

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

**Writ Petition (M/S) No. 703 of 2022**

Ajay Kumar .....Applicant

Vs.

Nagar Palika Parishad  
And Others .....Respondent

Mr Abhijay Negi, Advocate for the petitioner.  
Mr. K.K. Tiwari, Advocate for the respondent no.1.  
Mr. Aditya Pratap Singh, Advocate for the respondent no.3.  
Mr. A.S. Rawat, Sr. Advocate, assisted by Mr. Yogesh Kumar Pacholia, Advocate for respondent nos. 2 and 4.

**Hon'ble Sharad Kumar Sharma, J (Oral)**

The Uttarakhand Municipality Act of 1996, defines the Municipality under sub section 9 of section 2 of the act. It is an Institution of a local self body constituted under article 243 (e) to be read with Article 243-c of the Constitution of India. The area of operation and functioning of the municipalities are governed by the bifurcation of its powers, which are to be exercised by the municipality in and over the field which are covered by section 60 and section 50 of the Act. The exercise of powers in relation to the aforesaid two provisions are regulated and controlled by the area of functioning covered by the schedule appended to the Act.

2. Facts which are necessary for considering, in the present case, are that a concluded contract was executed by Nagar Palika Parishad, Nainital, in relation to the four tender contracts:-

- (1) With regards to the DSA car parking.
- (2) Lake Bridge entry fee.
- (3) BD Pandey Anda Market, Bara Patthar Ghoda stand, and
- (4) Zoo-shuttle services.

3. The said contracts which were executed by the municipality was governed by a concluded terms of the contract executed by a municipality of Nainital in favour of the successful bidders for each of the works, for the year 2022, the period of which

was to commence from 01.10.2020 was ending on 31st March 2022. The contract thus executed which is annexure-1 to the writ petition would fall to be a contract within the ambit of Section 96 to be read with Section 97 of the Municipalities Act, which are extracted hereunder:-

**“96. Sanctioning of contracts.-**(1) The sanction of the Municipality by resolution is required in the case of every contract-

(a) for which budget provision does not exist; or

[(b) involving a value or amount, exceeding] [Fifty thousand

rupees] in the case of contract by the Municipal Council and [Fifteen thousand rupees] in the case of a contract by the Nagar Panchayat:

[Provided that during the period intervening two meetings of the Municipal Council, the President may sanction contracts involving a value or amount not exceeding] [One lakh rupees]

(2) Any contract, other than a contract of either description specified in sub-section (1), may be sanctioned by resolution of the Municipality, or by a committee of the Municipality (not being an advisory committee) empowered in this behalf by regulation, or by any one or more than one officer or servant of the Municipality so empowered:

(Provided that the contracts sanctioned by a committee, officer or servant shall be placed before the] Municipality for information at the next ensuing meeting.

[Where] plans and estimates of a project have, in accordance with any rule made in this behalf, been sanctioned by the Municipality, and the execution of the work has been entrusted by the Municipality to an engineer in its service or employment, the Municipality may, with the previous sanction of the [Prescribed Authority] empower by resolution such engineer to sanction all contracts or any one or more contracts of any particular description other than a contract of either description specified in sub-section (1)] required for the execution of the project, and may in like manner impose any condition or restriction on the exercise of the power so conferred.”

4. The existing relationship between the employer Nagar Palika and the contractor, were governed by the terms and conditions contained under the contract itself. The issue which would be of concern in the present writ petition would be:-

(1) As to whether, at all under law the concluded contract which stood executed by the Nagar Palika, with regards to the four contracts referred to above (except for DSA parking) could at all be extended by the Nagar Palika for a further period, without even complying with

the provisions contained in section 96 and 97 of the Act, by way of inviting fresh bids, by resorting to an open process of bidding.

2. The issue would also be as to whether when the Board exercises, its powers to pass resolutions, whether the resolution thus taken could be put to a review before the municipal board itself.

(3) Whether the power of review of its own decision has been statutory vested with the elected Board, when rendered in the exercise of its executive and administrative powers, in the absence of power of review vested in it.

5. This writ petition has been argued on number of occasions and two questions were posed to the counsels representing the respondents.

(1) That whether the board while exercising its powers to pass a resolution can extend the terms of the contract beyond the period prescribed under the terms of the contract, therein in contravention to the provisions contained under section 96 of the Act (2) This Court had consistently called upon the respondent to answer as to whether in the matters of *state largesse*; where contract is to be executed by a local body, as constituted under Article 243 of the Constitution of India, could at all in the exercise of its executive power, the power of review of its earlier resolution dated 04.12.2021 could be reviewed.

6. The facts are that in relation to the aforesaid contracts, the board while allegedly exercising its powers under section 8(g) of the Act, which is extracted hereunder, had held up the boards meeting on 04.12.2021 and on the basis of the prevalent covid-19 situation, the decision was taken by way of resolution no.7 which is extracted hereunder:-

“7. नगरपालिका परिषद, नैनीताल में संचालित की पार्किंग एवं टॉल आदि में कोविड-19 वैश्विक महामारी) के दृष्टिगतों को सहत दिये जाने में में समझ विचारार्थ में चर्चा के दौरान यह निर्णय लिया गया कि भगरपालिका परिषद, नैनीताल में संचालित की पार्किंग एवं टॉल आदि में कोविड- 19 (वैश्विक महामारी) के इष्टिय व उदारों को राहत दिये जाने के संबंध में सीन सभासदों कमशः श्री मोहन सिंह नेगी, वार्ड नं0 14 नक्शीताल बाजार, श्री कैसाश रौतेला, समासद वार्ड नं 11 कृष्णापुर एवं श्री मनोज साह जगाती, सभासद

वार्ड नं० 08 अयारपाटा द्वारा लिखित आपत्ति बोर्ड के समक्ष प्रस्तुत की गयी तथा श्रीमती सपना बिष्ट, सभासद वार्ड नं० 10 नैनीताल क्लब द्वारा मौखित आपत्ति व्यक्त की गयी है। किन्तु श्री दीपक बर्गली समासद वार्ड नं० 09 अपरमाल बैठक में अनुपस्थित थे। उक्त प्रस्ताव पर अन्य 10 समासदों द्वारा सहमति प्रदान की गयी है। जिस कारण उक्त प्रस्ताव 10 सभासदों की सहमति के उपरान्त स्वीकृत। इस हेतु ठेका यथा पाकिंग, टॉल आदि के संयुक्त अनुरोध पत्र दिनांक 02.12.2021 पर चर्चा उपरान्त तीन माह की अवधि बढ़ाये जाने हेतु सर्वसम्मति से निर्णय लिया गया।”

7. While exercising power under Section 8(g), which is extracted hereunder:-

“8(g) giving relief on the occurrence of local calamities, by the establishment and maintenance of relief works or otherwise;”

the board decided vide its resolution of 04.12.2021 to extend the contract for a further period of three months which was as a consequence of a reaction and deliberation made on a representation submitted and solicited by the contractors, for the purposes of extension of the terms of the contract submitted on 02.12.2021. This Court is of the view that at this stage, it would be relevant to point out, that *inter se* contractual obligations which are governed by the terms of the concluded contract, they cannot be regulated or extended by the municipality to hold a resolution of the Board while exercising its purported powers under section 8(g), while taking a decision and that too which is motivated on a representation made by the contractors, because the representation herein itself will take the shape of a non-statutory representation and since the genesis of the resolution of 04.12.2021 was the representation by the contractors, which has got no legal sanctity in the eyes of law, coupled with the fact that it suffered from the vices of the non-compliance of the provisions contained under section 96 of the Act, the very decision making process of the Board was contrary to law.

8. The impugned resolution, which has been put to challenge by the petitioner, who was one of the aspirants to participate in the prospective bidding process, to be resorted to by the respondent, on the culmination of the contractual period, had filed the writ petition contending thereof, that in the absence of there being any statutory

powers vested with the municipal board to extend the terms of the existing contracts in contravention to the terms of the contract, and even in contravention to the lack of power having been legally vested with the municipal board, to extend the contract, coupled with the fact, that since the municipal board did not had power to review vested in it to review its own earlier decision, though the same was taken on the representation. The decision of extension of the contract by assessing the probable escalation, in the returns to be submitted by the contractors already in the helm of affairs of all the contracts detailed above had enhanced the amount by 20% which as per opinion of this Court it could not be done in the absence of power of review vested in it, as power of review is a power create by a statute.

9. This Court is of the tentative view that the board or its members, which constituted the board, in its decision making process of 04.12.2021 or that the one impugned in the present writ petition, i.e. dated 25.03.2022, cannot adorn to itself an exercise of the powers of being a financial expert, to scrutinize the technicalities of enhancement of the proportionate contract money by assessing its probable escalation to 20% and that too, without any material basis. In fact, if the impugned resolution itself is taken into consideration in its totality, it does not even reflect the parameters, which were adopted by the respondent to escalate the contract money by 20% and that too when the decision itself has been taken by way of exercising the power of review.

10. The learned counsel for the private contractor, had relied upon a judgment of the Hon'ble Apex Court reported in **2002 Livelaw SC page 295 Balaji Ventures Pvt. Ltd. Vs. Maharashtra State Power Corporation Company Ltd. and Others**, wherein, the Hon'ble Apex Court has widely laid down that the Writ Court under Article 226 of the Constitution of India, cannot grant an interim order, which may have an impact of rendering a final judgment or effecting a final decision to be taken. In fact, the ratio of the said judgment, has to be always applied depending upon the facts and circumstances which engages consideration before the Court under the facts of a particular

case. If the judgment relief by the counsel for the respondent in Balaji Ventures Pvt. Ltd. (*supra*), in fact, it was a tenderer, who was rendered to be non suited, because of the reasons given in paragraph 1 of the judgment, who was permitted to participate in the bidding process without even deciding its eligibility to participate and it was under those circumstances, the Court has observed that permitting the contractor, who was otherwise held to be ineligible by way of an interim measure, would amount to be a final relief, which cannot be granted. This is not the situation or similar circumstances, which is prevailing in the instant case. In the present case, as already observed that the impugned order apparently suffers from the vices (1) that it does not fall within the decision making process and power either under section 50, under section 60 or even for that purposes under section 8(g) of the Municipalities Act. Rather, this Court is of the view that the passing of the impugned resolution by way of exercising a power of review too will not fall to be within a zone of exercises of power which the municipalities could have exercised, because in an executive zone of decision, no power of review is vested until and unless it is statutorily created under the Act and by law.

11. The learned counsel for the municipalities has made reference to section 34 and particularly he has harped upon a platform which is alleged to be available to the petitioner of approaching before the prescribed authority, as against the impugned resolution. The learned counsel for the municipality has made reference to sub-section 1 (B) of Section 34 wherein, he contends that the power of review of a municipal board decision has been vested with the Board. Having gone through the provisions contained under sub-section 1(B) to Section 34. In fact, it is a joint committee or any officer or servant of the municipality, who if is aggrieved by any opinion expressed by the resolution or the order passed by the municipal board, which is in disregard and in with the breach of the provisions of law can approach the State Government on their own motion or by way of a complaint. In fact, if a simplicitor interpretation is given to this provisions contained under sub-section 1(B) of Section 34, the power available therein of approaching the State Government has been given to the

joint committee or any officer or servant of a municipality or of a joint committee. In fact, the recourse to 1(B) of Section 34 would not be a platform which would be available to the petitioner. Once it confines its approach by the members of the joint committee or the officer or a servant of the municipality the petitioner will not fall within its ambit. Hence, this argument of the learned counsel for the respondent is not tenable. The learned counsel for the municipality, in order to support the impugned resolution which was rendered in the exercise of powers of review, has made reference to the provisions contained under section 94, sub-section 6 of the Act, which is extracted hereunder:-

**94. (6) A resolution of a Municipality shall not be modified or cancelled within six months after the passing thereof.-**

(a) unless previous notice has been given setting forth fully the resolution which it is proposed to modify or cancel and the motion or proposition for the modification or cancellation of such resolution; and

(b) except by a resolution supported by not less than, one half of the total number of members of the Municipality for the time being.

12. In fact, if the title head of sub-section (6) of Section 94 itself is taken into consideration, it starts with a non obstinate clause, which rather creates a bar in modifying or annulling, any action or decision which is taken taken within six months prior to the date for the reasons of exceptions carved out under clause (a) and (b). Meaning thereby, the powers under sub-section (6) of Section 94, could be exercised when a pre-condition of sub-clause (a) and (b) of sub-section 6 of Section 94 of the Act, is complied and satisfied with. In fact, the resolution itself does not reflect the compliance of the pre-conditions contained and contemplated under sub-section 6 of Section 94 of the Act. The impugned resolution itself would be bad in the eyes of law, for the above reasons too.

13. As far as the respondent no. 3 is concerned, the orders passed herein today by this Court would not affect respondent no. 3 at all, for the reasons being that for the redressal of his grievances, he

has already approached the Commercial Court Tribunal i.e. the court of Additional District Judge, Commercial Tribunal, Dehradun by way of filing an Arbitration Case No. 28 of 2022, Sachin Kumar Contractor Vs. Nagar Palika Parishad, in which the interim order has been passed by the court on 29.03.2022, which has already put to challenge by the municipality by preferring an appeal from order under section 13 of the Commercial Courts Act, to be read with section 37(1)(b) of the Arbitration Act of 1996. Since, its different platform altogether, where the respondent no. 3 has already approached and the matter is now being sub-judice at the behest of the municipality in the AO. This order would not at all prejudice the proceedings of the arbitration initiated by respondent no.3, which has to be decided independent to the observations which has been made hereinabove.

14. For the reasons aforesaid, this Court is of the view that the impugned resolution suffers from an over exercise of powers which is not statutorily permitted to be exercised by the municipal board, as it falls to be outside the domain of exercise of powers contemplated under the Act. Hence, the resolution of 25.03.2022 would be kept in abeyance, till the next date of listing. The respondents who have already put in appearance through their respective counsels, as well as the municipal board may file their counter affidavit within a period of three weeks.

15. List thereafter.

**(Sharad Kumar Sharma, J.)**  
18.04.2022

Ujjwal