

A M/S. MADHOOR BUILDWELL PVT. LTD.

v.

YEOLA MUNICIPAL COUNCIL & ORS.

(Civil Appeal No. 7798 of 2019)

B OCTOBER 04, 2019

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Contract:

C *Work contract – For laying down sewer system – Assigned by Municipal Council under centrally sponsored Scheme – Non-payment to the contractor even after completion of 35% of work – Writ petition seeking direction to Central Government and State Government to disburse the funds under the Scheme – Petition dismissed by High Court – Appeal to Supreme Court – Held:*
D *Contract was awarded by Municipal Council without sanction of funds by Central Government – Thus, there is no illegality in the impugned order – However, since sewage system is a necessity, it would be appropriate for the State to consider and approve the sewer scheme and seek funds from the Central Government.*

E **Disposing of the appeal, the Court**

HELD: Respondent No. 1 Municipal Council has published public tender for giving contract of laying sewer without sanction of the funds by the Central Government. The State Level Sanctioning Committee under the Scheme approved the Sewage Scheme for the Yeola Municipal Council on July 20, 2013. Such Scheme was approved by the Ministry of Urban Development on December 24, 2013 but the concurrence of the Finance Ministry was sought. Since there was no approval from the Finance Department, the appellant cannot claim such amount on the basis of an inter-departmental communication where the Ministry of Urban Development has sought release of funds from the Ministry of Finance. Thus, there is no illegality in the order passed by the High Court. However, there cannot be any dispute that sewage system is a necessity in any urban area. The State Level Committee has approved the sewer for the respondent Municipality so as Ministry of Urban Development. The funds

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are to be allotted by the Central Government or the State Government according to the availability of funds and by maintaining balance of the requirement of various other local bodies. Therefore, it would be appropriate for the State Government to consider and approve the sewer Scheme for Yeola Municipal Council. If the State Government is unable to provide funds in terms of its policy, it shall seek funds from the Central Government under the present Scheme. This course of action is appropriate in view of approval of the Scheme earlier by the State Level Committee and by Ministry of Urban Development. [Paras 8 and 9] [649-C-H; 650-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7798 of 2019.

From the Judgment and Order dated 19.09.2014 of the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 3703 of 2014

Sudhanshu S. Choudhari, Adv. for the Appellant.

K. M. Natraj, ASG, Vinay Navare, Sr. Adv., Ms. Gwen Karthika, Ms. Abha R. Sharma, Nishant Ramakantrao Katneshwarkar, Anoop Kandari, Anmol Chandan, Somiran Sharma, Raj Bahadur, Mrs. Anil Katiyar, Advs. for the Respondents.

The Judgment of the Court was delivered by

HEMANT GUPTA, J.

1. The order dated November 16, 2017 passed by the High Court of Judicature at Bombay is the subject matter of challenge in the present appeal. Vide the aforesaid order, the writ petition filed by the appellant to seek direction to Government of India and Government of Maharashtra to disburse the alleged approved funds under Urban Infrastructure Development Scheme for Small and Medium Towns¹ was dismissed.

2. The respondent No. 1 – Yeola Municipal Council issued a public notice for providing underground sewer Scheme in Yeola city under the aforementioned centrally sponsored Scheme. The appellant is a

¹ for short, ‘Scheme’

A contractor who was assigned the work of laying of sewer system after being successful in the tender process.

3. The grievance of the appellant is that it has completed almost 35% of the work of laying sewer pipelines but the Municipal Council is not making the payment for the reason that the Central Government has not released the funds.

4. The High Court found that under the Scheme, 80% of the funding comes from the Central Government, 10% from the State Government and remaining 10% from the concerned Municipal Council. The said Scheme was discontinued after March 31, 2015. It is the stand of the Central Government that there is no privity of contract between the appellant and the Central Government. In these facts, the writ petition was dismissed.

5. Mr. Shyam Divan, learned senior counsel for the appellant refers to communication dated December 24, 2013 by the Ministry of Urban Development to contend that proposal of Yeola Municipal Council was approved by the Central Government. Earlier, the State Level Sanctioning Committee in its meeting held on July 20, 2013 has approved the Project of laying sewer in the area of Municipal Council. Therefore, the respondents are bound to release the funds in respect of Project which was approved by the State and the Union.

6. Mr. Divan points out that the appellant had carried out the work after being successful in the tender process. Since sewer is necessary for any urban area, therefore, the funds for laying sewer should be sanctioned by the State of Maharashtra under *Nagarothhan Yojana* or by the Central Government under the present Scheme, Atal Mission for Rejuvenation and Urban Transformation². Mr. Divan argued that sewage and sanitation process serve the public interest as is necessary for any urban local area.

7. During the course of arguments before this Court, Mr. K.M. Nataraj, learned Additional Solicitor General pointed out that the appellant relies upon inter-office communication dated December 24, 2013 to assert that the Project was approved by the Central Government. It is pointed out that such communication (Annexure P/4) is a letter by the Ministry of Urban Development to the Joint Secretary, Department of Expenditure, Ministry of Finance for approval

² for short, 'AMRUT'

to seek release of funds in respect of six municipalities in the State of Maharashtra but the Ministry of Finance vide communication dated February 19, 2014 has approved for release of amounts in favour of six municipalities in the State of Maharashtra, three of them were recommended in the communication dated December 24, 2013. It is, thus, contended that there was no commitment of release of funds in respect of remaining three municipalities including the respondent No.1 by the Central Government. The Ministry of Urban Development has sought the sanction of the Finance Department but since sanction for release of the funds has not come before the expiry of the Scheme, therefore, the unilateral act of the Municipal Council to award contract will not create any financial obligation on the Union.

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8. We have heard learned counsel for the parties and find that the Municipal Council has published public tender for giving contract of laying sewer without sanction of the funds by the Central Government. We find that the State Level Sanctioning Committee under the Scheme approved the Sewage Scheme for the Yeola Municipal Council on July 20, 2013. Such Scheme was approved by the Ministry of Urban Development on December 24, 2013 but the concurrence of the Finance Ministry was sought. The said communication is inter-departmental communication. The Ministry of Urban Development has sought release of funds from the Department of Expenditure, Ministry of Finance but, the funds amounting to Rs. 116961.81 lakhs were released including sum of Rs.46556.36 lakhs for the State of Maharashtra but no funds were released for Yeola Municipal Council. Since there was no approval from the Finance Department, therefore, the appellant cannot claim such amount on the basis of an inter-departmental communication where the Ministry of Urban Development has sought release of funds from the Ministry of Finance. Thus, we find that there is no illegality in the order passed by the High Court.

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9. However, there cannot be any dispute that sewage system is a necessity in any urban area. The State Level Committee has approved the sewer for the respondent Municipality so as Ministry of Urban Development. We are conscious of the fact that the funds are to be allotted by the Central Government or the State Government according to the availability of funds and by maintaining balance of the requirement of various other local bodies. Therefore, we deem it appropriate for the State Government to consider and approve the sewer Scheme for

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- A Yeola Municipal Council. The State Government shall take necessary action within three months for approval of the sewer system under the State Scheme but if the State Government is unable to provide funds in terms of its policy, it shall seek funds from the Central Government under the present AMRUT Scheme. We hope that the Central Government will be able to consider and take an appropriate decision within three months thereafter in view of the recommendation of the State Government, if any. This course of action is considered appropriate in view of approval of the Scheme earlier by the State Level Committee and by Ministry of Urban Development.
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10. With the said direction, the appeal stands disposed of.

Kalpana K. Tripathy

Appeal disposed of.