

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2918 OF 2015

[M/s. Shree Anukul Industries Private Limited .vs. State of Maharashtra and others]

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

Court's or Judge's orders

Shri R.G. Kavimandan, counsel for the petitioner,
Shri N.R. Rode, AGP for the respondent nos.1 and 2,
Shri Raghorte, counsel h/f Shri D.M. Kakani, counsel for the respondent no.3,
Shri D.M. Kale, counsel for the respondent no.4.

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

DATED : SEPTEMBER 01, 2015.

By this petition, the petitioner impugns the order of the Chief Officer, Nagar Parishad, Deulgaon Raja, dated 20.4.2015 withdrawing the work contract of laying the pipes for supply of water to the township. By the impugned communication, the allotment of the contract between the petitioner and the respondent no.4, dated 2.6.2014 was cancelled. The petitioner has sought a declaration that Condition Nos.14 and 30 in the contract, dated 2.6.2014 are null and void on account of unequal bargaining power between the petitioner and the respondents. The petitioner has sought a direction to the respondent no.4 to allow the petitioner to complete the contract.

On 2.6.2014, the respondent no.4 had published a tender notice and in pursuance of the said notice the contract of laying the pipelines for supply of water to Deulgaon Raja was allotted to the petitioner. According to the petitioner, though the contract was executed between the parties on 2.6.2014, the Chief Officer of Nagar Parishad, Deulgaon Raja was not interested in allotting the contract to the petitioner. It is averred in the petition that though the contract was liable to be completed within a period of two years from 2.6.2014, the respondent no.4 illegally issued communications to the petitioner informing it that the work was very slow. According to the petitioner,

the petitioner had made considerable progress in the work and the work report submitted by the petitioner were countersigned by the clerk of the respondent no.4. It is averred in the petition that the respondent no.4 had neglected to give clear possession of the site where the pipes were required to be laid. It is further averred that the petitioner was asked to sort out the issues with the villagers as the villagers were obstructing the work and the petitioner was required to settle the issues with four villagers by agreeing to pay compensation to them. According to the petitioner, the work of the petitioner was obstructed by the villagers and during the said period, the Project Director was in Russia for business tour. It is averred that the respondent no.4 had claimed that they had cancelled the work of the petitioner in its General Body Meeting, dated 8.4.2015. According to the petitioner, the site Engineer of the petitioner was informed that the work of supply of pipes was withdrawn and the contract was terminated by the respondent no.4, when he asked the respondent no.4 to make the site available for storing the pipes. According to the petitioner, Clauses 14 and 30 of the work contract are violative of the provisions of Article 14 of the Constitution of India, being arbitrary. It is stated that the said clauses are null and void in view of the unequal bargaining power between the petitioner and the respondent no.4. The petitioner has challenged the action of the respondent no.4 of cancelling the contract.

The respondent no.4 has filed the affidavit-in-reply. It is submitted that the work of laying down the pipes for supplying the water to the villagers to Deulgaon Raja was entrusted to the petitioner by the contract, dated 2.6.2014. It is stated that the petitioner did not start the work as per the work order and the progress in the work was extremely slow despite issuance of notices to the petitioner. It is stated that the petitioner did not bring the machinery and labourers on the site and did not take any steps for the commencement of the work. It is stated that the Maharashtra Jivan Pradhikaran, Buldhana which was appointed as a Project Advisor/Manager to supervise the work, had also opined that the work of the petitioner was very slow. The averments made in the petition in respect of the non performance on

the part of the respondent no.4 by not providing the site to the petitioner are disputed. It is stated in the affidavit-in-reply that the petitioner had admitted in the communication, dated 13.10.2014, that the work was slow, as the petitioner had ordered for the pipe lines. It is stated in the affidavit-in-reply that the explanation of the petitioner was sought by issuance of notice, but the explanation was not satisfactory. According to the respondents, since the contract awarded to the petitioner related to laying of water pipe lines for reaching the water to the residents of Deulgaon Raja and the need was urgent, the respondent no.4 had no course open but to cancel the contract. It is stated that the supervisory agency i.e. the Maharashtra Jivan Pradhikaran also opined that the work of the petitioner was slow and unsatisfactory and the contract needs to be cancelled. It is stated that disputed questions of facts are involved in this writ petition and the same cannot be decided in exercise of the writ jurisdiction.

On hearing the learned counsel for the parties, it appears that disputed questions of facts arise for determination in this writ petition. There is word against word, inasmuch as the facts averred by the petitioner in the writ petition have been seriously disputed by the respondent no.4. According to the petitioner, the work of the petitioner was carried out in terms of the work order and the progress was not slow, whereas according to the respondents, the petitioner had not commenced the work as per the work order and the progress of the work of the petitioner was extremely slow. We have already mentioned hereinabove, the relevant facts that are averred in the petition and that are disputed by the respondent no.4. It is a contractual matter which relates to the termination of the contract. It would be necessary for the petitioner to challenge the action of the respondents in a civil suit, more so, when the disputed questions of facts cannot be decided, unless opportunity is granted to the parties to tender evidence. The issues, whether Clauses 14 and 30 of the contract are null and void in view of the inequality in the bargaining power between the petitioner and the respondent no.4 could also be considered in a civil court.

Since the factual issues involved in this writ petition

cannot be decided in exercise of the writ jurisdiction, we are not inclined to entertain the writ petition. The writ petition is dismissed, with no order as to costs. The points raised in the petition are kept open.

JUDGE

JUDGE

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