

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10394 OF 2014

M/s. Ingawale Patil Construction Co. ..Petitioner
V/s.
The State of Maharashtra & Ors. ..Respondents

Mr. Machhindra Appaji Patil, for the Petitioner.
Mrs. M.P. Thakur, AGP for Respondent No.1.
Mr. Vijay Dinkarrao Patil, for Respondent Nos.2 to 6.

**CORAM : ABHAY S. OKA &
C.V. BHADANG, JJ.**

DATE : 08TH MAY 2015.

P.C.

1. This petition is filed by a contractor appointed by the Maharashtra Krishna Valley Development Corporation (for short "the said Corporation"). The petitioner was allotted work by the said Corporation of construction of C.C.lining from k.m. 115 to 121 for the NRBC (Neera Right Bank Canal Division). The 6th respondent issued letter a dated 17th July 2014 to the petitioner stating that no funds will be available for the said project during the financial year 2014-2015 and therefore, by carrying out further work, no liability shall be created.

2. The substantive prayer in this petition is for directing the respondents to provide funds for the work of construction of the Nira Right Bank Canal (NRBC) which is entrusted to the petitioner in a time bound schedule. The learned counsel appearing for the petitioner invited our attention to the order passed in the PIL 30 of 2007. He urged that every year substantial funds are being made available to the said Corporation. He urged that the work assigned to the petitioner cannot be stalled on the ground that there are no funds. It was submitted by him that since the work is in public interest, the petitioner may be permitted to complete the work with a direction to the said Corporation to pay necessary amount to the petitioner as and when funds are available. He submitted that the petitioner after completing the work is prepared to wait till the funds are made available at the disposal of the said Corporation for payment to him in accordance with the said contract.

3. We have heard the learned counsel for the 6th to 7th respondents and learned AGP for the 1st respondent. We have

perused the affidavit in reply of Shri. R.K.Jagtap, the Executive Engineer, Minor Irrigation Division 1, Pandarpur who is the respondent no. 6.

4. We have considered the submissions made by the learned counsel appearing for the petitioner. In the reply of Shri. R.K.Jagtap in paragraph 7, he has categorically stated that as there are no funds available for the project in question, either from the Central Government or State Government, he has issued the letter to the petitioner informing him not to carry out the work.

5. In the said reply, reliance is placed on the condition no.34 in the contract between the petitioner and the said corporation. The condition reads thus:

“34.A. Contractor shall not be entitled for any Compensation on account of Stoppage or work of delay in completion of work due to non-availability of funds for making payments of Contractor's bill and for delay in handing over land to the Contractor for the work or for any other reason.”

6. The petitioner has accepted the condition no. 34 of

the contract. The petitioner was fully made aware that there may be a possibility stoppage of work due to non-availability of the funds. The petitioner was put to notice that he will not be entitled to claim any compensation on account of stoppage of work due to non availability of funds. In paragraph 9 of the affidavit in reply, Shri. R.K. Jagtap has stated thus :-

9. I further state that the Petitioner has carried out work of Rs. 115.54 lacs out of the tender cost of Rs. 1215.70 lac and he has been paid almost the entire amount for the work carried out by him and his pending bill is of amount of Rs.93,000/-. I submit that the petitioner has done only the earth work and murun filling work and I deny the statement of the Petitioner that he has completed 2.5 kilo meter lining out of 7 kilo meter. I submit that in fact no actual lining work was done.

7. In paragraph 11 of the affidavit, there is a categorical statement made that no funds are available with the said Corporation and the possibility of the funds being made available is almost nil.

8. Considering the terms and conditions of the contract, the petitioner is not entitled to make any grievance if the work is ordered to be stopped on the ground that funds are

not available with the said Corporation. The grant of the relief of allowing the petitioner to complete the work will be completely contrary to the terms and conditions of the contract which are binding on the petitioner. Even if funds become available at any time in future, it is ultimately for the said Corporation to decide as to how the funds should be utilized. The petitioner cannot compel the said Corporation to make available funds for his work or to divert the funds as and when available, to the work allotted to him.

9. Rights and liabilities of the petitioner are based on a contract. Therefore, the petitioner is dis-entitled to any relief sought in this petition. Accordingly, the petition is rejected.

[C.V. BHADANG, J.]

[ABHAY S. OKA, J.]