

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.23 OF 2018

M/S R R KAPOOR THROUGH ITS PARTNER RISHI RAJESH
KAPOOR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri J.N. Singh
AGP for Respondents 1 to 3 : Shri P.G. Borade
Advocate for Respondent 4 : Shri P.N. Khedkar
...

CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 16th September, 2021

Per Court :-

1. The petitioner, in this petition, has put forth prayer
clauses B and C as under :-

- “B) *The Hon’ble Court may be pleased to declare that the order passed by the defendant No.2, Commissioner & Director, Municipal Administration, Directorate dated 04.04.2016 while deciding the issue of resolution was not justified in cancelling the contract itself because under the contract cancellation power of contract is given only to the Chief Officer, Defendant No.4 and ultimately the Hon’ble Court may be pleased to declare that, the action of Defendant No.2 is without jurisdiction.*
- C) *The Hon’ble Court may be pleased to declare that the action of the defendant No.4 dated 10.05.2016 pursuant to the order dated*

04.04.2016 passed by defendant No.2 cancelling the concluded contract without following due process of law is illegal, null and void.”

2. By the impugned order dated 14.10.2016, the Municipal Council, Shrigonda has forfeited the Earnest Money Deposit (EMD) of Rs.32 lacs by passing the resolution in the General Body bearing No.266 dated 21.09.2016. The reason for forfeiture is a disputed issue between the parties. This resolution and it's communication are sought to be challenged by filing this petition, on 10.04.2017. This petition was dismissed for non compliance and subsequently, it was restored.

3. On 10.01.2018, this Court (Coram : S.S. Shinde and S.M. Gavhane, JJ.) noted the objection raised by the State that the impugned communication can be challenged before an appropriate authority and that this petition raising disputed issues would not be entertained.

4. The learned advocate for the petitioner submits that the impugned communication has been passed under the guidelines of the Director of Municipal Administration and to support this contention, he relies upon the communication dated 06.09.2016 placed before the Court.

5. We find from the said communication that the Chief Officer of Municipal Council had a meeting with the Director of Municipal Administration and that meeting was not to formalize a decision as is taken by the General Body on 21.09.2016. As such, the petitioner can avail of a statutory remedy of approaching the Director of Municipal Administration under Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act.

6. The Honourable Supreme Court has ruled in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai vs. Tuticorin Educational Society, 2019 SCC Online SC 1292* (Civil Appeal No.7764/2019, decided on 03.10.2019) and *Genpact India Private Limited vs. Deputy Commissioner of Income Tax and others, (2019) 419 ITR 440*, that a statutory remedy should not be avoided by a litigant. If the issues raised by the litigant can be considered by availing of a statutory efficacious remedy prescribed under the statute, such proceeding should not be brought before the High Court under Article 226 of the Constitution of India.

7. The learned advocate for the petitioner has relied upon the order passed by the Honourable Supreme Court dated

08.03.2019 in Civil Appeal No.2610/2019 filed by ***M/s Surya Constructions versus the State of Uttar Pradesh***, to support his contention that this Court should entertain this petition.

8. We find from the said order passed in M/s Surya Constructions (supra) that it was canvassed before the High Court that the amount to be paid to the appellant was disputed. The Honourable Supreme Court concluded that the amount payable to the appellant is wholly undisputed. Before us, the learned AGP representing the State authorities and the learned counsel for respondent No.4/ Municipal Council submit that they seriously dispute the amount claimed by the petitioner since the amount has been forfeited.

9. In view of the above, as the payment of amount to the petitioner is disputed by the respondents, it would be advantageous for the petitioner to approach the Director of Municipal Administration, who can consider all issues raised by the petitioner.

10. At this juncture, the learned advocate for the petitioner submits, on instructions, that the petitioner would submit it's grievance for challenging the impugned order dated 14.10.2016 before the Directorate of Municipal Administration,

on or before 24.09.2021. He, however, makes a request that the concerned authority/ respondent No.2 herein may be directed to decide the grievance of the petitioner within a particular time frame.

11. In view of the above, this Writ Petition is disposed off by accepting the request of the petitioner of tendering the grievance before respondent No.2/ Director of Municipal Administration, on or before 24.09.2021. In the event, the issue of delay crops up, the time spent by the petitioner in this Court from 10.04.2017 till the filing of the proceeding before respondent No.2, shall be a ground for condonation of delay. We expect respondent No.2 to decide the grievance of the petitioner, as would be raised, as expeditiously as possible and preferably on or before 30.10.2021.

kps

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)