

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14628 OF 2022

M/s. Samiksha Construction	}	
Company	}	Petitioner
Versus		
Ambernath Municipal	}	
Council and Ors.	}	Respondents

Mr. I. M. Khairdi for the petitioner.

Mr. A. S. Rao for respondent no. 1.

Ms. R. A. Salunkhe, AGP for
respondent no. 3 (State).

**CORAM: DIPANKAR DATTA, CJ. &
ABHAY AHUJA, J.**

DATE: NOVEMBER 28, 2022

P.C.:

1. In this writ petition dated 22nd November 2022, the petitioner has claimed the following relief: -

"b) by an appropriate writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned tender notice dated 27.10.2022 issued by the Respondent No.2;

c) By an appropriate writ, order or direction, this Hon'ble Court be pleased to restrain the Respondent No.2 from issuing tender notice till the elections are held and new Body assumes the office of the Respondent No.1 Municipal Council."

2. It is not in dispute that the term of Ambernath Municipal Council (hereafter "the Council", for short) has ceased on 17th May 2020. The Council, by a work order dated 15th June 2016,

had engaged the petitioner for the work of collection and transportation of solid waste. The contract was valid for a period of 5 (five) years from the date of the work order, i.e., till 14th June 2021. Due to the unprecedented pandemic caused by COVID-19, election to the General Body of the Council could not be conducted and an Administrator came to be appointed. In all, 3 (three) extensions were granted to the petitioner. In terms thereof, it continued with the work of collection and transportation of solid waste beyond the initial period of 5 (five) years. The third extension that was granted, permitted the petitioner to execute the work entrusted to it for the period between 1st October 2022 and 31st December 2022 or until a new quotation for solid waste collection is received.

3. On 27th October 2022, the Administrator issued e-tender notice for appointing a service provider for 5 (five) years for collection and transportation of solid waste within the jurisdictional limits of the Council. It is this notice that forms the subject matter of challenge in this writ petition primarily on 2 (two) grounds: (i) the Administrator has no authority to take a policy decision and proceed for appointment of a new contractor for collection and transportation of solid waste; and (ii) clause (6), which is part of Appendix XI titled as "Project Information memorandum", requires provisions for 100 (hundred) e-Vehicles for door to door collection and transportation of municipal solid waste, which are not immediately available and, therefore, such term of the tender notice would render the entire process unworkable.

4. None of the contentions has appealed to us and hence, we have not called upon Mr. Rao, learned advocate for the Council to respond.

5. As has been noted above, the election to the General Body of the Council could not be conducted because of the unprecedented pandemic. Section 316 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereafter "the Act of 1965", for short) provides for the consequences if a municipal council is dissolved. It reads as under: -

"316. Consequence of dissolution

When the council is dissolved under section 313 or under the proviso to Article 243-ZF of the Constitution of India, the following consequences shall ensure, namely:

(a) all Councillors of the Council shall, as from the date specified in the order of dissolution, or from the date on which the Council stands dissolved under the proviso to Article 243-ZF, vacate their offices as such Councillors;

(b) all the powers and functions vesting in or exercisable by the Council, the President, the Vice-president, the various committees, the Councillors and the Chief Officer under this Act or any other law for the time being in force shall vest in and be exercisable by such Government Officer or Officers as the State Government from time to time appoints in this behalf and such Officer or Officers shall receive such remuneration from the municipal fund as the State Government may, from time to time, determine.

(c) the Chief Officer shall be subordinate to such Officer or Officers appointed under clause (b), who shall determine which powers and duties of a Chief Officer may be exercised and performed by the Chief Officer of such Council;

(d) all property vested in the Council shall, during the period of dissolution, vest in the state Government."

6. Thus, section 316 of the Act of 1965 provides for appointment of an Administrator, who steps into the shoes of the municipal council. Such Administrator is empowered by law to discharge all the duties and functions which the municipal council could have, in the ordinary course of business, discharged. If it is conceded that the Administrator does not have the authority to issue a fresh tender, by the same logic, the Administrator would not have the authority to extend the contract of the petitioner. Having derived the benefit of extension granted to it, the petitioner cannot question the Administrator's decision on the ground of lack of authority. Also, the third extension was granted and accepted by the petitioner on condition that it would continue till fresh quotation is received. Having accepted such condition imposed by the Administrator, it is clear that the petitioner is seeking to blow hot and cold at the same time. We are, therefore, unable to accept the challenge of the petitioner to the Administrator having issued the impugned e-tender notice.

7. The second contention raised by the petitioner is equally unsustainable. For facility of reference, clause (6) of Appendix XI to the tender notice, which is called in question, is quoted below: -

"6. Procurement of Equipment/Machinery: Procurement, installation and testing of equipment and machinery within the stipulated time period. Not limited to but Minimum Machinery and Vehicle Require for Door to Door Collection and Transportation of Municipal Solid Waste is given below.

Sr. No.	Particulars	Quantity
1	Ghantagadi Capacity upto 2 T (make Tata/ Ashok Leyland or equivalent)	84 E-Vehicle
2	Refuse Compactor capacity 7 Cum (make Eitcher/ Tata/ Ashok Leyland or equivalent)	12 E-Vehicle
3	Dumper/ Tippers capacity 3 T (make Tata, Ashok Leyland/ mahendra or equivalent)	04 E-Vehicle
	Total	100 nos.

The GPS system is mandatory for all vehicles. It is mandatory that the successful bidder should provide above 84 E-vehicle ghantagadi at site of work according to the scope of this tender within the 180 days from the date of work order. The purchased and registered date of the vehicles should not be one year beyond from the date of work order. The vehicles purchased before the specified date shall not be accepted. During the period of contract if E-Vehicles such as Refuse Compactor, Dumper/ Tippers are available in the market then it is mandatory to provide such vehicles for this work.”

8. In the present times of advancement of science and technology, when a shift towards e-Vehicles is discernible, it would be inappropriate to accept a challenge of the present nature. In fact, we ought to laud the attempt of the Administrator to ensure that for the purpose of solid waste collection from door to door and transportation to the dumping ground, use of e-vehicles is being encouraged. Our attention has not been drawn to any evidence that such e-Vehicles are not available in the market. From the above clause, we find that the contractors have been given 6 (six) months’ time for purchase of e-Vehicles from the date of the work order. Sufficient time has, therefore, been given to the selected bidder to comply with the requirements.

9. Before parting, we need to restate that it is not the function of the Court to sit in appeal over administrative decisions unless the decision is so outrageous that the same shocks the conscience of the Court. The Administrator is best suited to decide what would secure the interest of the Council best in relation to solid waste collection and transportation. We do not find the impugned clause to suffer from such an infirmity. There is also no bar for the petitioner to participate in the tender process and compete with other intending tenderers.

10. We, therefore, see no reason to entertain this writ petition. It is devoid of merits and, hence, stands dismissed.

11. No costs.

SALUNKE
J V

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by SALUNKE J V
Date: 2022.11.29
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(ABHAY AHUJA, J.)

(CHIEF JUSTICE)