

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3862 OF 2023**

**KAILASH HABU RATHOD
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS**

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Mr. D. K. Rajput, Advocate for the Petitioner.
Mr. A. R. Kale, AGP for Respondents-State.

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**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.
DATE : 05th APRIL, 2023.**

P.C:-

1. Heard.
2. The challenge in the petition is to the communication dated March 14, 2023 issued by the respondent i.e. District Collector, who is ex-officio Secretary of District Planning Committee.
3. It is the case of the petitioner that, the local Member of the Legislative Council has certain funds at his disposal which are to be used for the development purpose within his constituency. Such funds are to be disbursed through the Collector provided the works are to be sponsored by the local Member of the Legislative Council. According to him, the procedure contemplated is provided and prescribed in the Government Resolution dated 12th July, 2016. Learned counsel for the petitioner would invite our attention to the tender floated and the selection of the petitioner for the works to be executed with the Labour Co-operative Society. According to him, in view of the shortlisting of the petitioner and the recommendation in his

favour for the purpose of implementation of certain works which are sponsored by the local Member of the Legislative Council, he has already complied with the requirement of depositing the mandatory fees/contribution with the office of the Public Works Department. He would urge that such deposit is pursuant to the recommendation in favour of the petitioner and the technical sanction granted by the competent authority. In such an eventuality, he would urge that it is not open for respondent no.3 to cancel the works upon recommendation of the local Member of the Legislative Council. He would urge that, even if there are no work orders issued in favour of the petitioner, still having regard to the development at an advanced stage of finalizing the contract in favour of the petitioner, he has already incurred expenses in stocking the material at the site where the work is to be executed. In such an eventuality, he would urge that not only there is a concluded contract in favour of the petitioner, but also principle of legitimate expectation warrants that before passing the order impugned the petitioner should have been heard.

4. Mr. Kale, learned A.G.P. would support the order impugned, as according to him, the order impugned is in tune with the policy of the Government reflected in the aforesaid resolution dated 12th July, 2016. He would urge that since admittedly, the work orders are not issued in favour of the petitioner and the agreement is not entered into there is no concluded contract. The stocking of the material in this background by the petitioner is at his own cost and peril and as such, the petitioner cannot draw an undue advantage from the same.

5. We have appreciated the aforesaid submissions.

6. The admitted facts are the petitioner is a Labour Co-operative Society. The policy of the Government is to secure certain works to be executed through the Labour Co-operative Societies and accordingly, the District Planning Committee pursuant to the Member of the Legislative Council has sanctioned in all six works for which technical sanction was granted by the respondent-Public Works Department. Subsequent thereto, the proposal for the execution of the works was approved and the petitioner's name was accordingly sponsored resulting into the petitioner depositing certain amount under the aforesaid scheme with the Public Works Department.

7. The fact remains that as on date neither any work order issued to the petitioner nor a agreement to execute the work came to be executed between the petitioner and the respondents. As a sequel of above, Mr. Kale, learned A.G.P. is justified in claiming that there is no concluded contract in favour of the petitioner.

8. In view of the above, the claim put forth by the petitioner that there is a concluded contract in favour of the petitioner cannot be inferred from the record.

9. Merely because the technical sanction was granted by the respondent-authority after the works were sponsored by the Member of the Legislative Council, that by itself does not create any right in favour of the petitioner to claim legitimate expectation from the respondents of executing a contract in its favour, as the authority lies with such Member of the Legislative

Council to cancel the contract provided the conditions incorporated in the Clause 3.12 of the aforesaid Government Resolution dated 12th July, 2016 are satisfied. Though the execution of the contract in favour of the petitioner has traveled at an advanced stage, the fact remains that the works in question are canceled pursuant to the instructions issued by the Member of the Legislative Council, who has sponsored such works. Neither there is work order issued in favour of the petitioner nor there is question of commencement of the work by the petitioner in such an eventuality. The stocking of the material by the petitioner at the site of the work is out of his own act and the petitioner cannot draw an undue advantage for the same.

10. In view of there being absence of a concluded contract in favour of the petitioner, there is no question of granting opportunity of hearing to the petitioner.

11. The order impugned issued by respondent no.3-Collector is in tune with the powers conferred under the aforesaid Government Resolution dated 12th July, 2016. No illegalities are noticed in the order impugned. The writ petition, as such, is dismissed.

12. However, if the petitioner intends to seek any compensation, he is at liberty to take up such proceedings as is permissible and in accordance with law, which claim be preferably decided in accordance with law.

(S. G. CHAPALGAONKAR)
JUDGE

(NITIN W. SAMBRE)
JUDGE