

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 957/2015

(M/S R.B. CONTRACTORS, NAGPUR **VERSUS** STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri S.D. Harode, counsel for the petitioner.
 Shri N.R. Rode, A.G.P. for the R-1 to 4.

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATE : AUGUST 27, 2015.

By this petition, the petitioner seeks a direction to the respondent nos.1 to 4 to release the payment of Rs.2,72,48,217/- in favour of the petitioner for the work completed by the petitioner in terms of the contract in the year 2009.

The petitioner is a contractor working for the Public Works Department. A contract was entered into between the petitioner and the Public Works Department for improvement of roads. According to the petitioner, though the work was completed by the petitioner on 30.03.2009, the respondents did not release the amount due and payable to the petitioner in terms of the contract. The petitioner preferred an appeal as per Clause 30 of the contract before the Superintending Engineer. The appeal was decided and certain directions for payment of amount to the petitioner were issued. Being aggrieved by a part of the order, the petitioner filed an appeal before the Chief Engineer as per Clause 30(2) of the contract. The Chief Engineer directed that certain amount be paid to the petitioner within a period of six months. The petitioner claims to have filed an appeal before the State Government as per Clause 30(3) of the contract but, the appeal is not decided. It is stated that though the petitioner has successfully completed the work in terms of the contract, the respondents have not paid the amount for the same.

Shri Rode, the learned Assistant Government Pleader appearing on behalf of the State, states that the writ petition would not be tenable as the petitioner is seeking an amount that is allegedly payable to the petitioner in terms of the contract. It is stated that several disputed questions of fact arise for determination in this writ petition. It is stated that there is a serious dispute in regard to the proper implementation and completion of the work that was entrusted to the petitioner in terms of the contract. It is stated that the petitioner has not filed the appeal to the Secretary of Public Works Department as required by Clause 30(3) of the contract and the same appears to have been filed before the Minister of Public Works Department and that too belatedly. It is stated that an appeal ought to have been preferred by the petitioner against the order of the Chief engineer before the Secretary of the Public Works Department within a period of thirty days. It is stated that certain amounts in terms of the contract have already been paid to the petitioner.

On hearing the learned counsel for the parties, it appears that it would not be possible to decide the issues involved in this petition in exercise of the writ jurisdiction. Several disputed questions of facts arise for determination in this writ petition. The issues could be decided only after tendering of evidence, both, oral and documentary. Though the request is made by the learned counsel for the petitioner for a direction to the Hon'ble Minister, Public Works Department to decide the appeal under Clause 30(3) of the contract, such a direction cannot be issued, specially when the petitioner was required to file the appeal within a period of thirty days from the receipt of the order of the Chief Engineer before the Secretary of the Public Works Department and not before the Hon'ble Minister of the Public Works Department. The appeal is not filed before the appropriate authority and also appears to have been filed belatedly.

In view of the aforesaid, the writ petition is dismissed with no order as to costs.

The points raised in the petition are, however, kept open.

JUDGE

JUDGE

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