

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5195 OF 2023

G. S. Engineering Through its
Proprietor Govind Jagannath Shinde .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 5196 OF 2023**

Ashok Light House Beed Through its
Proprietor Ashwini Arjunrao Yadav .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 5197 OF 2023**

Samarth Electrical Works and
General Suppliers Industrial
Co-operative Society Beed
Through its Chairman .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Abhijit C. Darandale, Advocate for the Petitioner in all
matters.

Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 to 5 in
all matters.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

DATE : 25 SEPTEMBER 2023.

FINAL ORDER (Per Shailesh P. Brahme, J.) :-

. Heard the learned counsel for the respective parties for final disposal of the petitions at the admission stage.

2. In all these petitions an order dated 20.03.2023 passed by the respondent No. 3/Collector, Beed revoking administrative sanction for 72 work items is challenged. Additionally, directions are also sought to permit the petitioners to execute the work as per the work orders and as per the administrative sanction issued by the Government Resolution dated 28.06.2022. All facts, circumstances and grounds of challenge in these petitions are identical. Hence, all petitions are decided by this common order. For the sake of convenience, we propose to refer the papers from Writ Petition No. 5196 of 2023.

3. The issue pertains to developmental works under “Bharat Ratna Dr. Babasaheb Ambedkar Samajik Vikas Yojana” (hereinafter referred as to the “Scheme” for brevity). The scheme is implemented vide G. R. dated 09.03.2018. In the present matters, the work pertains to installation of polls with LED lights within various localities in Beed city. It was proposed by the representative of the people vide proposal dated 13.05.2022, which is at Exhibit B.

4. The budgetary sanction was issued vide G. R. dated 23.06.2022 for 186 work items. Thereafter vide letter dated 27.06.2022, the Municipal Council Beed issued no objection

certificate for 69 work items. On 28.06.2022, the respondent No. 3/Collector issued administrative sanction for 186 work items on certain conditions.

5. The petitioners were selected as successful lowest bidders in a tender process to execute the work. On 14.07.2022, the petitioners were issued with distinct work orders. The petitioners deposited security amount. The arrangements were made to disburse the initial amount, which is evident from the letter dated 27.07.2022. The petitioners were to commence the work, but they learnt about the order dated 20.03.2023 passed by the respondent No. 3/Collector revoking the administrative sanction.

6. The petitioners are surprised by order dated 20.03.2023 revoking administrative sanction which is under challenge in the present petitions. Without extending any opportunity of hearing a drastic action is taken causing prejudice and hardship. The learned counsel for the petitioners would submit that the impugned action is without jurisdiction and misconceived. The Collector is misled by the report dated 07.02.2023 submitted by the Chief Officer, Municipal Council, Beed. The learned counsel submits that the Municipal Council wrongly withdrew no objection certificate. It is misinterpreted that the municipal council allotted the same work to the Energy Efficiency Services Ltd. (for short hereafter referred as to the 'EESL' company), while drawing inference that there was duplication of the work.

7. The work allotted to the petitioners is distinct than the work executed by EESL. The impugned action is arbitrary as it was passed at the instance of the political person, who was against the development work. The learned counsel would submit that the hearing contemplated in pursuance of the orders of this Court passed in Writ Petition No. 11107 of 2022 was for the different issues and purposes. The respondent No. 3 erroneously relied on the G. R. dated 12.01.2018 and M.O.U. dated 12.06.2018.

8. The respondents have filed separate affidavit in reply justifying impugned action. According to them the petitioners do not have indefeasible right to seek the directions from this Court. After selection of the petitioners, complaint was filed on 20.07.2022 and 02.08.2022 by one of the councillors making serious allegations. It was disclosed that the NOC was withdrawn by the Municipal Council on 06.07.2022 and self same work was allotted by the Municipal Council to EESL. It is pleaded that there was no necessity to extend any opportunity of hearing.

9. A report was called for from the Municipal council by the Collector, Beed. The survey was conducted. A survey report dated 06.03.2023 was submitted by the Chief Officer. It is further contended that vide letter dated 19.07.2022, the Executive Engineer, Public Works Department clarified that work orders were prepared, but not issued and an attempt was made vide letter dated 27.07.2022 for the disbursement of the

funds. It was misrepresented that the work was in progress.

10. It is averred that, the respondent No. 3/Collector conducted hearing. He was apprised of the fact that there was no need to execute any work. Taking stock of the situation, the impugned action was taken to save the public money. It is submitted by the learned Assistant Government Pleader for the respondents that the collector was under obligation by G. R. dated 09.03.2018 to monitor the work and to see that the funds disbursed for the developmental work are properly utilized. He was to ensure that there should not be duplication of the work. Invoking supervisory powers the Collector deemed it fit to abort the work.

11. The learned Additional Government Pleader would submit that as per the conditions stipulated in the administrative sanction, the Collector was obliged to look into the complaints. The learned Addl. G. P. has placed reliance upon the bilateral agreement executed between the Municipal Council and EESL to show that the Municipal Council contracted out the self same work to EESL, which amounted to duplication of the work. He has further placed reliance upon the letter dated 06.07.2022 issued by the Municipal Council revoking no objection certificate. Along with affidavit in reply the survey report is placed on record which was part and parcel of enquiry conducted by the Collector on 19.01.2023.

12. The learned Addl. G. P. would submit that as per the directions issued by the this Court in Writ Petition No. 11107 of

2022, hearing was conducted by the Collector. After receiving the report from the competent authorities, especially survey report, the impugned decision is arrived at. He would submit that there is no illegality or arbitrariness in the impugned action. He would urge to dismiss the writ petitions.

13. The petitioners have filed affidavit in rejoinder. Additionally, the learned counsel for the petitioners would submit that the petitioners have made huge investment and waiting for more than three months. The impugned order was passed in clandestine manner. They reiterated their grievances.

14. So far as Writ Petition No. 5195 of 2023 is concerned, the petitioner in that matter was heard by the respondent No. 3/Collector, Beed. Remaining facts and circumstances are common.

15. We have considered the submissions of the rival parties. We are not oblivious of the parameters and the restrictions in exercising writ jurisdiction under Article 226 of the Constitution of India. Time and again the Supreme Court has ruled the scope and the powers of the High Court in tender or contractual matters. It is profitable to refer to few judgments of the Supreme Court.

- (i) Silppi Constructions contractors Vs. Union of India and another reported in (2020) 16 SCC 489.
- (ii) Jagdish Mandal Vs. State of Orissa and others. reported in

(2007) 14 SCC 517.

- (iii) N. J. Projects Ltd. Vs. Vinod Kumar Jain reported in AIR 2022 SC 1531.
- (iv) Tata Motors Ltd. Vs. Brihan Mumbai Electric Supply and Transport Undertaking reported in AIR 2023 SC 2717.

16. We are not the experts and cannot impose our views to substitute the decisions arrived at by the Competent Authority, who is at the helm of affairs. It is the wisdom and the discretion of the implementing agency and supervisory authority. The High Court can interfere only if a case is made out showing *mala-fides*, arbitrariness or procedural impropriety. The action under challenge cannot be either substituted or quashed just because another view is possible

17. We propose to deal with the merits of the matter with the aforesaid notions. Initially budgetary sanction was given followed by administrative sanction for 186 work items. The Municipal Council Beed gave no objection certificate on 27.06.2022. The petitioners were the successful bidders. It appears from the record that the different work orders were issued on 14.07.2022 to the petitioners. The Municipal Council, Beed revoked no objection certificate on 06.07.2022.

18. One of the petitioners G. S. Engineering through its proprietor had filed Writ Petition No. 11107 of 2022 with a grievance that the work allotted to it was directed to be stopped, despite of lifting of stay granted by the State Government

earlier. By order dated 28.11.2022, the petition was disposed of by directing the Collector to take some decision on its grievance within four weeks. In pursuance of this order the respondent No. 3/Collector conducted an enquiry.

19. The Chief Officer, Municipal Council, Beed submitted report on 07.02.2023 before the Collector disclosing that as per the G. R. dated 04.06.2018, the Municipal Council contracted out the work of LED Street Light with EESL Company by executing a contract. The Chief Officer explained the circumstances for withdrawing no objection certificate vide letter dated 06.07.2022. It was reported that when the self same work was allotted to EESL company, there was no propriety to allot the work under the special scheme. The instructions issued in that regard vide G. R. dated 12.01.2018 were also cited for not to proceed with execution of the work through contractors.

20. During hearing survey report with photographs were placed on record before the Collector. After a threadbare enquiry, the respondent No. 3/Collector arrived at a conclusion for passing the impugned order. In this manner the authority has passed the impugned order.

21. The learned A. G. P. has placed reliance on G. R. dated 09.03.2018, which lays down a policy to regulate the implementation of Bharat Ratna Dr. Babasaheb Ambedkar Samajik Vikas Yojana. The responsibility of the Collector and his role in implementation of the scheme is laid down therein. The

respondent No. 3/Collector is empowered to grant administrative sanction as per clause No. 3. He has to see the necessity of the work and is responsible for disbursement of the funds. He has to perform supervisory role to oversee proper utilization of the funds, quality of the work, adherence to the rules and policies. The general condition No. 6 laid down in the resolution speaks about the care to be taken by the Collector and the implementing agency to avoid duplication of the work. Considering the clause Nos. 3, 4, 5, 8 and 9 and clause No. 6 of the general conditions, the respondent No. 3/Collector is duty bound to monitor the implementation of the scheme.

22. In view of the obligations cast upon the respondent No. 3/Collector, we find that it was within his duties to look into the complaint made by any stake holder alleging illegalities, duplication of the work and the propriety. The respondent No. 3 additionally was directed to consider grievance of one of the petitioners G. S. Engineering by the orders of this Court in Writ Petition No. 11107 of 2022. The respondent No. 3 accordingly took cognizance of the complaint and conducted an enquiry. It cannot be said that the enquiry was restricted to an issue of disbursement of funds as contended by the learned counsel for the petitioners.

23. The Chief Officer of the Municipal Council submitted report on 07.02.2023. The reasons were assigned by Chief Officer to withdraw no objection certificate. The survey report comprising of spot inspection of 72 works was also placed on

record. The instructions issued to the local bodies for installing LED lamps were also placed on record in the enquiry. An indepth objective enquiry was conducted by the respondent No. 3/Collector before revoking the administrative sanction by the impugned order. We find that the respondent No. 3/Collector has jurisdiction and due procedure was followed by him. The submissions of the learned Addl. G. P. in that regard are well founded.

24. The Government Resolution dated 09.03.2018 and the directions issued by this Court in Writ Petition No. 11107 of 2022 are the sources for the respondent No. 3/Collector to conduct an enquiry so as to see that there should not be duplication of the work, examine its propriety and to see proper utilization of the funds to be released. No fault can be found in the impugned order. The submission of the learned counsel for the petitioners pertaining to overstepping the power of the Collector and the scope of enquiry have no merits.

25. A grievance of the petitioners is violation of principles of natural justice. One of the petitioners M/s G. S. Engineers was given opportunity of hearing, which we have already recorded. The rest of the petitioners were only successful bidders to whom work orders were issued. We have our reservations to accept the contentions of the petitioners that they had commenced the work. The petitioners had no indefeasible right. It was an administrative action which was required to be initiated by the respondent No. 3/Collector. Pertinently, sanction of 72 work

items was revoked without castigating the petitioners. There was no allegations against the petitioners as such. The learned counsel for the petitioners is unable to point out the monetary loss or the investment made by the petitioners. We therefore find that there is no violation of the principles of natural justice.

26. The administrative sanction dated 28.06.2022 issued by the respondent No. 3/Collector, which is revoked by the impugned order is placed on record at Exhibit – G. It contains the conditions. The condition Nos. 14, 18 and 21, empower the respondent No. 3/Collector to abort the work or to revoke the administrative sanction. Condition No. 8 lays down that there should not be duplication of work. The condition No. 21, which is relevant is as follows :

21) सदर प्रशासकीय मान्यता अपरिहार्य कारणास्तव रद्द करण्याचे अधिकार / प्रलंबित ठेवण्याचे अधिकार शासन व या कार्यालयामार्फत राखीव ठेवण्यात येत आहेत.

27. We find that in present matters condition No. 21 is rightly invoked by the respondent No. 3/Collector, anticipating loss to the public exchequer.

28. In a writ jurisdiction, we cannot substitute the decision taken by the respondent No. 3/Collector. We have already recorded that the impugned action was taken without attributing any fault to the petitioners. The decision under challenge was taken because of unavoidable circumstances and out of abundant precaution. The proper procedure was followed by him and we

find that there is absolutely no arbitrariness.

29. The submission of the learned counsel for the petitioners that the respondent No. 3/Collector was misled by the report of the Chief Officer and he was over skeptical in interfering the duplication of work cannot be countenanced. Firstly, these submissions pertain to disputed questions of facts. Secondly, the respondent No. 3/Collector had discretion and wisdom to come to a particular conclusion after objective satisfaction. We find that the enquiry conducted by the the respondent No. 3/Collector which culminated into impugned action is based upon the reports. In our limited jurisdiction, we can only examine decision making process and not the merits of the decision.

30. Though it is a ground raised by the petitioners that there are *mala-fides* and at the instance of political persons the impugned action is taken, we do not find any corroboration to these allegations. We do not find any material to show that there was any grudge against the petitioners or the petitioners were to be targeted. The enquiry conducted by the Collector revealed the circumstance for which no fault can be attributed to the petitioners. The impugned action, therefore, cannot be interfered with on this ground.

31. The learned counsel would vehemently submit that installation of the poles and LED lights are the work specifically prescribed under the scheme. The work is to be executed under the supervision of Public Works Department. The Municipal

Council or the Collector have no power to disband the work. We have already recorded that after the objective satisfaction the respondent No. 3 has passed the impugned order. He has considered the necessary material. We do not find any valid reason to interfere in the powers exercised by the Collector. Hence, we reject the submissions.

32. We find no merit in all these petitions. All the writ petitions are dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 23