

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) (WRIT PETITION (PIL)) NO. 9 of 2024****With****CIVIL APPLICATION (FOR JOINING PARTY) NO. 3 of 2024****In R/WRIT PETITION (PIL) NO. 9 of 2024**

=====

RE-MANAGEMENT OF THE WATER BODIES SUCH AS
RESERVOIRS/PONDS/RIVERS/LAKES IN THE STATE OF GUJARAT, &
ANR.

Versus

STATE OF GUJARAT THROUGH THE SECRETARY HOME DEPARTMENT
& ORS.

=====

Appearance:

MS TRUSHA PATEL, SR. ADVOCATE for LAW OFFICER BRANCH(420) for
the Applicant(s) No. 1,2

MS E.SHAILAJA(2671) for the Applicant(s) No. 1,2

for the Opponent(s) No. 3

MR PRAKASH K. JANI, SR. ADVOCATE with G H VIRK(7392) for the
Opponent(s) No. 2

MR KAMAL B. TRIVEDI, ADVOCATE GENERAL with MR VIJAY
BAIRAGRA, AGP for the Opponent(s) No. 1

=====

CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 03/07/2024

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)

1. Perused the report of the Fact Finding Committee constituted vide Government Resolution dated 08.05.2024 under the chairmanship of the Principal Secretary, Urban Development and Urban Housing Department, Government of Gujarat in compliance of the order dated 25.04.2024 of this Court in the

instant PIL.

2. In the order dated 25.04.2024, on perusal of the original record pertaining to grant of contract in favour of M/s. Kotia Projects for development of Harni Lake on PPP (Public Private Partnership) Mode and the affidavit of the Municipal Commissioner, Vadodara Municipal Corporation, it was noted by this Court that, though, a proposal was submitted by the Municipal Commissioner to the Standing Committee on 15.09.2015, authorizing to take steps for development of various lakes and surrounding areas on PPP Mode, however, the said proposal was not approved by the Standing Committee.
3. In spite of the same, the Municipal Commissioner himself gave approval in principle both, administrative and technical sanctions for Expression of Interest (EOI), to develop Harni Lake on PPP Mode and published advertisement in the newspaper. When the proposal was placed before the Standing Committee on 01.10.2015, it has postponed the same to a later date vide Resolution No. 418. However, on the EOI submitted by M/s. Kotia Projects on 05.10.2015, vide Resolution No. 425 dated 08.10.2015, the Standing Committee directed for submitting a comprehensive proposal again after incorporation of suggestions for approval thereof. Another EOI was submitted AIIMac India on 15.10.2015. Thus, two bids were received for development of Harni Lake on PPP Mode, viz. one by AIIMac India and another by M/s. Kotia Projects.

4. The original record further indicated that the bid submitted by M/s.Kotia Projects was not approved. However, again advertisements dated 09.12.2015 and 10.12.2015 were published inviting EOI for development of Harni Lake on PPP Mode which were published in the local Gujarati newspapers. Pursuant to the advertisement dated 27.12.2015, M/s. Kotia Projects submitted EOI along with consulting agreement executed by it with Prem Fisheries providing consultancy services. There were two proposals against the said advertisement; one from M/s. Kotia Projects and another from M/s. Mangalam Construction Company.
5. For the purpose of evaluation of the bids, only one bidder remained, which is M/s. Kotia Projects, as Mangalam Construction Company had withdrawn its proposal, to whom the contract has been awarded after approval by the Standing Committee vide Resolution No. 296 dated 08.09.2016.
6. It has been brought on record of this petition that the General Body of the Vadodara Municipal Corporation approved the proposal of contract vide Resolution No.110 dated 12.09.2016 and the Work Order was issued on 01.12.2016. The agreement was, thereafter, executed with M/s. Kotia Projects.
7. Noticing these turn of events, this Court vide order dated 25.04.2024, for the reasons recorded therein, directed the Principal Secretary, Urban Housing and Urban Housing Department, Government of Gujarat, to initiate an inquiry by constituting an Inquiry Committee to find out the role and

responsibility of the Municipal Commissioner, Vadodara Municipal Corporation, who has been instrumental in the matter of grant of contract in favour of M/s. Kotia Projects, which was initially disqualified on the EOI submitted on 05.10.2015.

8. The fact-finding inquiry report has been placed before us in a sealed cover on 27.06.2024 and had been taken on record. Noticing certain contradictions in the inquiry report, we have supplied a copy thereof to the learned Advocate General appearing for the respondent State to go through it and make its submissions. A three page note has been submitted by the learned Advocate General today in the Court, on behalf of the State Government, on the role and responsibility of the then Municipal Commissioner, Vadodara Municipal Commission, in the matter of grant of contract in favour of Kotia Projects as discernible from the inquiry report.
9. Before going through the note submitted by learned Advocate General, we may go through the findings of the Inquiry Committee into the role and responsibility of the then Municipal Commissioner. Amongst various observations made by the Committee into the mode and manner of the procedure adopted in the proposal concerning Harni Mothnath Lake, we may note the observations of the Committee in paragraph '11' of the report as under :-

"11. Committee notes that the procedure adopted in various earlier PPP projects by Futuristic Planning Cell of VMC is same as the procedure adopted in the proposal concerning Harni Mothnath Lake. The procedure is :-

- a. EOI is published after getting due permission from Municipal Commissioner.
 - b. Presentations are made by the bidders to Standing Committee and VMC officials as per their availability wherever required.
 - c. Technical and financial bids are prepared based on requirements and suggestions received during the presentations.
 - d. Technical bid and financial bid are called for.
 - e. The bidders submit their bids.
 - f. The bids are opened and negotiation takes place with the selected bidder, wherever required.
 - g. Proposal is sent to Standing Committee which may approve the proposal or reject the proposal as the case may.
 - h. Work Order is issued "
10. As per the procedure, which can be discerned from the above noted statement, the EOI is published after permission from Municipal Commissioner, the presentations are to be made by the bidders to the Standing Committee and the Vadodara Municipal Corporation officials as per their availability, whenever required. Technical and financial bids are to be prepared based on the requirements and suggestions received during the presentations.
11. In the instant case, at the first place, when the EOI was submitted by M/s.Kotia Projects on 05.10.2015, as noted hereinabove and in the order dated 25.04.2024 of this Court,

the Standing Committee vide Resolution No. 425 dated 08.10.2015 had directed for submitting a comprehensive proposal again after incorporating suggestions for approval therein. There is nothing on record placed before us that a fresh comprehensive proposal was ever submitted by M/s. Kotia Projects before the Standing Committee thereafter. However, the fact remains that the bid submitted by M/s. Kotia Projects and AIIMac India had been rejected for the reason that both the bidders did not have financial capacity and M/s. Kotia Projects being a new entity, did not have work experience.

12. In the second round, pursuant to the advertisement dated 27.12.2015, M/s. Kotia Projects again submitted EOI in coordination with the consultant Prem Fisheries. There was another bidder M/s. Mangalam Construction Company. There is nothing on record that, at that juncture, the proposals submitted by them were placed before the Standing Committee. There is nothing on record that the two proposals received pursuant to the advertisement dated 27.12.2015 were placed before the Standing Committee or the presentations were made by the bidders to the Standing Committee, as was required under the procedure noted by the Committee in the above noted paragraph of the inquiry report.

13. The observations of the Inquiry Committee in paragraph '12' of the report that the record reflects that the process and procedure followed by the Corporation in the matter of inviting bid for development of Harni Mothnath Lake was near identical to the process and procedure followed for other

public works of the Corporation, is found to the contrary to the prescribed procedure and its own observation in paragraph '11' of the report. Further conclusion drawn by the Committee in paragraph '15' of the report that both the Municipal Commissioners of the Corporation had followed the regular and general procedure, which the Corporation was adopting for various other PPP proposals/projects is misleading.

14. As regard the second advertisement, the finding of the Inquiry Committee is that the advertisement was approved by the Executive Engineer of Futuristic Planning Cell of the Corporation on 09.12.2015. These advertisements were published in Gujarati newspapers of Vadodara and newspaper of Ahmedabad. It is noted by the Committee that in relation to the procedure for publishing the advertisement, the EOI/Tender could have been better handled if the tendering was online, i.e. e-procurement, which would most certainly led to wider participation by interested bidders.
15. The Committee also noted that only 20 days period was provided to interested bidders to submit their bids whereas the duration for submission of bids ought to have been at least 21 days for projects valued at more than Rs. 1 crore and 30 days for projects value at more than Rs. 3 crores. It was, thus, noted by the Committee that though the advertisement of tender in question was in the nature of public advertisement to the world at large, but the Corporation could have followed the more streamlined process of inviting bids and could have granted the world at large a greater

duration to submit bids. Each urban local body, must in these days and age, should prefer e-tendering/e-procurement and issue a public advertisement, both physical and e-mode to ensure that maximum publicity is received for all public works projects, which was missing in the matter at hand.

16. It is, thus, clear that as per the finding of the Committee that the requisite procedure for advertisement of the tender in question was not followed by the Corporation and the Municipal Commissioner who authorised himself to take steps for development of various lakes and surrounding areas on PPP mode is guilty of not following the prescribed procedure in the matter of grant of contract on PPP mode.

17. As regards the issue of M/s. Kotia Projects having been qualified in the second EOI, it was noted by the Committee in paragraph '20' as follows :-

"20. The Committee has observed that as far as the issue of qualification of M/s. Kotia Projects in the second EOI (in context of said bidder having "Nil" turnover and no experience just before 2 months in the first EOI) following is to be noted: -

a. M/s. Kotia Projects was a new entity that had just been established on 05.10.2015, i.e. after the issuance of the first EOI. This should have acted as an indicator of lack of qualification of the tendered work.

b. In response to the first EOI, M/s. Kotia Projects submitted a bid, wherein the turnover of the past 3 years was reflected as "Nil" and it was shown that the bidder-firm had been established on 05.10.2015.

c. In response to the second EOI, M/s, Kotia Projects

submitted a bid wherein the turnover for the past 3 years was provided as under: -

FY 2012-13 Rs 1,80,28,606

FY 2013-14 Rs 1,50,43,368

FY 2014-15 Rs 1,59,08,331

d. Additionally, the net-worth of all partners/consortium members was mentioned as Rs. 3.87 crores.

e. M/s. Kotia Projects submitted a Consulting Agreement dated 22.12.2015 executed by it with M/s. Prem Fisheries. Separately, M/s. Kotia Projects also submitted another Consortium Collaboration Agreement dated 22.12.2015 executed by it with M/s. Planning Solution.

f. M/s. Prem Fisheries had expertise as a consultant for maintaining the lakes, preserving aquatic life, water treatment, etc and M/s. Planning Solution was engaged in beach development, lake development, urban development, tourism, etc.

18. It was further noted by the Committee that in the tender in question, minimum qualification requirements of technical and financial qualifications of the bidder or the lead member in the public procurement was missing and then observed that there was substantial room for improvement in tender document for Harni Lake project. As per the tender notice at point no.16, the submission of bid through joint venture was not permitted. In the EOI format submitted by the bidders, there were inherent contradictions in the data provided by M/s. Kotia Projects on 05.10.2015 in the first EOI and on 25.12.2015 in the second EOI. In the EOI, though the bidders were invited to submit details of consortium/collaborations, but in the detailed tender notice, it was specifically mentioned that the joint venture was not

permitted.

19. The inquiry report says that it has emerged from the record that M/s. Kotia Projects had not submitted the details as per the prescribed format of EOI and that in the EOI, it is admitted being a new firm established as on 05.10.2015. In the second EOI, the turnover for Financial Year 2012-13 and Financial Year 2013-14 of Rs. 1.89 crores and Rs. 1.50 crores could not have been submitted by taking into consideration of the turnover of its proposed consortium partner/s.
20. It was further noted that considering the above documents and the report dated 01.06.2024 submitted by the Chief Engineer, Gujarat Urban Development Mission (GUDM), in the present case, the feasibility report, financial mode, draft concession agreement, etc were not prepared before invitation of the bids and the tenders conditions were not strictly followed. It was further opined by the Committee that in public tendering, when the bidder does not submit any information in the manner and form provided, the bid must be rejected forthwith. Moreover, when M/s. Kotia Projects had been disqualified in the first EOI, it was impossible for it to be qualified in the second EOI in absence of requisite credentials.
21. It was further noted that a Techno-Economic Feasibility (TEF) Study could have been conducted in the matter and a Standardised bidding document (Request for Qualification) for shortlisting of developers could have been adopted. It was clear that M/s. Kotia Projects was not bidding for the project

as a joint venture or a consortium, but in its independent capacity, therefore, all technical and financial qualifications should have been found in the qualifications of M/s. Kotia Projects itself and not some third party with whom M/s. Kotia Projects executed agreements.

22. From the above noted findings of the Fact Finding Committee, our tentative opinion in the order dated 25.04.2024 that there was apparent illegality in the contract awarded to M/s. Kotia Projects on the approval by the Standing Committee vide Resolution No. 296 dated 08.09.2016, stands substantiated.

23. In spite of all these illegalities and discrepancies found in the record of the Corporation in the matter of grant of contract to M/s. Kotia Projects, further observations made by the Committee into the role and responsibility of the then Municipal Commissioners, who were posted at the relevant point of time, was found to be confusing and misleading. As a result of it, the Court required the learned Advocate General to make clear the stand of the State Government on the role and responsibility of the two Municipal Commissioners posted during the period from 25.02.2015 till 08.09.2016 when the approval was granted by the Standing Committee to the bid submitted by M/s. Kotia Projects.

24. In the note put up by the learned Advocate General on behalf of the State Government, the observations in paragraph '36' of the Fact Finding Report with regard to the then Municipal Commissioner Mr. H.S. Patel (posted from

25.02.2015 to 23.02.2016) have been extracted to place before the Court that the Committee finds that the Municipal Commissioner Mr. H.S. Patel should have critically looked to the bid of M/s. Kotia Projects who had been disqualified in the first round of EOI and who was subsequently qualified in the second round of EOI. We may note that in submission of bid by M/s. Kotia Projects in both the rounds, Mr. H.S. Patel was the Municipal Commissioner, Vadodara Municipal Corporation.

25. As regards the second Municipal Commissioner who had on 24.06.2016, after retirement of Mr. H.S. Patel on 23.06.2014, he was posted in the Corporation from 25.06.2016 to 17.07.2018, i.e. at the time when the second bid submitted by M/s. Kotia Projects was evaluated. We may note from the statement in paragraph '43' of the report of the Fact Finding Committee, which states that Dr. Vinod R. Rao resumed charge of Municipal Commissioner on 24.06.2016. On 16.08.2016, it was decided to call the bidders to submit their respective final scope of work and price bid. M/s. Mangalam Construction Company had withdraw from the bidding process on 22.08.2016. The Committee, thus, observed that when one of the two bidders had withdrawn from the tender process and that in the first round of the tendering process (EOI), the second bidders had been disqualified, the entire tendering exercise could have been reviewed, scrapped and re-invited at this stage.

26. We may note that the Fact Finding Committee is sounding modest in say that the "entire tendering exercise

could have been reviewed/scrapped". In our opinion, the entire tendering process should have been "reviewed/scrapped", which is reflection of a sheer illegality in the tendering process. The proposal submitted by the then Municipal Commissioner Dr. Vinod R. Rao to qualify M/s. Kotia Projects as successful bidder to the Standing Committee on 23.09.2016, thus, suffers from grave illegality. As to how the proposal was approved by the Standing Committee in its Resolution No. 296 dated 08.09.2016 and the General Body vide Resolution No.110 dated 12.09.2016, is a question which raises eyebrows. At least, we can observe that the Principal Secretary, Urban Development and Urban Housing Department, Government of Gujarat is required to take a serious view of the manner of working of the Standing Committee and the General Body of the Corporation, which is now in charge of the affairs of the Corporation. No such instance should be repeated.

27. The observation in paragraph '46' of the Fact Finding Committee that the entire process is what is generally followed at Vadodara Municipal Corporation as also similar to what is followed in other urban local bodies and, therefore, no fault can be found in the process, is an effort of the inquiry Committee to mellow down the affairs of the Corporation. If this is the procedure and process which is being followed in the Corporation and Urban Local Bodies, in the State, then the Principal Secretary, Urban Development and Urban Housing Department, Government of Gujarat is required to change his own approach to have a re-look to his own opinion about the manner of working of such public

bodies. The Court takes strong exception to this observation in the report of the Fact Finding Committee and it seemed to the Court that the Fact Finding Committee is trying to cover up the illegality committed in the matter of grant of contract to M/s.Kotia Projects, evident from the original records, as observed in the order dated 25.04.2024 and also the inquiry report.

28. In our tentative opinion, both the Municipal Commissioners posted at the relevant point of time, are guilty of dereliction of duty and misuse of their position. In any eventuality, M/s. Kotia Projects cannot be said to be a qualified bidder in the process and, as such, there was no question of its selection.
29. However, the Court desists from making any further observation in the manner in which the Fact Finding Committee has prepared its report, inasmuch as, a statement has been made by the learned Advocate General based on the note submitted by him on behalf of the State Government that in view of the observations made in the Fact Finding Report, the competent authority of the State Government will initiate disciplinary action against the two officers posted as Municipal Commissioners, Vadodara Municipal Corporation, referred in inquiry report, through its General Administration Department (GAD) as per the All India Services (Discipline And Appeal) Rules, 1969 as well as under the All India Services (Death-cum-Retirement Benefits) Rules, 1958.
30. Taking note of the above, we provide that the necessary

disciplinary action shall be initiated against the erring officials considering the findings in the inquiry report of the Fact Finding Committee and the statement made on behalf of the State Government by the learned Advocate General, noted hereinabove. The disciplinary action, so initiated, shall be brought to its logical conclusion by adopting due procedure of law, and the result of the same shall be brought before the Court in the instant petition.

31. As regards the larger issue of management of water bodies such as reservoirs, ponds, rivers, lakes in the State of Gujarat, the present PIL is posted on 12.07.2024.

The Fact Finding Report has been sealed again and is kept on record in the sealed cover.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

BIJOY B. PILLAI