

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

WRIT PETITION NO. 4199 OF 2014

(Mr. D.H. Khandelwal vs. The State of Maharashtra thr. its Secretary, PWD & Ors.)

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

Court's or Judge's orders.

Shri M.G. Bhangde, Senior counsel with Shri V.V. & R.M.
Bhangde, counsel for the petitioner.
Shri A.S. Fulzele, Additional GP for the respondents.

**CORAM : SMT. VASANTI A. NAIK &
A.M. BADAR, JJ.
AUGUST 05, 2015.**

By this petition, the petitioner – Civil Contractor challenges the communications of the respondent No. 2 – the Executive Engineer, Public Works Department, dated 21.07.2007, 22.01.2013, 12.07.2013 and 23.12.2013, calling upon the petitioner to deposit the sum of Rs.2,11,77,379/- and Rs.1,07,17,154/-. The petitioner has sought a direction to the respondents to refund an amount of Rs.73,57,675/- to the petitioner along with interest @ 18% per annum.

The petitioner was awarded the work of construction of a Bye-pass road by the respondent No. 2. The work was to be completed within a period of 24 months. Admittedly, there were disputes between the parties and on 27.10.2006, the respondent – department took over the work from the petitioner and completed the remaining work through some other contractor. By the communications issued since 21.07.2007, that are

impugned in the writ petition, the respondent No. 2 directed the petitioner to deposit certain sums towards the loss caused to the department, in view of the delay on the part of the petitioner in completing the work within the stipulated time. Since the respondent No. 2 revived the demand dated 21.07.2007, by a subsequent communication, the petitioner filed a representation to the State Government, challenging the action of the respondent No. 2 in seeking the amount as claimed in the communication. According to the petitioner, though the petitioner was heard in the matter, the respondent No. 1 did not take a decision on the representation. Hence, apart from challenging the communications, the petitioner has also sought a direction to the respondent No. 1 to decide the appeal/representation filed by the petitioner.

The respondent Nos. 2 & 3 have filed an affidavit in reply. It is stated in the affidavit in reply that the petitioner was not completing the agreed work within the stipulated period despite the service of several notices on the petitioner from time to time. It is submitted that the work of the petitioner was withdrawn as the petitioner had committed the breach of the conditions of the Tender agreement dated 27.05.2004. It is stated that several clauses of the work order were breached by the petitioner and, therefore, the respondent Nos. 2 & 3 were required to complete the incomplete work through another contractor. It is stated that the running bill, of which the petitioner has sought the payment, was not paid to the petitioner as the petitioner had left the work incomplete and the work had to

be executed from another contractor. It is stated that the petitioner was unable to complete the work and since the petitioner had breached the terms of the contract, the respondent No. 2 – department had rightly called upon the petitioner to deposit the amount as mentioned in the communication dated 21.07.2007. It is stated that in view of the breach of the contract by the petitioner and the withdrawal of the work from him, the communications were rightly issued to the petitioner, seeking the recovery of the amount.

On hearing the learned counsel for the parties, it appears that the issues involved in this writ petition cannot be decided in exercise of the writ jurisdiction. Several disputed questions of facts are involved in this writ petition. The respondents have claimed certain amounts from the petitioner towards the loss caused to the department as the petitioner had failed to complete the work and the work had to be completed through another contractor. The petitioner has also claimed the amount of the 11th running bill, the dues under some other contract between the petitioner and the respondents and the refund of the Security deposit. The issues involved in this case cannot be decided without permitting the parties to tender evidence, oral and documentary. The petitioner is free to avail appropriate remedy, if so advised. The submission made on behalf of the petitioner that the respondent, who was a party to the contract, did not have the authority to assess the damages and hence the impugned communications are liable to be set aside, in view of the judgment of the Hon'ble Supreme

Court in the case of State of Karnataka vs. Shree Rameshwara Rice Mills, Thirthahalli, reported in (1987) 2 SCC 160, could also be made before the Civil Court, along with the other submissions. We find that in the case in the reported decision, the Hon'ble Supreme Court was considering the Special Leave Petition (Civil) against the judgments passed by the High Court in the Second Appeals.

This Court would not be in a position to direct the State Government to decide the representation made by the petitioner though the petitioner claims to have been heard by the Hon'ble Minister. There is no right in the petitioner to file an appeal or representation before the State Government against the communication of the respondent No. 2, seeking certain amount towards the loss caused to the respondent No. 2 in view of the breach of contract by the petitioner. Since the petitioner does not have any right to make a representation/ appeal, statutory or otherwise, we are not inclined to issue a mandamus to the respondent No. 1 to decide the representation of the petitioner.

In the aforesaid set of facts, we decline to entertain the writ petition. The Writ Petition is disposed of with no order as to costs. The issues raised in the petition are kept open.

JUDGE

JUDGE

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