

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3401 OF 2021

Baba Taj Rozgar Va Swayam Rozgar Bandhkam Seva Sahakari Sansthan, Digras, Dist.
Yavatmal, through its President Raghunath Gujar,

..VS..

The State of Maharashtra, through Secretary, Ministry of Urban Development,
Mantralaya, Mumbai and Anr.,

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J. B. Kasat, Advocate for petitioner.
Shri N. R. Patil, A.G.P for respondent No.1.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : 08.09.2021

1. Heard Shri J. B. Kasat, learned counsel for the petitioner and Shri N. R. Patil, learned A.G.P for respondent No.1.

2. It is the contention of learned counsel for the petitioner that certain amounts are recoverable by the petitioner from respondent No.2 on account of the petitioner completing various works in terms of different work orders issued to him. It is the case of the petitioner that in spite of submission of bills from time to time, respondent No.2 failed to honour the bills and pay the amount of the bills. The petitioner further submits that even notice dated 08.10.2020 sent by the petitioner to respondent No.2 under Section 304 of the Maharashtra

Municipal Councils, Nagar Panchayats, Industrial Townships Act, 1965 has not yielded any fruitful result. Learned counsel for the petitioner submits that no reply to this notice dated 08.10.2020 has been sent by respondent No.2, although, respondent No.2 is under a legal duty to reply the notice. This mandate of law, according to the learned counsel for the petitioner, has been laid down in the case of ***Salem Advocate Bar Association (II) Vs. Union of India, 2005 (6) SCC 344.*** He invites our attention to the observations which are relevant here, appearing in paragraph Nos.38 and 39 of the said judgment, which are also produced in the memo of petition.

3. On such grounds, learned counsel for the petitioner urges that direction be issued to respondent No.2 to send its reply and that further direction be issued to the respondent State for taking action against the Officers of respondent No.2, who are guilty of not sending any reply to the statutory notice received by respondent No.2 under Section 304 of the aforestated Act. Further direction for imposing heavy costs to the extent of Rs. Two Lacks upon responsible Officer of respondent No.2 has been sought.

4. Shri Patil, learned A.G.P. submits that so far as concerned the direction sought against respondent No.1/ State, such direction could be given only after the competent Civil Court having territorial jurisdiction over

the matter decides on merits about the negligence or deliberate failure of a particular Officer of respondent No.2 in not sending the reply. He draws our attention to the observations of the Apex Court made in paragraph No.39 in this regard.

5. There can be no quarrel about the principle, as laid down in the case of ***Salem Advocate Bar Association*** (supra) that whenever statute requires service of notice as a condition precedent for filing of suit or other proceedings against it and Officer of the Government or the Local Authority or the Local Body must nominate an Officer who shall be made responsible to ensure that replies to notices under Section 80 or similar provisions are sent within the period stipulated in a particular legislation. But, the Supreme Court after having laid down such rule of conduct, has also provided for a remedy when there is a breach of such rule of conduct. It has directed that if the Court finds that either the notice has not been replied or reply is evasive and vague and has been sent without proper application of mind, the Court shall ordinarily award heavy costs against the Government and direct it to take appropriate action against the concerned Officer including recovery of costs from him. This remedy could be effectively afforded to by the petitioner only when the petitioner chooses to file a civil suit for recovery of its dues from respondent No.2 in a Civil Court having territorial jurisdiction over the matter and in that case only, the competent Civil Court

would be in a position to decide the question of imposition of heavy costs against respondent No.2 and also issuance of necessary directions regarding taking of appropriate action against the concerned Officer including recovery of costs, if any. This could be seen from the observations made in paragraph No.39 of the aforestated case, which are reproduced for the sake of convenience as under :-

“39. These provisions cast an implied duty on all concerned governments and States and statutory authorities to send appropriate reply to such notices. Having regard to the existing state of affairs, we direct all concerned governments, Central or State or other authorities, whenever any statute requires service of notice as a condition precedent for filing of suit or other proceedings against it, to nominate, within a period of three months, an officer who shall be made responsible to ensure that replies to notices under Section 80 or similar provisions are sent within the period stipulated in a particular legislation. The replies shall be sent after due application of mind. Despite such nomination, if the Court finds that either the notice has not been replied or reply is evasive and vague and has been sent without proper application of mind, the Court shall ordinarily award heavy cost against the Government and direct it to take appropriate action against the concerned Officer including recovery of costs from him.”

6. In the present case, there is no dispute about the fact that the petitioner has still not filed any civil suit for recovery and has directly approached this Court. If that is so, we do not think that as of now, any right regarding imposition of heavy costs and also the right as regards direction to be issued for recovery of costs from the concerned Officer of the respondent No.2 have arisen in the present case.

7. In this view of the matter, we are not inclined to entertain this petition. The writ petition stands **dismissed**. No costs.

JUDGE

JUDGE

Kirtak