

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:

LAW OFFICER BRANCH(420) for the Applicant(s) No. 1

MS TRUSHA PATEL, SR. ADVOCATE with MR HEMANG M SHAH(5399) for
the Applicant(s) No. 1,2

for the Opponent(s) No. 3

MR G H VIRK(7392) for the Opponent(s) No. 2

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

=====

**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 25/04/2024

ORAL ORDER

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

- 1.** Perused the original record produced before us.
- 2.** In the order dated 15.04.2024, having perused the personal affidavit of the Municipal Commissioner, Vadodara Municipal Corporation and noticing that the correct and complete fact in the matter of grant of contract in favour of M/s. Kotia Projects for development of Harni Lake on PPP (Public Private Partnership) Mode has not been brought on record, we posted the matter today

requiring the learned counsel appearing for the Corporation to bring the entire original record pertaining to grant of contract. A further affidavit was required to be filed to answer as to how and in what manner, the contract was awarded and to reply the averments in the writ petition that the contractor had sublet the contract, contrary to the conditions in clause-21 of the tender document.

3. In the affidavit dated 23.04.2024 of the Municipal Commissioner, Vadodara Municipal Corporation, it is stated that the entire documents pertaining to the record of the matter of grant of contract have been brought on record. A chronology of dates and events in the award of contract has been given in paragraph-8. As per the chronology and the statements made in paragraphs 38 to 44, it is pertinent to note that a proposal was submitted by then Municipal Commissioner to the Standing Committee on 15.09.2015 for authorizing him to take steps for development of various lakes and the surrounding areas on PPP Mode. The said proposal was not approved by the Standing Committee. However, on 23.09.2015, 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 to publish advertisement in the newspapers. 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.

4. However, after the EOI submitted by M/s. Kotia Projects on 05.10.2015, the Resolution No.425 dated 08.10.2015 was passed and the Standing Committee directed for submitting a comprehensive proposal again after incorporation of suggestions for approval therein. Another EOI was submitted by AllMac India on

15.10.2015. Thus, two bids were received for development of Harni lake on PPP Mode, i.e. from (I) AllMac India and (II) M/s. Kotia Projects.

5. It is further relevant to note that in the bid submitted by M/s. Kotia Projects in the column of financial turnover, there was 'NIL' entry. M/s. Kotia Projects was a new entity established on 05.10.2015. The project was conceived by then Municipal Commissioner, Vadodara Municipal Corporation by granting approval in principle to himself to go ahead with the development of the lake through PPP Mode, when there was no approval of the Standing Committee for the project.

6. With these facts, we may record our strong suspicion to the manner in which the EOI was submitted by a new entity, established after the project was conceived. This aspect itself requires inquiry into the role of the then Municipal Commissioner, Vadodara Municipal Corporation.

7. It is further pertinent to note that the record indicates that both the bidders did not have financial capacity and M/s. Kotia Projects being a new entity did not have work experience, which was required under the bid. No public tender was floated at that point of time. As per the notings in the file, both the bids were rejected.

8. It seems that in order to grant contract to M/s. Kotia Projects, advertisements dated 09.12.2015 and 10.12.2015 were again published for inviting EOI for development of Harni Lake on PPP Mode. As per the record, both the advertisements were issued in local Gujarati newspapers. The names of the papers, wherein the

advertisements were published, have not been disclosed in the affidavit. However, it is noteworthy that pursuant to the advertisement dated 27.12.2015, M/s. Kotia Projects submitted EOI along with the consulting agreement executed by it with Prem Fisheries Providing consultancy services.

9. Against the said advertisement, there were two proposals, namely, from (I) M/s. Kotia Projects and (II) Mangalam Construction Company. It is stated that on 08.01.2015, on verification of pre-qualification documents, both the bidders were qualified for further consideration and M/s. Kotia Projects was asked to bring IT/CA certified turnover certificate instead of self declaration. Presentations were made and finally, only one bidder remained, which is M/s. Kotia Projects to whom the contract has been awarded on approval by the Standing Committee vide Resolution No.296 dated 08.09.2016. It is also stated that the General Body of the Vadodara Municipal Corporation approved the proposal of the contract by way of Resolution No.110 dated 12.09.2016 and the Work Order was issued on 01.02.2017. The agreement was, thus, executed.

10. With this chronology of events, it is not understandable as to how M/s. Kotia Projects, the contractor, became qualified within the span of two months when it was disqualified pursuant to EOI submitted in October, 2015 noticing that the financial turnover of the said contractor was 'NIL' and it had no experience being a new entity established on 05.10.2015. All these aspects of the matter bring us to an irresistible conclusion that the procedure prescribed by law for award of a public contract has been given complete go-bye, while awarding work to M/s. Kotia Projects.

11. It is further evident from the record that then Municipal Commissioner of the Corporation has been instrumental in granting contract illegally in favour of M/s. Kotia Projects. With this prima facie opinion arrived by us on the basis of the material on record, we think it fit to conduct an inquiry into the role and responsibility of then Municipal Commissioner of the Corporation.

12. The Principal Secretary, Urban Development and Urban Housing Department, Government of Gujarat is, therefore, directed 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, as noted herein above. The Inquiry Committee shall complete the inquiry within a period of two months from today after giving due opportunity of hearing to all concerned strictly in accordance with the Service Rules. The inquiry report shall be submitted before this Court along with the affidavit of a responsible officer from the office of the Principal Secretary, Urban Development and Urban Housing Department.

13. On other issues pertaining to the incident in question, this present petition is posted on 27.06.2024.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

cmk