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

WRIT PETITION NO.11019 OF 2013

F. A. Enterprises

..Petitioner

Versus

State of Maharashtra & Ors.

..Respondents

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Mr. A. Y. Sakhare, Senior Advocate with Mr. R. K. Adsure and Mr. Shekhar Jagtap i/b. J. Shekhar & Co. for the petitioner.

Mr. V. B. Thadani, AGP for respondent no.1-State.

Mr. Sachin D. Bagal i/b. Mr. P. M. Patil for the respondent no.2.

Mr. G. S. Hegde for the respondent no.3.

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**CORAM: MOHIT S. SHAH, C. J. AND
A. K. MENON, J.**

DATE : 17 JULY 2015.

PC.:

This petition pertains to the project of construction of Balganga Dam to cater to the needs of drinking water and water for industrial purposes in taluka Pen, District Raigad. The petitioner-contractor has prayed for a direction to CIDCO to fund Kokan Irrigation Development Corporation (for short "KIDC") for payment of all the pending bills for the work done by the petitioner for the said Balganga River Project.

2 Since the parties have agreed to refer the disputes to an Arbitral Tribunal consisting of 5 Arbitrators, we do not propose to set out how the dispute has arisen between the parties.

3 The learned Senior Counsel for the petitioner-contractor states that Mr. Justice A. V. Sawant, former Chief Justice of Kerala High Court, has agreed to be the Arbitrator appointed by the petitioner-contractor. Mr. Hegde, the learned counsel for CIDCO states that Mr. C. S. Modak, retired Secretary (WRM & CAD) Water Resources Department, Government of Maharashtra, is the Arbitrator appointed by CIDCO. The learned counsel for KIDC states that Mr. D. M. More, retired Director General, Maharashtra Engineering Research Institute, Nashik is the Arbitrator appointed by KIDC.

4 In this matter, the contract for the above project was given by KIDC to the petitioner and KIDC was to receive the funds from CIDCO. Hence the State of Maharashtra is not directly involved in the controversy amongst the parties. However, the State Government is respondent no.1 and the aforesaid parties have agreed that the State Government may also appoint an Arbitrator. Learned AGP Mr. Thadani states that Mr. H. T. Mendegiri, retired Secretary, Water Resources Department, Government of Maharashtra is the Arbitrator appointed by the State Government.

5 Now coming to the appointment of the Presiding Arbitrator, the learned counsel for the petitioner-contractor, the learned counsel for CIDCO and KIDC have suggested that Mr. Justice V. G. Palshikar, a former Judge of this Court be appointed as the Presiding Arbitrator. Mr. Thadani, the learned AGP states that he has no instructions in the matter.

6 Having heard the learned counsel for the parties, we dispose of this petition in terms of the following order:-

(A) All the disputes and differences between the parties regarding construction of Balganga Dam in taluka Pen, District Raigad and payments/non-payments for the same are referred to the Arbitral Tribunal comprising the following:-

- (i) Mr. Justice V. G. Palshikar, Presiding Arbitrator;
- (ii) Mr. Justice A. V. Sawant, Arbitrator appointed by the petitioner-contractor;
- (iii) Mr. H. T. Mendegiri, Arbitrator appointed by the State Government;
- (iv) Mr. M. C. Modak, Arbitrator appointed by CIDCO and
- (v) Mr. D. M. More, Arbitrator appointed by KIDC.

(B) The parties agree that all disputes/claims/counter claims, etc. arising out of and between the parties in respect of the above Irrigation Project are referred for arbitration to the above Arbitral Tribunal.

(C) The parties also agree that the first meeting of the Arbitral Tribunal will be held within 4 weeks from today and that the Presiding Arbitrator shall fix the date, time and place of the first meeting.

(D) The parties further agree that the petitioner herein shall coordinate for all the meetings, including making arrangements for the hall and inform all the parties of the first meeting as per the direction of the Presiding Arbitrator.

(E) The parties agree to extend cooperation to the Arbitral Tribunal for expeditious disposal of the Arbitration Proceedings.

(F) As regards the amount of Rs.28.20 crores deposited by CIDCO in compliance with the direction dated 10 April 2014 of this Court, the amount has already been invested in Fixed Deposit with a Nationalised Bank and, therefore, the amount shall continue to remain invested and the said deposit with accrued interest thereon shall abide by the award of the Arbitral Tribunal.

(G) We request the Arbitral Tribunal to decide the disputes between the parties as expeditiously as possible and preferably by 31 March 2016.

7 We are also informed that the issue of rehabilitation of persons affected by the Balganga Dam Project is also required to be undertaken with utmost expedition and, therefore, the concerned authorities of the State Government, including the Collector Raigad

and all other agencies shall take the necessary steps for expeditious rehabilitation/resettlement of the project affected persons including acquisition of land.

8 We reiterate the clarification made by this Court in the order dated 8 July 2014 that the orders passed by the Aurangabad Bench of this Court in Writ Petition No.4274 of 2014 would apply to the case of the petitioners in that petition or at the most in respect of lands which fall within the territorial jurisdiction of the Aurangabad Bench. The question whether the persons who lose their lands, wholly or partly, should be compensated in accordance with the terms of Notification dated 19 March 2014 or any higher amount is to be paid as compensation would be decided by Aurangabad Bench but obviously the authorities cannot decline to pay any compensation on the ground of stay of operation of the said Notification dated 19 March 2014.

9 We are informed that the State Government has made awards for compensation for the lands which are acquired for the construction of Balganga Dam, but the amounts are yet to be paid for compensation in respect of the lands which are acquired for rehabilitation and resettlement of the project affected persons. All the concerned authorities, including the Collector, Raigad, and the Special Land Acquisition Officer shall make the awards in respect of the said lands as expeditiously as possible and preferably by 31

October 2015. The concerned respondent authority is liable to pay compensation for such lands shall deposit the amount with the concerned Special Land Acquisition Officer within one month of the date of the award. The Collector Raigad shall take all the necessary steps for rehabilitation/resettlement of the persons affected by the Balganga Dam Project with utmost expedition.

10 We would like to place on record an appreciation for the positive stand adopted by all the parties for expeditious resolution of the disputes.

11 The writ petition is accordingly disposed of in terms of the above directions and observations.

12 Liberty to apply in case of difficulty.

CHIEF JUSTICE

(A. K. MENON, J.)