Haider, reply of the petitioner to the said complaint, the complaint made by Mrs.Shubhda Patkar to the Mayor of respondent no.1 who was referred to Nanavati Hospital by the petitioner, the endorsement made by Mayor on the said complaint made by the said Mrs.Shubhda Patkar referring the matter to the Assistant Municipal Commissioner for investigation and needful, response of the petitioner to the letter addressed by the Assistant Municipal Commissioner in that regard on 30th October,2015. It is submitted that the said patient had

met with a road accident and was initially given treatment at Sanjeevani Hospital owned by another institution. The relatives of the said patient was insisting to shift the said patient to the Nanavati Hospital. The petitioner accepted the request of the relatives of the said patient and thus there could be no breach of any of the provisions of the agreement entered into between the petitioner, respondent no.1 and respondent no.3.

25. Learned senior counsel also dealt with the complaint of Mr.Ismail Makwana and the reply of the petitioner to the said complaint, complaint of Mr.Mohammed Hanif Hassan Shaikh and response of the petitioner thereto.

26. Insofar as the allegation of charging higher amount of some of the tests carried out by few patients in the hospital managed by the petitioner is concerned, learned senior counsel invited my attention to the rates prescribed in the agreement entered into between the parties and the explanation as to in which category those parties whose instances were relied upon in the impugned order would fall under the said agreement. He submits that none of those alleged instances relied upon by the respondent no.2 in the impugned order were even forming part of the show cause notice. There were no cases of any over charging to any of the patient. He submits that in any event, even if according to the respondent no.1, few patients were charged more than the amount prescribed in the agreement, if any opportunity would have been given to the petitioner to remedy the alleged breaches at the relevant time, the petitioner would have explained their say on such complaint or would

have remedied such alleged breaches within the time prescribed under the agreement and thus few such alleged instances could not have been the ground for termination of the agreement which was atleast for 30 years from the date of execution thereof.

27. Insofar as the allegations made by the respondent no.1 about the alterations and additions in some portion of the hospital building by the petitioner is concerned, learned senior counsel invited my attention to clauses 6, 8 and 9 of the agreement and would submit that under the said agreement the petitioner was handed over the hospital building along with the plant and machinery, equipments and furniture listed in Annexure 2 to the said agreement which were bear minimum. Under the said agreement, the petitioner was required to maintain and manage 100 bedded hospital without any financial burden on the respondent nos. 1 and 3 with OPD, IPD and operation theatre, services in medicine, surgery, pediatrics and Gynaec-obst with diagnostic facilities in pathology and radiology. In addition, the petitioner was permitted to provide additional facilities like ICU, CT-Scan, stress test, day & night chemist shop, meditation and any other related activities without any financial burden on the respondent nos.1 and 3.

28. The petitioner was also permitted to carry out alterations and additions in the civil work of the hospital using full available FSI and for constructing an additional floor at their own cost to accommodate additional services subject to approval of Municipal architect. It was agreed by the petitioner that the right, title and interest and the ownership of such additional construction/floor shall vest with the

respondent no.1. The petitioner shall not claim any title, interest, ownership and compensation towards the said civil works and additional constructions.

29. Learned senior counsel for the petitioner invited my attention to the report dated 11th August, 2017 issued by the Deputy Chief Fire Officer, Mumbai Fire Brigade certifying that the fire safety requirements issued from the Chief Fire Officer's Department dated 30th January, 2017 had been found complied with. The petitioner had submitted a copy of the testified certificate of Fire Suppression System installed in the premises. The Deputy Chief Fire Officer issued a complied certificate in favour of the petitioner without prejudice to any legal matters pending in court of law, if any.

30. Pursuant to the liberty granted by this court, the petitioner filed an affidavit dated 17th June, 2019, annexing a copy of the acceptance of completion issued by the Municipal Architect on 11th June, 2009 in respect of the construction of the 7th floor by the petitioner. In the said affidavit, the petitioner has also placed on record that another application for grant of occupation certificate to the respondent no.1 was made on 29th May, 2009 stating that development work of 7th floor in the said hospital building had been completed. The petitioner had submitted various documents such as architectural plans/drawings, structural plans, structural stability certificate dated 3rd June, 2009 and soft copy of C.D. of architectural plans.

31. In the said affidavit, it is placed on record that the office staff of Chief Medical Superintendent had visited the premises of the petitioner and after survey of the premises, it was informed to the petitioner that the completion work was accepted by the respondent no.1. It is submitted that the allegation of the respondent no.1 that the petitioner had carried out any additions or alterations contrary to the provisions of the agreement entered into between the parties is *ex-facie* incorrect. It is submitted that in any event, the respondent no.1 would be the owner of the said additional construction in terms of clause (6) of the said agreement.

32. Learned senior counsel for the petitioner on instruction from the petitioner submits that the charity commissioner has not withdrawn any benefit under section 41AA granted to the petitioner till date. It is submitted by the learned senior counsel that the allegation made in the show cause notice were general and vague. The explanation of the petitioner was a plausible explanation and thus could not have been rejected in a casual manner on an erroneous interpretation of clauses (10) and (11) and the other provisions of the said agreement. The petitioner has spent huge amount on renovation and introducing several additional facilities permitted under the said agreement for carrying out the hospital successfully for the benefit of the large number of public on 'no profit no loss' basis. The order of termination thus passed by the respondent no.2 abruptly cannot be sustained. The provisions under clauses (21) and (22) of the agreement have to be read harmoniously. Clause (22) of the agreement has not been invoked by the respondent

no.2 admittedly.

33. Learned senior counsel also invited my attention to the interim order passed by this court on 6th November,2017 while admitting this petition and making a strong observation against the respondent no.1 while granting interim relief.

34. It is submitted by the learned senior counsel that the NOC from the Chief Fire Officer dated 11th August,2017 was already issued before the date of the impugned order passed by the respondent no.2. A copy of the said NOC was forwarded to the respondent no.1 by the petitioner. The respondent no.1 however did not produce the copy of the said NOC before the respondent no.2 though had filed written submissions after closure of the hearing by the respondent no.2.

35. It is submitted by the learned senior counsel that the petitioner is a charitable trust funded by various agencies being a global non-profit NGO in Zurich (Switzerland) in regard to the treatment lip-cleft patients. The petitioner was not entitled to any funds from the respondent no.1 or respondent no.3 for running the said hospital. All the patients under the RGJAY scheme belonged to the poor and needy section of the society. There were no charges stipulated in the agreement for the services like orthopedic, cardiology, nephrology which services were not part of the said agreement entered into between the parties. The petitioner had not insisted any of the patient to buy medicines from the hospital pharmacy. The patients were given an option to buy the medicines from the pharmacy or from any outside

chemist. The charges for patients admitted in the hospital were not stipulated in the agreement by the parties. No complaint from any needy or poor alleging any breaches of the agreement was provided to the petitioner by the respondent no.1 despite several letters to share the alleged complaints if any.

36. It is submitted by the learned senior counsel that 33% of the in-patient beds were and have been used only for poor and needy persons who were below the income criteria fixed by the respondent no.1 or the State Government. The cleft-lip/RGJAY patients were not admitted by the petitioner in the 'MCGM quota beds'. He submits that only when group of 11 children from the neighbouring State of Gujarat were treated for cleft-lip disorders, they were admitted for the treatment. There is no such term in the agreement that the patients from outside Maharashtra cannot be admitted by the petitioner.

37. Mr.Joaquim Reis, learned senior counsel appearing for the respondents on the other hand submits that the petitioner has prayed for specific performance of the agreement dated 3rd April,2002 in this writ petition by praying for quashing and setting aside the impugned order passed by the respondent no.2 which is not permissible in view of section 14(1)(C) of the Specific Relief Act, 1963. He submits that the respondent no.2 has rightly terminated the agreement entered into between the petitioner, the respondent nos. 1 and 3. In support of this submission, learned senior counsel placed reliance on the judgment of this court in case of **Spice Digital Ltd. vs. Vistaas Digital Media Pvt. Ltd., 2012 SCC OnLine Bom 1536** and in particular paragraphs 8, 13

and 21, judgment delivered by the Division Bench of this court in case of ***Oil and Natural Gas Corporation Ltd., Mumbai vs. M/s.Streamline Shipping Co.Pvt.Ltd., 2002(3) Mh.L.J.530***, and in particular paragraphs 6 and 10 and judgment of Supreme Court in case of ***Indian Oil Corporation Ltd. vs. Amritsar Gas Service and others, (1991) 1 SCC 533*** and in particular paragraphs 2, 8 to 14.

38. It is submitted by the learned senior counsel that the agreement entered into between the respondent nos. 1 and 3 was in the realm of contract under clause (27) and thus the termination of the contract by the Municipal Commissioner on the petitioner committing breaches of the said agreement is binding and final on the petitioner. He submits that there is no dispute raised by the petitioner that the respondent no.2 had not complied with the principles of natural justice before passing the impugned order. He submits that since there are two views possible, this court shall not interfere with the impugned order passed by the respondent no.2. There are no allegations of *malafide* against the respondents made by the petitioner in this petition or before the respondent no.2.

39. Insofar as the services of providing treatment of lip-cleft patients by the petitioner is concerned, the petitioner has been admittedly funded by the international NGO which is not permissible under the agreement entered into between the parties. He submits that along with show cause notice issued by the respondent no.1, a compilation containing large number of documents including the complaints received from various patients and members of public received by the

respondent no.1 against the petitioner were relied upon. A copy of such compilation forming part of the show cause notice was duly served upon the petitioner. The petitioner was also given inspection of all those documents.

40. The next submission of the learned senior counsel is that under the agreement dated 3rd April,2002, the petitioner had agreed to provide the charitable services to the poor people by running the hospital on 'No Profit No loss basis'. The petitioner was however charging amounts towards various tests and other facilities more than the charges permissible under Annexure (3) to the agreement entered into between the parties. It is the case of the petitioner itself that the petitioner has collected more than Rs.20 crores towards donation and has spent on running this hospital. He submits that one entire floor has been put up by the petitioner without approval of the Municipal Architect and in violation of the agreement. It is submitted by the learned senior counsel that the petitioner was under an obligation to allot 5% beds out of 33% in-patients reserved under clause (10) for the respondent nos. 1 and 3 each on preferential basis. The petitioner was also under obligation to reserve 10% beds on preferential basis from the remaining 67% from the in-patients category on the rates approved by the advisory committee. There is gross violation of this clause also committed by the petitioner.

41. Insofar as validity of the termination raised by the petitioner is concerned, learned senior counsel strongly placed reliance on clauses (21) and (22) of the agreement. He submits that the power under

clause (22) can be exercised by either party by giving written notice of six months which power is in addition to the power of the respondent no.1 to terminate the agreement in the event of the petitioner committing breaches in terms of clause (21) after expiry of 30 days if any breach is not remedied by the petitioner.

42. Learned senior counsel placed reliance on the ground 18-FF in the petition and would submit that the petitioner is not a poor organization and has been collecting donations and has been funded by the international organization.

43. Insofar as the issuance of the show cause notice by the respondent no.1 is concerned, it is submitted by the learned senior counsel that the show cause notice has been issued by the respondent no.1 on the basis of the complaints, correspondence annexed to the affidavit in reply of the Corporation filed in the Appeal from Order in compliance with the order dated 3rd May,2016 passed by this court. The petitioner was already offered inspection of all these documents to enable the petitioner to file reply to the show cause notice.

44. It is submitted by the learned senior counsel that the petitioner had made various additions and alterations to the existing building without obtaining prior approval of the Municipal authorities under clause (21) of the agreement. The petitioner has submitted a plan to the Municipal Architect *post facto* in breach of clause (21) of the said agreement. Learned Municipal Commissioner has considered this aspect in great detail in the impugned order. The Charity

Commissioner has also initiated action against the petitioner for withdrawal of concession granted under the provisions of Maharashtra Public Trust Act, 1950. The petitioner has admitted in the reply to the show cause notice about various additions and alterations made by the petitioner without permission of the Municipal Architect and more particularly in respect of the construction carried out on the 7th floor. The petitioner has not produced any letter or application alleged to have been filed by the petitioner for seeking permission of Municipal Architect before carrying out such additions or alterations.

45. Learned senior counsel placed reliance on various pages of the compilation in support of his submission that the petitioner had charged various amounts in excess of the amounts permitted in Annexure (III) to the agreement entered into between the parties and more particularly in respect of x-ray and sonography. It is submitted by the learned senior counsel that the complaints are still received by the respondent no.1 from various patients against the petitioner alleging various breaches of the agreement. He relied upon the complaints from pages 124, 132, 139, 142, 149, 153, 162, 167, 170, 176, 178 and 182.

46. It is submitted by the learned senior counsel that in view of the serious breaches of the petitioner committed by the petitioner of the terms and conditions of the agreement entered into between the parties, it would be in public interest that the respondent no.1 shall be allowed to run the said hospital itself for better administration and for providing services to the needy and poor patients.

47. Mr.Vineet Naik, learned senior counsel for the petitioner in rejoinder submits that the petitioner has not prayed for any specific performance of the agreement between the parties in this writ petition but has only impugned the order passed by the Municipal Commissioner terminating the agreement entered into with the petitioner on various legal and tenament grounds. None of the judgments thus relied upon by the learned senior counsel for the respondents would apply to the facts of this case. He submits that each and every finding of the respondent no.2 and the conclusion drawn is totally perverse. He submits that even in respect of the cleft treatment, the patients were given free treatment from the funds funded by the international NGO. He submits that there is no bar under the agreement entered into between the parties for collecting any donation by the petitioner. The petitioner is a charitable organization and has been operating the said hospital based on the donations in view of the petitioner being obliged to run the hospital on 'No Profit No loss' basis.

48. Insofar as the submission of the learned senior counsel for the corporation regarding additions and alterations is concerned, learned senior counsel invited my attention to the relevant paragraphs of the reply filed by the petitioner to the show cause notice in this regard and would submit that the 7th floor of the hospital has been built after having taken necessary permission and approval from the Municipal Architect and Chief Fire Officer. The petitioner has also annexed a copy of such NOC from the Chief Fire Officer to the said reply filed to the show cause notice. He submits that those changes were

specifically made to optimize the use of the limited space and to make it more functional for providing greater ease and comfort of patients and staff.

49. The Municipal Architect and the Chief Fire Officer had carried out a joint inspection of the building on 21st March, 2013 with reference to the amended hospital building plan of December 2005. The Municipal Architect had submitted its report thereafter and made various observations. The Municipal Architect did not make any adverse observation or remark in terms of the additions or alterations made in the hospital with reference to the amended plan of 2005. The Municipal Architect observed that the internal changes being executed by the petitioner may have been done considering the specific uses/utilizes required from the hospital operations point of view.

50. Learned senior counsel submits that the petitioner did not commit any violation of any FSI norms, no such violations are alleged by the respondent no.1 or the Deputy Chief Fire Officer. He submits that the petitioner has not carried out any addition or alteration which would affect the structural stability of the building. The petitioner only changed the tiles for aesthetic purposes which work was carrying out as the tiles had become old and were in an ageing worn out condition and was carried out solely at the expenses of the petitioner. The intimation of carrying out the said work was already given to the Municipal architect from time to time. Learned senior counsel placed reliance on several letters referred at pages 77 to 79 of the petition forming part of the reply given by the petitioner to the show cause

notice. It is submitted that the occupation certificate is already granted by the respondent no.1 in respect of 7th floor. The NOC for 7th floor is already issued by the Fire Officer. Learned senior counsel sought liberty to file an affidavit to place on record the certificate issued by the Municipal Architect regarding the construction of 7th floor. He submits that the Municipal Architect has not alleged any violation against the petitioner of allegedly not obtaining prior permission without carrying out any addition/alteration.

51. It is submitted by the learned senior counsel that the entire show cause notice issued by the respondent no.1 itself was totally vitiated and without any particulars in support of the alleged breaches against the petitioner. The learned commissioner placed reliance on various material which was not forming part of the show cause notice. The entire compilation of documents relied upon before this court in the Appeal from Order itself could not be part of the show cause notice. The petitioner could not have culled out the alleged breaches from hundred of documents annexed to the show cause notice and then to deal with those allegations specifically. It is submitted that if the impugned order is not set aside, the petitioner would suffer tremendous hardship. Large number of patients who are treated by the petitioner free of charges being the poor and needy, would deprive of such medical assistance. In future, if any breaches of any of the provisions of the agreement are alleged by the respondents against the petitioner and if an opportunity of remedying those breaches are given in accordance with the provisions of the agreement, the petitioner would remedy those breaches, if any, within the time permitted under the

agreement.

Reasons and Conclusion:-

52. There is no dispute that by an agreement dated 3rd April 2002 between the petitioner, the respondent nos. 1 and 3, the petitioner was permitted to maintain and manage the hospital for an initial period of 30 years, which could be extended for such further period at the sole discretion of the respondent no.2 on the terms and conditions set out in the said agreement. The petitioner was permitted to maintain the said hospital building consisting of basement, ground floor and six floors along with the plant machinery, equipment and furniture, etc. listed that in annexure 2 to the said agreement at the no loss no profit basis. The respondent no.1 agreed to provide exclusive, uninterrupted, unobstructed and unhindered use by the petitioner for the said hospital.

53. It was also provided in the said agreement that an Advisory Committee will be formed consisting of three representatives each of petitioner, respondent no.1 and 3. It was agreed that Mayor/Deputy Mayor or his nominee, Municipal Commissioner. Additional Municipal Commissioner or his nominee and Chief Accountant or his nominee would be the three representatives of the respondent no.1. The Advisory Committee will supervise the maintenance and management of the hospital and the recommendations and suggestions made by the majority of such Advisory Committee will be binding on the petitioner.

54. In clause 6 of the said agreement, it was provided that the petitioner was permitted to carry out alterations and additions in the civil work of the hospital using full available FSI and constructing of an additional floor at their own cost to accommodate additional services subject to approval of Municipal Architect. The right, title, interest and NOC for such additional construction/floor shall vest with the respondent no.1. The petitioners shall not claim any title, interest, ownership and compensation towards the said civil work and additional constructions.

55. Clause 8 of the said agreement provided that the petitioner will maintain and manage 100 bedded Municipal General Hospital, which shall be initially started with 80 beds. The petitioner shall run the hospital without any financial burden on the respondent nos.1 or 3 with OPD, IPD and Operation Theater, services in Medicine, Surgery, Pediatrics and Gynaec Obst. with diagnosis facilities in Pathology and Radiology. The petitioner was also permitted to provide additional facility of ICU, CT-Scan, Stress Test, Day and Night Chemist Shop, Meditation and any other related activities without any financial burden on respondent nos. 1 or 3. In clause 9 of the said agreement, it was provided that the respondent no. 1 shall give all requisite NOCs to the petitioner for obtaining all necessary licenses, permissions and approvals from the authorities for successfully managing and maintaining the said hospital.

56. Clause 10 of the said agreement provided that the petitioner shall provide all services and facilities available in the hospital to 40% OPD patients and 33% in-patients (poor and needy) at the prevailing charges described by the respondent no.1 from time to time at the other Municipal Hospitals like KEM, Nair, Sion Hospital, as per schedule of charges set out in annexure A-3. The petitioner was required to provide services and facilities to non-free, non-subsidised patients as per the tariff/rates approved by the Advisory Committee set out in annexure 4 to the said agreement. It was further provided in the said clause that the petitioner shall be allowed to raise funds by means of donations as stated in annexure 5 to the said agreement.

57. Clause 11 of the said agreement provided that out of 33% in-patients reserved as stated in clause 10 of the said agreement, 5% each will be allotted to respondent nos. 1 and 3 on preferential basis, 10% will be reserved for respondent no.3 on preferential basis from the remaining 67% of in-patients category and at the rates approved by the Advisory Committee.

58. Clause 21 of the said agreement provided that in the event that the petitioner commits breach of the terms of the said agreement, the respondent no.1 will give 30 days notice to remedy the breach complained. If breach is not remedied by the petitioner within the said period of 30 days, the said agreement shall stand terminated on the expiry of the said period of 30 days. Clause 22 of the said agreement provided that petitioner and the respondent no.1 can terminate and/or

cancel agreement by giving prior written notice of six months.

59. Clause 23 of the said agreement provided that on the termination of the agreement, the petitioner will remove themselves along with the staff employed by them from the hospital premises. Any civil work including additional floor/s constructed by the petitioner by utilizing the available full FSI will be treated as donation to the respondent no.1.

60. Clause 27 of the said agreement provided that in all cases or disputes, the decision of the Municipal Commissioner shall be final but before taking any decision, Municipal Commissioner shall give a personal hearing to the petitioner. Clause 28 of the said agreement provided that any dispute or difference which may arise at any time between the parties in relation to the said agreement shall be subject to the jurisdiction of Mumbai Court.

61. A perusal of record indicates that the petitioner was issued notice dated 31st May 2012 by the respondent no.1 alleging certain breaches of the provisions mentioned in the said agreement. The petitioner denied the said allegations by reply dated 22nd October 2012. No further steps were taken by the respondents against the petitioner pursuant to the said notice dated 31st May 2012. The respondent no.1 issued a notice again on 5th July 2013 alleging breach of contract by carrying out additions and alterations and also invoking clause 21 of the said agreement and called upon the petitioner to show cause. The petitioner replied to the said show cause notice on 30th August 2013. The respondent no.1 thereafter terminated the said agreement dated 5th

July 2014. The petitioner impugned the said letter of termination by filing a Writ Petition (L) No. 1900 of 2014. The respondents made a statement before this Court thereby withdrawing the said letter of termination and agreed to give a fresh hearing to the petitioner. This Court accordingly by order dated 25th July 2014 disposed of the said writ petition with liberty to the Corporation to issue fresh notice and give hearing to the petitioner.

62. The respondent issued a fresh show cause notice dated 2nd June 2015. The respondent no.2 thereafter passed an order on 29th December 2015 against the petitioner. The petitioner filed a suit before the Bombay City Civil Court, Dindoshi Division. The City Civil Court did not grant any injunction in favour of the petitioner. In appeal no. 271 of 2016 filed by the petitioner, this Court disposed off the said appeal by consent of parties. The respondent no.1 agreed to issue a fresh show cause notice to the petitioner based on the said agreement dated 3rd April 2002 on the basis of complaints, correspondence annexed to the affidavit in reply of the respondent no.1 filed in the said appeal from order no. 271 of 2016 containing in page nos. 121 to 498 as well in other documents till the date of the show cause notice was issued and which the respondent no.1 would rely upon. The petitioner was granted an opportunity to take inspection of the additional document, if any, other than the documents annexed at pages 121 to 498 of the appeal paper book within two days of the receipt of the show cause notice.

63. The petitioner was granted an opportunity to file reply to the show cause notice within three weeks from the date of inspection of

the documents. The Municipal Commissioner was directed to provide hearing to the petitioner and to pass an appropriate order. It was made clear that the Municipal Commissioner would decide the issue afresh without being influenced by the order dated 29th December 2015 passed by the Municipal Commissioner and directed the Municipal Commissioner to decide the show cause notice on its own merits and kept all the contentions of the parties on merits of matter expressly open. The petitioners sought leave to withdraw the civil suit filed before the City Civil Court, Bombay.

64. A perusal of the show cause notice dated 22nd July 2016 issued by the Municipal Commissioner indicates that in the said show cause notice the respondent no.2 had alleged that several complaints were made to the respondent no.1, which were relied upon in the affidavit in reply at page nos. 121 to 498 since 2013 till the year 2005. In paragraph 7 of the said show cause notice, the respondent no.2 referred to a report dated 3rd May 2013 submitted by the Fire Brigade Department raising an objection to the additions and alterations carried out by the petitioner to the premises. It was alleged that such additions and alterations were done without permission, were not as per original approved plan and were in violation of the terms and conditions of the agreement.

65. In paragraph 9 of the said show cause notice, the respondent no.2 referred to an alleged surprise visit to the hospital by team of in-charge of various Municipal Hospitals on 18th June 2015 and 19th June 2015 and noticed various alleged irregularities. In paragraph 10 of the

said show cause notice, respondent no.2 summarized some of the alleged irregularities and breaches on the part of the petitioner. It was alleged in the show cause notice that such alleged breaches were conveyed to the petitioner in a notice dated 3rd May 2013 with a direction to rectify those breaches. The petitioner however allegedly did not take any corrective steps in that regard.

66. A perusal of the record further indicates that the petitioner filed a detailed reply to the said show cause notice on 30th August 2013, denying the breaches alleged by the respondent no.2 in the said show cause notice para wise.

67. Learned Senior Counsel for both the parties invited my attention to some of the documents forming part of the compilation annexed to the affidavit in reply filed in Appeal from Order no. 271 of 2016 and some of the annexures annexed to the writ petition and the affidavits filed by both the parties. The learned Senior Counsel for the respondents laid emphasis on few complaints allegedly made by few patients and the local politicians alleging higher amount charged by the petitioner for carrying out certain tests and reports than the rates prescribed in the schedules appended to the said agreement. The learned Senior Counsel for the petitioner on the other hand explained in detail about those instances pointed out by the learned Counsel for the respondents and would submit that the learned Municipal Commissioner passed an order of termination of the said agreement passed on the complaints, which were not referred in the show cause notice issued by him but on the extraneous material not reflected in the

said show cause notice.

68. A perusal of the order passed by the Municipal Commissioner indicates that in the show cause notice, the Municipal Commissioner relied upon some of the documents referred in the affidavit in reply filed in the appeal from order. The Municipal Commissioner however passed an order of termination of the agreement based on some of the allegations not forming part of the show cause notice and without giving an opportunity to the petitioner to deal with such additional alleged complaints not forming part of the show cause notice. In my view, merely because such compilation of documents relied upon by the respondents in the appeal from order filed by the petitioner were furnished to the petitioner or inspection thereof was given to the petitioner, such documents itself would not form part of the show cause notice.

69. The respondent no.2 was required to set out the allegations arising out of such documents specifically in the show cause notice and to give an opportunity to petitioner to deal with such allegations. The petitioner was not expected to deal with each and every documents annexed in the said compilation and to probe into the mind of the respondent no.2 that would be considered against the petitioner for the purpose of termination of the said agreement. This Court while disposing of the appeal from order dated 3rd May 2016 had set aside the earlier order of termination and made it clear that the fresh show cause notice shall be based on the agreement dated 3rd April 2002 and also on the basis of the complaints, correspondence annexed to the affidavit in

reply at pages 121 to 498 as well as any other additional documents. The specific charges which could be derived from those documents annexed at pages 121 to 498 and any other documents sought to be relied upon ought to have been specified in the show cause notice. In my view, the impugned order passed by the respondent no.2 thereby terminating the agreement entered between the parties is in violation of principles of natural justice. Be that as it may, the learned Municipal Commissioner could not have considered the material in the impugned order, which were not relied upon in the show cause notice issued to the petitioner. The impugned order deserves to be set aside on this ground also.

70. In any event, the learned Senior Counsel for the petitioner has satisfactorily explained before this Court that those specific instances pointed out by the learned Senior Counsel for the respondents based on the complaints made by few of the patients or local politicians had no substance or in any event would not indicate any serious breach of any provisions of the agreement entered into between the parties resulting in termination of the agreement, which was admittedly for a period of 30 years atleast from the date of execution of the said agreement. I am inclined to accept the submissions of learned Senior Counsel for the petitioner that most of the material considered by the learned Municipal Commissioner in the impugned order was not brought to the notice of the petitioner and were relied upon in the show cause notice.

71. Be that as it may, none of those alleged breaches regarding higher amount allegedly charged by the petitioner in respect of certain

reports or tests carried out by some of the patients in the hospital were of a serious nature, which could be sufficient for the purpose of termination of the maintenance agreement and were curable. Under the said maintenance agreement, an Advisory Committee consisting of representatives of the petitioner, respondent nos.1 and 3 was already appointed to supervise the maintenance and management of hospital. The recommendations and suggestions made by the majority of the said committee members was binding on the petitioner. The breaches alleged in past by the respondent no.2 against the petitioner of the agreement were denied by the petitioner by addressing various letters. There was no action admittedly taken by the respondents based on the earlier complaints.

72. This Court while admitting this writ petition prima-facie observed that petitioner had raised funds from various sources an amount of Rs.20 crores and has run the hospital without any complaint till March 2011. It was only after a gap of about 9 years that the respondents started alleging that there were various breaches of the agreement. This Court prima-facie observed that the breaches alleged by the respondents were not such as would warrant a termination of the contract. Most and perhaps all of the so called breaches are curable and in the nature of irregularities. This Court also observed that in the larger public concerned that the interest of patients would be undoubtedly suffer if a contract of this kind is abruptly terminated. This Court accordingly granted interim relief against the respondents and in favour of the petitioner.

73. During the course of arguments, learned Senior Counsel for the respondents strongly contended that the petitioner had carried out various alterations and additions in the hospital building without permission of the Municipal Architect and more particularly on the 7th Floor of the hospital building in alleged violation of clause 6 of the said agreement. A perusal of clause 6 clearly indicates that the petitioner has been permitted to carry out alterations and additions in the civil work of the hospital utilizing the full available FSI and constructing an additional floor at their own cost to accommodate additional services however subject to approval of Municipal Architect. Admittedly, the petitioner has been running various additional facilities for the benefit of the patients by providing various units already referred to aforesaid by spending substantial amount. In view of the liberty granted in the said agreement, the petitioner has obtained huge amount of donations and has stated to have spent a sum of Rs.20 crores in order to create a Multi Specialty Hospital. The respondents have not disputed that about more than 500 people are working in the hospital maintained by the petitioner including Doctors, Staff and Nurses. A perusal of the photographs produced by the learned Senior Counsel for the petitioner clearly indicates that the petitioner has started various medical facilities in order to create and has created Multi Specialty Hospital as allowed to be provided by the petitioner under the said agreement.

74. The petitioner in the reply to the show cause notice has brought to the notice of the respondent no.2 that the 7th Floor of the hospital building had been built after taking necessary permissions and

approvals from the Municipal Architect and Chief Fire Officer. The petitioner had also received NOC from Chief Fire Officer. All such permissions and NOC's were annexed as annexure 5 to the reply to the show cause notice filed by the petitioner. A joint inspection of hospital building was also conducted by officers from office of the Municipal Architect and a Chief Fire Officer on 25th March 2013 with reference to the amended building plan of December 2005. The Municipal Architect also submitted a report in that regard. The said report was highlighted in the said reply and indicates that the Municipal Architect had observed that considering the specific resources, utilities required from the hospital and patients point of view. The trust may have executed some of those internal changes. A Chief Fire Officer did not make any adverse remark in terms of fire safety regulations point of view, the Municipal Architect did not make any adverse remarks or remarks in terms of any additions and alterations made by the petitioner in the hospital with reference to the amended plans of December 2005. It is not a case of the petitioner committing any violation of any FSI norms.

75. It was the specific case of the petitioner that the petitioner had changed tiles for aesthetic purposes as the same had become old and were in an ageing worn out condition at its own cost and had not carried out any structural changes affecting the stability of the building. The petitioner had already given intimations from time to time to the respondents about such work. The petitioner had also annexed the copies of such intimations in the said reply to the show cause notice. In the reply to the show cause notice, the petitioner had highlighted those

letters addressed by the petitioner to the respondents from time to time regarding the work of repairs and maintenance carried out by the petitioner and without carrying out any structural changes.

76. Pursuant to the liberty granted by this Court, the petitioner filed an affidavit dated 17th June 2019 placing on record the completion plan submitted by the petitioner in respect of 7th Floor of the hospital building, which was accepted as completion from Architectural planning and the designing point of view by the office of Municipal Architect on 11th June 2009. In the said affidavit it is also stated by the petitioner that if according to the respondents the petitioner had carried out any unauthorized alterations and additions while carrying out development work on 7th Floor in the said building, the Municipal Architect would not have issued such certificate as far back as on 12th June 2009. In my view, the allegations of unauthorized additions and alterations made in the show cause notice by the respondent no.2 is contrary to clause 6 of the agreement and also various documents placed on record by the petitioner before the respondent no.2. A perusal of the impugned order clearly indicates that the respondent no.2 has not considered most of the submissions made in the reply to the show cause notice and the large number of documents produced by the petitioner before the respondent no.2 in the impugned order. The impugned order is in gross violations of principles of natural justice on this ground also.

77. The learned Senior Counsel for the Corporation could not point out any order passed by the Charity Commissioner withdrawing the

benefit under Section 41AA granted to the petitioner. I am thus inclined to accept the statements made by the learned Senior Counsel for the petitioner that no such exemption is withdrawn by the Charity Commissioner till date.

78. The petitioner was allowed to collect donation from any third party, so as to run and maintain the said hospital. The respondent no.1 had clearly permitted the petitioner to collect such donation and had made it clear that the respondents will not reimburse the petitioner any of the expenses incurred on maintaining the said hospital. The respondents thus cannot make any grievance against the petitioner for collecting such donation for providing several facilities in the hospital maintained by the petitioner and more particularly by providing Multi Specialty Hospital.

79. In so far as the submission made by the learned Counsel for the respondents that the petitioner was not allotting 5% and 10% beds in the hospital on preferential basis to the respondent nos. 1 and 3 are concerned, it is the case of the petitioner that the petitioner had not refused to allot the beds to any of the patients referred by the respondent nos. 1 or 3 at any point of time. No such proof of this alleged breach could be produced by the respondents even for consideration of this Court during the course of hearing. There is no doubt that the petitioner is bound to comply with the provision for allotment of 5% and 10% beds to the respondent nos. 1 and 3 on preferential basis. The petitioner shall be more careful in future about compliance of the condition prescribed under the said agreement

entered into between the parties.

80. On perusal of the documents annexed to the affidavit in reply in the appeal from order and produced for perusal of this Court and the allegations made in the show cause notice even otherwise did not indicate that the charges and the allegations levelled against the petitioner even otherwise were of such a nature that it would warrant termination of the maintenance agreement of the hospital, on such grounds, which are satisfactorily explained by the petitioner. The petitioner is running the said Multi Specialty Hospital for last several years and has spent about 20 crores in creating the said Multi Specialty Hospital for the benefit of large number of poor and needy patients on no profit and no loss basis. There is no dispute that the petitioner has more than 500 people working in the said hospital including Doctors, Staff and Nurses. Large number of patients are benefited by various facilities provided by the petitioner in the said hospital. In my view, action of termination on the part of the respondent is thus even otherwise disproportionate considering the nature of allegations made against the petitioner.

81. In so far as the Judgments in case of ***Spice Digital Ltd.*** (supra), ***Oil and Natural Gas Corporation Ltd.*** (supra), ***Indian Oil Corporation Ltd.*** (supra) replied upon by the learned Senior Counsel for the respondent in support of the submission that no specific performance of the agreement can be granted by this Court is concerned, in my view none of these Judgments would apply to the facts of this case. The respondent no.2 has passed an order terminating

the agreement dated 3rd April 2002 in violation of principles of natural justice and also in violation of the provisions of agreement dated 3rd April 2002. The petitioner has impugned the said order of termination in this petition and has not applied for specific performance of the agreement dated 3rd April 2002. There is thus no merit in this submission of the learned Senior Counsel for the respondents.

82. In so far as the submission of the learned Senior Counsel for the respondents that clause 22 of the said agreement could be independently invoked by the respondents in addition to the invocation of clause 21 thereof is concerned, it is not in dispute that in this case the respondents have not invoked clause 22 of the said agreement but have invoked clause 21 thereof. There is thus no substance in this submission made by the learned Senior Counsel for the respondents.

83. In so far as the submission of the learned Senior Counsel for the respondents that the agreement entered into between the parties was in the realm of the contract and thus the termination of the contract by the Municipal Commissioner is final and binding on the petitioner is concerned, in my view since the termination of the agreement itself was illegal, such termination of the contract cannot be considered as final and binding on the petitioner. There is no merit in the submission of the learned Senior Counsel for the respondents that there was no dispute raised by the petitioner that the respondent no.2 had not complied with the principles of natural justice before passing the impugned order. In my view, the view of the respondent no.2 in the facts and circumstance of this case was not a possible view and thus

this Court has ample power under Article 226 of the Constitution of India to interfere with the impugned order passed by the respondent no.2.

84. In so far as the submission of the learned Senior Counsel for the respondents that the petitioner has submitted a plan in the Municipal Architect post facto in breach of clause 21 of the said agreement is concerned, it is not in dispute that the Municipal Architect did not raise any such objection and issued completion certificate. There is thus no merit in this submission of the learned Senior Counsel for the respondents.

85. Hence, I pass the following order:-

- i) The impugned order dated 10th October 2017 passed by the respondent no.2 is quashed and set aside.
- ii) Show cause notice dated 22nd July 2016 issued by the respondent no.2 is also quashed and set aside.
- iii) The respondents would be at liberty to take appropriate action against the petitioner in accordance with the provisions of the said agreement dated 3rd April 2002 and in accordance with law in the event of the petitioner committing any breaches of the said agreement in future after following the procedure prescribed under the said agreement and

following the principles of natural justice.

- iv) Rule is made absolute on aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)