

CWP-9210-2021 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-9210-2021 (O&M)
Date of decision: 28.07.2021

Municipal Committee, Jhajjar and ors.

...Petitioners

Versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Piyush Aggarwal, Advocate for the petitioners.

Mr. Samarth Sagar, Addl. AG, Haryana.

Mr. Deepak Sabharwal, Advocate for respondent No.3 to 6.

ANIL KSHETARPAL, J.

The petitioners are the Municipal Committee, Jhajjar, its President and 9 Municipal Commissioners, respectively. They have filed the writ petition claiming the following substantive reliefs:-

(i) An appropriate Writ, Order or Direction, thereby directing the respondents No.1 and 2 to order an impartial and detailed enquiry by the State Vigilance Bureau, or any other investigating agency, into the manner in which, without there being any budget estimate and any resolution/decision by the Municipal Committee and without even inviting any tender and without bringing any such fact to the notice of the President of the Municipal Committee, the work to install LPG/CNG/PNG based crematorium at Jhajjar, to the tune of Rs.67 lacs, was allotted in favour of respondent No.7, by the respondent No.4 and 5, on their own, in excess of their powers and when the petitioner No.2, being the President of the Municipal Committee raised an objection to the release of funds for the work on that account, instead of enquiring into the matter, she is being pressurized to release funds in favour of the respondent No.8.

(ii) It is further prayed that the respondents No.1 and 2 may kindly be directed to order legal action against the respondents No.4 and 5,

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who have blatantly misused and superseded their authority/powers and have tried to usurp the powers of the petitioner No.2 being the President of the Municipal Committee Jhajjar, in an endeavor to usurp the funds of Municipal Committee, Jhajjar, in connivance with the respondent No.8 agency.

(iii) It is further prayed that during the pendency of the present petition, the disbursement of any amount to the respondent No.8 agency may kindly be ordered to be stayed or the respondents may kindly be directed not to compel/pressurize the petitioner No.2 to release funds in favour of the respondent No.8.

In substance, petitioner No.2, the President of the Municipal Committee claims that a work order for installation and establishment of LPG/CNG/PNG based crematorium has been placed without following the procedure prescribed under the Haryana Municipal Act, 1973, (hereinafter referred to as 'the 1973 Act') and the rules framed thereunder. As is apparent, the petitioners pray for issuance of direction to the State of Haryana to hold an inquiry through the State Vigilance Bureau or any other agency.

The petitioners allege that petitioner No.2 who is the President of the Municipal Committee was never informed and she came to know of the work having been started when a part of the payment was sought to be released in favour of respondent No.8, the contractor.

On the other hand, written reply has been filed by respondent No.3 to 6 including District Municipal Commissioner contending that 11 out of 19 Municipal Councillors have been granted permission for placing the work order. It has further been brought to the notice of the Court that Directorate of Urban Local Bodies, Haryana, had proposed to install LPG/CNG/PNG based crematoriums in the Municipal Committees during

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the spread of Covid-19 pandemic. In that regard, names of 4 agencies/contractors were empanelled and circulated amongst the Municipal Committees with an option to choose any of the agencies to get the work of setting up and installation of the crematoriums. Pursuant to the communication to the Directorate, respondent No.8 contacted the Municipal Committee, Jhajjar, and expressed its willingness to work. None of the other agencies contacted Municipal Council, Jhajjar. Even Swarag Ashram Seva Samiti, Jhajjar, which has been constituted in order to run the activities of the cremation ground, gave its no objection and assured that the Samiti would maintain the same. The aforesaid communication was also signed by various Municipal Councillors including Vice President of the Municipal Committee. Since, the President of the society was not coming to the office due to spread of covid-19 pandemic therefore, on the recommendations of the Member of Parliament along with 11 Municipal Councillors, after getting approval from the Director 04.09.2020, the work order was issued on 14.09.2020.

Heard, learned counsel for the parties at length and with their able assistance, perused the paper book.

The learned counsel representing the petitioners while drawing attention of the Court to the various provisions of the Haryana Municipal Act, Haryana Municipal Code and Rules framed thereunder, submits that respondent No.4 and 5 have not followed the provisions of the Act, Code and Rules. He further submits that contract, the value whereof exceeds Rs.100/-, is required to be signed by two members out of whom the

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President or Vice President shall be one as also the Executive Officer or the Secretary of the Municipal Committee, the other. He further submits that without issuing tender, the work has been allotted.

On the other hand, learned representing respondent No.3 to 6 contends that in view of spread Covid-19 pandemic, the Directorate thought it to be appropriate to prepare a panel of the contractors after inviting tender on e-tendering portal. He further submits that since there was an urgency therefore, the Municipal Committees were given an option to choose any of the four shortlisted agencies to set up LPG/CNG/PNG based crematoriums in their jurisdiction. He further contends that 11 members out of 19 including petitioner No.7, 9 and 11 did sign in favour of getting the work done from respondent No.8.

After having heard the learned counsel for the parties, this Bench is of the considered view that in the facts and circumstances of the present case, it would not be appropriate for a Writ Court to issue the directions as prayed for because of the following reasons:-

1. The entire country or rather the entire world has been facing unprecedented crisis. Due to the spread of covid-19 pandemic, there was a panic like situation everywhere and all the government agencies were taking action as knee jerk reaction. On account of the unprecedented increase in the death rate, efforts were being made to set up modern pollution free crematoriums. Even the Union of India had invoked the provisions of the Disaster Management Act, 2005.

2. It is not disputed that 11 out of 19 Municipal

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Councillors did approve the setting up and establishment of the crematorium.

3. There are no allegations that the work has been allotted at a price higher than the market price. There are no allegations of financial bungling on the part of the respondents.

4. The petitioners have not challenged or assailed the correctness of the work allotted or agreement signed with respondent No.8. The petitioners have also not prayed for its cancellation.

5. The work of establishment/setting up of LPG/CNG/PNG based crematorium is in progress and as per the assertions made, more than 50% of the work has been completed.

6. The majority of the Municipal Councillors are in favour of the establishment of the crematorium through respondent No.8.

Hence, due to differences between the Municipal Councillors, it appears that one group has chosen to file the writ petition.

Keeping in view the aforesaid facts, this Bench does not find it appropriate to issue the writ as prayed for.

The petitioners shall be at liberty to avail the alternative remedy, if so desired.

With these observations, the writ petition is disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

28.07.2021

ashok

Whether speaking/reasoned:

Whether reportable:

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No