



IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE  
HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 28<sup>th</sup> OF NOVEMBER, 2024

WRIT PETITION No. 12898 of 2022

*NAGAR PARISHAD BAMHANI BANJAR DISTRICT MANDLA M.P.*

*Versus*

*COLLECTOR AND OTHERS*

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Appearance:

Shri Rahul Rawat, Advocate for Petitioner.

Shri Jitendra Shrivastava, Panel Lawyer for State.

Shri Abhigya Verma, Advocate for Respondent No.2.  
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ORDER

This petition is filed by the Petitioner/Nagar Parishad, Bamhani Banjar, District Mandla through its Chief Municipal Officer being aggrieved of order dated 31.3.2022 passed by learned Court of the Collector, Mandla in Case No.0040 (B-121) 2021-22 (Chief Municipal Officer, Nagar Parishad, Bamhani Banjar, Mandla versus Ashish Kachhwaha) holding that the Chief Municipal Officer, Nagar Parishad, Bamhani Banjar, District Mandla is entitled to only forfeit the amount of the earnest money and the remaining amount should be refunded to the respondent herein.

Brief facts of the case are that on 18.3.2021, a notice inviting offers for collection of weekly market recovery charges was floated by the present petitioner and in pursuance of that notice, the private respondent being the



highest bidder had furnished his earnest money of Rs.50,000/-. On 18.3.2021, the bid of Contractor Ashish Kachhwaha was accepted. On 19.3.2021, the Chief Municipal Officer had informed the Contractor to deposit 25% of the bid amount totaling to Rs.4,63,445/- within twenty-four hours otherwise his bid shall stand cancelled. Thereafter, the Contractor had deposited a sum of Rs.4,63,445/- on 22.3.2021 with a request to the Municipal Authority to make a public announcement that the persons participating in the collection of weekly market recovery charges will also be liable to pay the amount of GST alongwith the market tax. On 3.4.2021, an application was filed by the Contractor to the Chief Municipal Officer that on account of non-convening of the weekly market, the installments for the period concerned be condoned as second phase of Covid-19 has set in. On 7.4.2021, the Contractor had purchased stamp paper of Rs.100/- but instead of presenting it to the Office of the Chief Municipal Officer, he kept it with himself. On 27.8.2021, the Chief Municipal Officer gave reply to the communication of the Contractor dated 3.4.2021 and informed him that as per Resolution No.10 dated 17.6.2021, the Contractor can approach the State Government for cancellation of the contract and for refund of the amount. On 3.9.2021, the Contractor had informed the Chief Municipal Officer that on account of pandemic of Covid-19, no recovery could be made from the market and since there was no authorization letter given by the Municipal Council nor any agreement was executed and he is facing undue loss, therefore, his earnest money alongwith the money of first installment be refunded to him.



The aforesaid plea was rejected though Shri Rahul Rawat, learned counsel for the petitioner submits that later on the Contractor was asked to continue with the work of weekly market recovery charges but he did not agree when the matter was taken before the Collector. He places reliance on the judgment of the Apex Court in **Sardar Sucha Singh versus Union of India & Others 1987 (Supp) SCC 127** to contend that by conduct of the Contractor in depositing the first installment, there had come in existence of formal agreement though it was not executed on paper and, therefore, the Respondent/Contractor is not entitled to wriggle out of the contract and claim refund. He also submits that the order of the Collector directing for forfeiture of the earnest money and refund of the amount of first installment is contrary to law and to buttress his claim, he also places reliance on the judgment of a Coordinate Bench of this Court in **Shiv Singh versus Union of India & Another 2007 (4) M.P.L.J 165**.

Shri Abhigya Verma, learned counsel for the Respondent/Contractor in his turn places reliance on the judgment of the Madras High Court Bench at Madurai in Writ Petition (MD) No.19767/2020 & W.M.P (MD) No.16467/2020 [P.M.Harshan Hassan versus Government of Tamil Nadu & Others] decided on 1.2.2021 wherein the Madras High Court has taken this fact of outbreak of national disaster, namely, Covid-19 into consideration and has observed that in **Bharat Petroleum Corporation Limited versus Maddula Ratnavalli (2007) 6 SCC 81**, it is held by the Apex Court that where an entity is a State within the meaning of Article 12 of the Constitution of India, it is enjoined with a duty to act fairly and reasonably. The State acting whether as



a landlord or a tenant is required to act bonafide and not arbitrarily, when the same is likely to affect prejudicially the right of others. A statute must be construed justly. An unjust law is no law at all. A statutory order or discretion exercised by a statutory authority must be tested on the anvil of the constitutional scheme. The action on the part of the State must be reasonable even in contractual matters.

I have heard learned counsel for the parties and gone through the record.

The Collector, Mandla has passed an order to the Nagar Parishad, Bamhani Banjar, District Mandla to forfeit the amount of earnest money of Rs.50,000/- and return the amount of the first installment deposited by the petitioner. When the order of the Collector, Mandla is tested in the light of the fact that the second wave of Covid-19 has set in April when the Contractor was to begin his work and that continued to harass, depress and threaten the common citizens till atleast September, 2021 then after having lost almost six months' period of recovery, the Contractor was helpless due to such situation of the force majeure. It is not a case where on a situation of Contractor's own making, he had sought to wriggle out of the so called commitment to collect the weekly market recovery charges for the Nagar Parishad. In view of such fact, the judgment of Apex Court in **Sardar Sucha Singh versus Union of India & Others (supra)** will not be applicable to the facts & circumstances of the present case. Similarly, the facts of **Shiv Singh versus Union of India & Another (supra)** are different and that will not have any application to the facts & circumstances of the present case. However,



the law laid down by the Apex Court in **Bharat Petroleum Corporation Limited versus Maddula Ratnavalli (supra)** is relevant for the present. The controversy is that whether the contract could not be executed and given effect to due to force majeure or on account of certain lacunas on the part of the Contractor and the answer is that prima facie the contract could not be given effect to on account of the force majeure i.e. the outbreak of the second wave of Covid-19.

Thus, when this fact is taken into consideration then the action on the part of the State made through the Collector, Mandla when tested appears to be reasonable to direct the Municipal Authority to forfeit the amount of the earnest money but refund the amount of the first installment on account of the fact that due to force majeure, the Contractor was stopped from making recovery of the weekly market recovery charges as there was no organization of market in the wake of Covid-19 Phase-II breakdown.

Thus, the impugned order dated 31.3.2022 passed by learned Court of the Collector, Mandla in Case No.0040 (B-121) 2021-22 being just & correct and has fulfilled the cannons of reasonableness even in contractual matter as has been held by the Apex Court in **Bharat Petroleum Corporation Limited versus Maddula Ratnavalli (supra)**, I do not see any error in the said order calling for interference in this petition.

Accordingly, this writ petition fails and is dismissed.

At this stage, Shri Abhigya Verma, learned counsel for Respondent/Contractor prays for a specific time frame for refund of the amount of the first installment.



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The Petitioner/Nagar Parishad, Bamhani Banjar, District Mandla is requested to make that refund within a period of one month from the date of receipt of certified copy of the order being passed today.

**(VIVEK AGARWAL)**  
**JUDGE**

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