

CASE NO.:
Appeal (civil) 6793 of 2004

PETITIONER:
Nandkishore Ganesh Joshi

RESPONDENT:
Commissioner, Municipal Corporation of Kalyan & Dombivali & Ors.

DATE OF JUDGMENT: 15/10/2004

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:
J U D G M E N T

[Arising out of SLP (Civil) No.14833 of 2002]

S.B. SINHA, J :

Leave granted.

INTRODUCTION :

The Appellant herein, Chairman of the Standing Committee of the Second Respondent-Municipal Corporation of City of Kalyan and Dombivali (hereinafter referred to as 'the Corporation') had filed a writ petition before the Bombay High Court praying for issuance of a writ of or in the nature of mandamus directing the respondents to ensure that whenever a proposal for grant of approval of the contract in terms of Section 73 of the Mumbai Provincial Municipal Corporation Act, 1949 (hereinafter referred to as 'the Act') is placed before the Standing Committee, the same should contain the tender forms and other documents submitted by the contractor as well as other documents, if any, containing the records of negotiations made by the Commissioner of the Corporation after the tenders are opened or placed before it. The said writ petition was dismissed by the High Court on an interpretation of clause (c) of Section 73 of the Act as also the locus of the Appellant.

THE ACT VIS-@-VIS THE PARTIES :

The Respondent-Corporation has been constituted under the provisions of the said Act. The First Respondent herein is the Commissioner of the said Corporation appointed in terms of Section 36 of the Act. The State is also a statutory authority under the Act and may in a given situation exercise its revisional jurisdiction in terms of Section 451 thereof. A Standing Committee is constituted under Section 20 of the said Act. The Chairman of the Standing Committee is elected in terms of Section 21 thereof. The Standing Committee exercises various powers with which we are not concerned at present. Section 73 empowers the Commissioner to execute contracts on behalf of the Corporation but clause (c) thereof restricts the said power in the following terms :

"(c) no contract which will involve an expenditure (ten lakh rupees) or such higher amount as the Corporation may, with the approval of the (State) Government, from time to time prescribe, shall be made by the Commissioner unless the same is previously approved by the Standing Committee:

Provided that, where the previous approval of

the Standing Committee is sought by the Commissioner for any contract the Standing Committee shall consider and dispose of the proposal made by the Commissioner in that behalf within fifteen days from the date on which the item is first included in the agenda of any meeting of that Committee, failing which, the approval to such contract shall be deemed to have been given by the Committee, and a report to that effect shall be made by the Commissioner to the Corporation."

BACKGROUND FACTS :

In exercise of the said power the First Respondent issued notices inviting tender for supply of various materials, pursuant where to or in furtherance whereof, contractors submitted their tenders. He forwarded summaries of three separate tenders, which according to the Standing Committee of the Corporation did not disclose any material whereby it could assess the merits or demerits thereof. The matter was placed before the Standing Committee on 26.4.2001 whence the following resolution was passed :

"Considering the administrative proposal of supplying Bleaching Powder Grade-2 and Hydrated Lime to Twelfth Water Treatment Plant, it is essential to obtain relevant documents to provide detailed information to the members of the Standing Committee. Therefore, this Standing Committee resolves that, as per rules the administration should submit brief of the said case in office of the Secretary for the information of the Standing Committee. Similarly, in future briefs of each proposal from administration, which is placed before the Standing Committee should be submitted in Secretary's office along with profile from time to time for the perusal of the Standing Committee."

Curiously the First Respondent did not respond thereto directly to the Standing Committee; but by a letter dated 9.5.2001 addressed to the Secretary of the Corporation posed a question as to under which rule it had asked for the said documents. It was contended :

"The administration has decided to ask the Government for advice. As soon as the advice is obtained from the Government a decision shall be taken in respect of the demand referred to above."

The Government of Maharashtra by its letter dated 18.5.2001 quoting Rule 24 of the Rule Book of the Corporation, General Meetings, Standing Committee and Transport Committee Working Rules, opined :

"Therefore before approving any work or resolution the Standing Committee shall examine these documents. Therefore it is essential to make available such documents in the office of the Secretary or in the presence of their representative for the perusal of the speaker or member of the Standing Committee."

Rule 24 of the Rules, however, does not appear to have been correctly quoted in the said letter, which is as under :

"24. Papers laid on the Table.-

Papers which are intended to be placed before the Corporation or any committee for its information shall be kept in the office of the Municipal Secretary and intimation thereof shall be given to every councillor. Such paper shall be open for inspection by any councillor during office hours."

The Standing Committee of the Corporation by its letter dated 22.4.2001 brought the aforementioned direction of the State Government to the notice of the First Respondent and requested him to make available all the files in the office of the Municipal Secretary. The said issue was again raised in a meeting dated 6.6.2001 wherein it was pointed out that all the documents and the files had not been made available for inspection of the members and despite the directions given by the State Government, the Commissioner has approved the contracts treating the same to have been sanctioned in terms of the proviso appended to Section 73(c) of the Act.

It is evident that before the State's reply reached the hands of the First Respondent, he invoked his power in terms of the proviso appended to clause (c) of Section 73 of the Act holding such approval of the Standing Committee would be deemed to have been granted as it did not dispose of the said proposal within 15 days from the date on which the item is first included in the agenda of the meeting of the Standing Committee. The said order was questioned by the Appellant herein which as noticed hereinbefore was dismissed by the High Court.

SUBMISSIONS OF THE COUNSEL :

Mr. C.A. Kaladkar, the learned counsel appearing on behalf of the Appellant would submit that the High Court committed a manifest error in interpreting clause (c) of Section 73 of the Act and the proviso appended thereto. The contention of the learned counsel is that the documents sought for by the Standing Committee of the Second Respondent were essential for the purpose of assessing the viability, merits and demerits of the tender so as to enable it to consider the question as to whether the recommendations of the First Respondent should be approved or not.

The learned counsel would urge that the reason for the Standing Committee to ask the First Respondent to supply the said recommendations arose in view of the fact that the rates at which Bleaching Powder, Hydrated Lime and Liquid Chlorine were sought to be purchased were much above the market rates thereof. A statement to the said effect was made in paragraph 17 of the Rejoinder Affidavit filed by the Appellant herein but the same had not been traversed. The learned counsel, therefore, would argue that in the aforementioned situation, the High Court ought to have held that the proviso appended to clause (c) of Section 73 of the Act could not have been invoked.

Mr. K. Radhakrishnan, the learned senior counsel appearing on behalf First Respondent, on the other hand, would submit that all the informations in terms of the form prescribed by the Standing Committee under Chapter V of the Schedule of the Act having been disclosed, it was not necessary to supply any further documents. The reasons for non-supply of such documents, according to the learned counsel, as contained in paragraph 4 of the Counter Affidavit are :

"That there are several other reason also for not submitting the papers, correspondence etc. before the Standing Committee namely : (i) important papers from the tenderers/files containing important information may be removed or the files may be misplaced; (ii) that the Officers of the Corporation normally give their remarks about the responsibility of the rates quoted, ability and integrity of the tenderer. In case of some adverse remarks against a particular tenderer, which if made known, the life of the officer making such remark, may be endangered; (iii) in case, the remarks etc. made in the file are revealed to the tenderers, the tenderers may use force to ensure that other tenderers do not submit their tenders etc. (iv) the forms and the tender documents are open to the public and the rates quoted by each and every tenderer are mentioned in the summary/proposal sent by the Commissioner to the Standing Committee."

The learned senior counsel would further submit that the Appellant herein has no locus standi to maintain the writ petition and in any event, the matter is still pending with the Government as the same had been referred to it by the First Respondent himself.

The learned counsel would further urge that the Appellant herein did not approach the High Court with clean hands and in that behalf our attention has been drawn to paragraph 18 of the Affidavit filed in reply affirmed by Ramnath K. Sonawao, Deputy Secretary (Legal) of the Respondent-Corporation, which is as under :

"I say that the Petitioner has since oblique motives in asking for the custody of the documents. As stated earlier except in particular cases i.e. about 5 cases in the remaining contract proposal, which were placed, the same have been approved without calling for the files. In relation to the supply of chemicals for purification of water the Petitioner appears to have some vested interest and is intended to support the case of the contractors who lost their tenders\005."

Further contention of Mr. Radhakrishnan is that even in law, there was no necessity to supply any document having regard to the form which was prescribed by the Municipal Corporation and our attention in this behalf has been drawn to the informations sent in the format by the First Respondent to the Standing Committee on 26.4.2001. In any event, the learned counsel would urge that as the Standing Committee had an alternative remedy to approach the State Government in terms of Section 451 of the Act, the writ petition was not maintainable.

ANALYSIS OF THE STATUTORY PROVISIONS :

A statute, as is well-known, must be construed in such a manner whereby the intent and object of the Act can be given effect to. A literal meaning should also be avoided if it results in absurdity. Indisputably, the First Respondent holds a statutory position. A discretion conferred on a statutory authority, it is well-settled, must be exercised in public interest and judiciously. There is no place of any whim or caprice in exercise of such discretionary power. [See Clariant International Ltd. & Anr. Vs. Securities & Exchange Board of India \026 2004 (7) SCALE 180].

Although the Commissioner is entitled to execute contracts on behalf of the Corporation but a statutory embargo is placed thereupon by reason of Clause (c) of Section 73 of the Act. A contract which may be entered into by the Commissioner requires prior approval of the Standing Committee. It is, thus, not a case where an action taken by a statutory authority requires approval which may be granted at a later stage. The approval of the Standing Committee, a bare perusal of Clause (c) would show, is required to be granted before any contract is entered into. The approval of a contract and that too with previous approval by the Standing Committee cannot, thus, said to be an empty formality. [See Canbank Financial Services Ltd. vs. The Custodian & Ors. - 2004 (7) SCALE 495 \026 PARA 35]. The Standing Committee is required to perform its functions in terms of the provisions of the said Act. A statutory authority has also a duty to act in public interest as also fairly and in a reasonable manner.

With a view to bona fide performing its statutory functions, if the Standing Committee is unable to approve such proposal on the basis of the documents supplied to it, it is entitled to ask for the relevant documents from the Commissioner. Clause (c) of Section 73 is couched in the negative language and, therefore, is imperative in character. [See P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. & Ors. \026 Civil Appeal Nos. 689 of 1998 etc. \026 decided on 7th October, 2004].

The proviso appended to Section 73 carves out an exception to the general rule which evidently has been enacted for the purpose of avoiding any delay and would apply in a situation where despite meeting, the Standing Committee deliberately or otherwise refuses or fails to take any decision. No doubt a legal fiction has been created but the same cannot be given effect to in vacuum. It is to be applied having regard to the legislative intent and a restricted meaning is to be attributed thereto in a situation of this nature. A statute, it is also well-known, must be read in such a manner whereby it is made workable - Ut res magis valeat quam pereat. [See Andhra Bank vs. B. Satyanarayana and Others \026 (2004) 2 SCC 657] and Indian Handicrafts Emporium and Others vs. Union of India and Others \026 (2003) 7 SCC 589]. In any event, where a difficulty arises in a given situation to construe the statute upon applying a plain meaning thereof, it is well-settled, the rule of purpose construction should be applied. [See Swedish Match AB & Anr. Vs. Securities & Exchange Board, India & Anr. \026 2004 (7) SCALE 158].

APPLICATION OF RULE :

We have noticed hereinbefore that the functions of the Standing Committee must be exercised in public interest and, thus, cannot be said to be a formal ones. The members of the Standing Committee must apply their mind to the proposal of the Commissioner wherefor they must have before them the relevant records.

The Commissioner who is a statutory authority is bound to comply with the said request unless there exist strong and cogent reasons for not doing so. It is relevant to notice that the First Respondent in his letter dated 9.5.2001 which incidentally was issued 14 days after the resolution adopted by the Standing Committee i.e. a day just prior to the expiry of 15 days did not raise any contention that the relevant records were not required nor did he say that the purpose of such approval, the informations disclosed in the prescribed form would subserve the purpose. He further did not say that for one reason or the other, which has now been contended in the Counter Affidavit, that such documents should not be disclosed. A statutory authority, as is well known, when acts in terms of a statute, is bound by his action. He cannot supplement or supplant the reason later on by way of Affidavit. Furthermore, we find that apart from the fact that no such question had been raised by the Commissioner in his letter dated 9.5.2001, the reasons sought to be assigned in the Counter Affidavit either are unjustified or irrelevant. A Statutory Committee should not be denied

access to the documents to which it is entitled to, even according to the State Government. Rule 24 whereupon reliance has been placed by the State Government in its letter dated 18.5.2001 (although may not be a verbatim copy of the extant rules) would also go to show that each member of the Committee is entitled to have access to the documents. No privilege had been claimed nor can be claimed in law in the matter of disclosure of such documents. Furthermore, the apprehension expressed by the Commissioner in his Affidavit as regard the consequences which may ensue by disclosure of such documents is not correct, having regard to the fact that the tender had reached the final stage. The contention of the Respondent that all informations had been supplied in the proforma in the light of Chapter V of the Act also appears to be incorrect as in sub-paragraph (E) of paragraph 5 of the Counter Affidavit, the Respondent himself stated that Chapter V of the Schedule of the Act relates to execution of the contract and evidently, thus, would not be applicable for the purpose of grant of approval at the threshold. In any event, the information given in a form is merely a matter of procedure and what matters in a situation of this nature is the substance thereof. The Commissioner, furthermore, despite referring the matter to the State Government did not wait for its opinion on the subject. He invoked the proviso to Section 73(c) much before the opinion of the State as contained in its letter dated 18.5.2001 reached his hands. Submission of Mr. Radhakrishnan that the Appellant has no locus standi to maintain the writ petition cannot be accepted keeping in view the fact that he was the Chairman of the Standing Committee and although the Standing Committee itself was not the writ petitioner. A question involving proper interpretation as regard the statutory provisions conferring a statutory right on a statutory authority vis-à-vis a statutory duty on the part of the Commissioner could be gone into by the High Court even in a public interest litigation.

We are also not in agreement with the submission of the learned counsel that Section 451 of the Act provides for an alternative remedy. Even such a question had not been raised before the High Court. Another submission of Mr. Radhakrishnan to the effect that the matter is still pending before the State Government having regard to the letter dated 18.5.2001 again does not appear to have been raised before the High Court, nor such a contention can be accepted as the State by its letter dated 18.5.2001 had already directed the Commissioner to disclose the documents before the Standing Committee which had asserted its right in terms of its resolution dated 26.4.2001.

We fail to understand as to how the matter can be said to be pending before the State Government.

For the foregoing reasons, we are of the considered view that the impugned judgment of the High Court cannot be sustained, which is set aside accordingly. The First Respondent is hereby directed to place before the Standing Committee of the Second Respondent all materials sought for from the Appellant in terms of its resolution dated 26.4.2001.

The appeal is allowed with the aforementioned directions. In the facts and circumstances of the case, there shall be no order as to costs.