

A MUNICIPAL COUNCIL GONDIA

v.

DIVI WORKS & SUPPLIERS, HUF & ORS.

(Civil Appeal No. 1538 of 2022)

B FEBRUARY 28, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Constitution of India: Art. 226 – Appellant-Municipal Council is running educational institutions – A resolution was passed for purchasing school furniture – Original writ petitioner no. 1 (respondent No.1) was declared successful bidder and work order was issued in its favour – However, on outbreak of Covid-19 pandemic and lockdown in force, the State Government published G.R. dated 4.5.2020 providing that owing to Covid-19 restrictions impacting government finances, non-priority expenditure should not be incurred – Pursuant thereto, Municipal Council informed respondent No.1 regarding suspension of work order until further orders – Municipal Council cancelled the work order after obtaining report from the Education officer that respondent No.1 had not taken any further steps in regard to supply of furniture as per the work order and that since the supply of furniture was not urgent in nature – On writ petition, High Court held that respondent No.1 is entitled to make the supply in pursuance of the work order – Hence the instant appeal – Respondent No.1 submitted that they have already manufactured the goods which are customized and therefore, if the Municipal Council is not directed to lift the goods prepared/got prepared as per the work order, it would suffer a huge loss – This Court directed on 7.2.2022 that as the schools have restarted, the official of the appellant would visit the place where the manufactured goods are kept and identify the goods which are immediately required, at this stage which shall not be less than 25% of the total quantity manufactured – On inspection of the goods, the official found that the goods did not meet the requirement of the work order – Even respondent No.1 had admitted that goods were not available – Held: There are disputed questions of fact such as whether in fact the goods were manufactured as per the specifications or not – Nothing was on record before the High Court that goods were in fact and actually manufactured by respondent No.1, as per the

specifications and the requirements of the Council and as per the work order – In absence of any evidence on record and there being disputed questions of facts, High Court ought not to have passed the impugned judgment directing the Council to continue the work order and accept the goods from respondent No.1 and to make the payments as per the work order – Even otherwise, no writ of mandamus could have been issued virtually granting the writ for specific performance of the contract/work order in a writ petition under Art.226 of the Constitution of India – Respondent No.1 ought to have been relegated to file a civil suit for appropriate relief of losses/damages, if any, sustained – Writ jurisdiction.

Allowing the appeal, the Court

HELD: By the impugned judgment, the High Court has issued a writ of mandamus virtually granting the relief of specific performance of the contract/work order. From the impugned judgment, it appears that the High Court was made to believe that the original writ petitioners had already manufactured the goods which are customized and as per the specifications and the work order. However, it is now found that there are no manufactured goods readily available which can be supplied to the appellant-Council. There are disputed questions of fact such as whether in fact the goods were manufactured as per the specifications or not. Nothing was on record before the High Court that goods were in fact and actually manufactured by the original writ petitioner No.1, as per the specifications and the requirements of the Council and as per the work order. In absence of any evidence and disputed questions of facts, the High Court ought not to have passed the impugned judgment and order directing the Council to continue the work order and accept the goods from the original writ petitioner No.1 and to make the payments as per the work order. Even otherwise, no writ of mandamus could have been issued virtually granting the writ for specific performance of the contract/work order in a writ petition under Article 226 of the Constitution of India. The original writ petitioners ought to have been relegated to file a civil suit for appropriate relief of losses/damages, if any, sustained. Even otherwise on merits also the High Court has

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- A erred in setting aside the communication dated 18.05.2020 and 07.07.2020. The High Court has not at all appreciated the reasons for suspending/cancelling the work order till further orders. It is to be noted that the decision dated 07.07.2020 was taken pursuant to the G.R. dated 04.05.2020 which was necessitated due to Covid-19 Pandemic and there was a lockdown and the schools were closed and that the Council had no sufficient funds. Even the said decision was taken after calling for a report from the Education Officer in regard to the tender/work order issued to the original writ petitioner No.1 and the Education Officer informed that the original writ petitioner No.1 has not taken any further steps in regard to supply of material as per the work order. [Paras 8, 8.1][431-E-H; 432-A-D]
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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1538 of 2022.

- D From the Judgment and Order dated 05.01.2021 of the High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Writ Petition No.1984 of 2020.

Mohit P. Khajanchi, Mahesh Dhatrak, C. George Thomas, Gaurav Agrawal, Advs. for the Appellant.

- E R. L. Khapre, Sr. Adv., Ms. Anagha S. Desai, Rahul Chitnis, Sachin Patil, Aaditya A. Pande, Geo Joseph, Ms. Shwetal Shepal, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- F 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.01.2021 passed by the High Court of Judicature at Bombay, Nagpur Bench at Nagpur in W.P.No.1984 of 2020, by which, the High Court has allowed the said writ petition preferred by respondent No.1 & 2 herein – original writ petitioners (hereinafter referred to as the original writ petitioners) and has quashed and set aside the action on the part of the appellant in cancelling the work order and by which the High Court has held that original writ petitioner No.1 is entitled to make the supply in pursuance of the work order dated 07.02.2020 to the appellant
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herein and consequent to which it will be entitled to the payments as per the terms of the work order, original respondent No.2 – Municipal Council, Gondia through its Chief Officer has preferred the present appeal. A

2. The appellant – Municipal Council is running educational institutions/schools. There was a requirement for benches, almirahs and tables in a school run by it. Accordingly, resolution dated 12.12.2018 came to be passed for purchasing desks, benches, almirahs and tables. An e-tender was issued by the appellant vide letter dated 19.09.2019 by virtue of which, bids were invited. That original writ petitioner No.1 participated in the tender and was declared the successful bidder and the same was sanctioned by the Standing Committee of the Municipal Council. Thereafter, an Agreement came to be executed between the original writ petitioner No.1 and the appellant, as a result of which, work order dated 07.02.2020 came to be issued in favour of original writ petitioner No.1. However, in view of the Covid-19 Pandemic and the lockdown in force, the Government of Maharashtra published G.R. dated 04.05.2020 by which it was provided that owing to Covid 19 restrictions impacting government finances, non-priority expenditure like in the present case, should not be incurred. In pursuance of above G.R., the President of Municipal Council, Gondia vide communication dated 18.05.2020 informed the Chief Officer that as the Municipal Council was not having any income due to ongoing lockdown and most of the schools were closed due to pandemic, no purchases should be made and no proposal for the same should be forwarded. In view of the above, the Chief Officer of the Municipal Council informed the original writ petitioner No.1 that the work order had been suspended until further orders. It is the case on behalf of the appellant that after obtaining the report from the Education Officer that the original writ petitioner No.1 had not taken any further steps in regard to supply of material as per the work order and having found that since the supply of desks, benches etc., was not urgent in nature during the time of pandemic and considering the G.R. dated 04.05.2020, the Municipal Council cancelled the work order till further orders. B C D E F G

2.1 Feeling aggrieved and dissatisfied with the action of the Municipal Council vide letter dated 07.07.2020 suspending/cancelling the work order till further orders respondent No.1 & 2 herein – original writ petitioners preferred W.P. No.1984 of 2020 before the High Court. By the impugned judgment and order the High Court has set aside the H

A action of the Municipal Council vide letters dated 18.05.2020 and 07.07.2020 and has held that original writ petitioner No.1 is entitled to make the supply in pursuance of the work order dated 07.02.2020 to the Municipal Council and consequent to which it is entitled to the payments as per the terms of the work order.

B 3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the Municipal Council has preferred the present appeal.

C 4. The present appeal was heard by this Court on 07.02.2022. It was submitted on behalf of the original writ petitioners that in fact they have already manufactured the goods which are customized and therefore, if the Municipal Council is not directed to lift the customized manufactured goods which the original writ petitioners prepared/got prepared as per the work order, the original writ petitioners would suffer a huge loss. This Court passed the following order on 07.02.2022: -

D “Having heard learned counsel appearing on behalf of the respective parties and considering the fact that as such on the order being placed by the petitioner, the respondent has already manufactured the goods which are customized and during the last two years, there may be some difficulty faced by the petitioner due to COVID-19 pandemic. But, now as the schools have re-started, we direct the official of the petitioner to visit the place where the manufactured goods are kept and identify the goods which are immediately required, at this stage which shall not be less than 25% of the total quantity manufactured and also make a schedule with respect to the balance goods manufactured and when the goods will be lifted and payment shall be made.

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Put up on 21.02.2022.”

G 5. Shri Gaurav Agrawal, learned counsel appearing on behalf of the appellant – Municipal Council has submitted that pursuant to the order passed by this Court on 07.02.2022, the official of the Council visited the premises of respondent No.1 on 10.02.2022. The officials of the Council were asked to visit Nagpur which they did on 11.02.2022. On inspection of the goods, it was seen that the goods do not meet the requirement of the work order and that they were not prepared for the Council as claimed by the original writ petitioners before this Court. It is pointed out that even vide communication dated 18.02.2022 respondent

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No.1 had admitted that goods were not available. It is therefore submitted that there are no manufactured goods available as per the specifications and the requirements of the Council and as per the work order and even the manufactured goods are not available till date, and hence there is no question of accepting any goods as per the work order as directed by the High Court. A

6. Shri R.L. Khapre, learned Senior Advocate appearing on behalf of the original writ petitioners has tried to explain the reasons as to why the manufactured goods are not available. It is submitted that as more than two years have passed and the goods manufactured with specifications were dismantled for proper storage as well as maintenance including polishing thereof and were kept in the available space/storage at Nagpur as it was practically impossible to store such huge quantity of material for such a long period due to unavailability of space as well as having regard to the their maintenance. Therefore, it is requested to grant some time for reassembling the goods in question for supply as early as possible. B C D

7. We have heard the learned counsel appearing on behalf of the respective parties at length.

8. At the outset, it is required to be noted that by the impugned judgment and order the High Court has issued a writ of mandamus virtually granting the relief of specific performance of the contract/work order. From the impugned judgment and order passed by the High Court it appears that the High Court was made to believe that the original writ petitioners had already manufactured the goods which are customized and as per the specifications and the work order. However, it is now found that there are no manufactured goods readily available which can be supplied to the appellant – Council. There are disputed questions of fact such as whether in fact the goods were manufactured as per the specifications or not. Nothing was on record before the High Court that goods were in fact and actually manufactured by the original writ petitioner No.1, as per the specifications and the requirements of the Council and as per the work order. In absence of any evidence and material on record and there being disputed questions of facts the High Court ought not to have passed the impugned judgment and order directing the Council to continue the work order and accept the goods from the original writ petitioner No.1 and to make the payments as per the work order. Even otherwise, no writ of mandamus could have been issued E F G H

- A virtually granting the writ for specific performance of the contract/work order in a writ petition under Article 226 of the Constitution of India. The original writ petitioner sought to have been relegated to file a civil suit for appropriate relief of losses/damages, if any, sustained.

- 8.1 Even otherwise on merits also the High Court has erred in
- B setting aside the communication dated 18.05.2020 and 07.07.2020. The High Court has not at all appreciated the reasons for suspending/cancelling the work order till further orders. It is to be noted that the decision dated 07.07.2020 was taken pursuant to the G.R. dated 04.05.2020 which was necessitated due to Covid-19 Pandemic and there was a lockdown and the schools were closed and that the Council had no sufficient funds.
- C Even the said decision was taken after calling for a report from the Education Officer in regard to the tender/work order issued to the original writ petitioner No.1 and the Education Officer informed that the original writ petitioner No.1 has not taken any further steps in regard to supply of material as per the work order. Therefore, the High Court has erred
- D in quashing and setting aside the communication dated 07.02.2020 in exercise of powers under Article 226 of the Constitution of India.

9. In view of the above and for the reasons stated above the present appeal succeeds. The impugned judgment and order passed by the High Court in W.P. No.1984/2020 is quashed and set aside.
- E Consequently, the original writ petition stands dismissed. However, it is made clear that this shall not preclude the original writ petitioners in initiating appropriate proceedings before the civil court for the damages/ losses, if any suffered by them, which may be considered in accordance with law and on its own merits and on the basis of the evidence to be led. The present appeal is accordingly allowed to the aforesaid extent.
- F No costs.