

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

WRIT PETITION No. 3292/2016.

M/s. Vaishnovi Construction and TBPR Infra Project Pvt. Ltd., Nagpur.

-VERSUS-

Vidarbha Irrigation Development Corporation, Nagpur and others.

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

Court's or Judge's Orders

CORAM : B.P. DHARMADHIKARI
AND S. B. SHUKRE, JJ.

DATE : NOVEMBER 15, 2016.

Petitioner, a Contractor is before this Court challenging a communication dated 28.11.2014 and 01.03.2016 imposing penalty of Rs. 50,000/- per day, and thereafter of Rs. 1 lakh per day for not completing the work agreed to be performed.

2. This Court has issued notice in the petition on 15.06.2016, and on 29.06.2016, when request of respondents seeking time to file reply was opposed, after hearing the parties, respondents were restrained from taking any coercive steps against petitioner till 07.07.2016. This order continues to operate even today. In that order we have taken note of a

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communication dated 17.05.2016, advising the petitioner not to commence the work till the proposal submitted by the department to the Executive Director, V.I.D.C., for withdrawal of contract itself is decided.

3. We have heard Shri M.G. Bhangde, learned Senior Counsel with Shri N. Lalwani, learned Counsel for the Petitioner and Shri S.G. Jagtap with Shri J.B. Kasat, learned Counsel for the respondents.

4. During hearing, it is not in dispute that the respondents have submitted a proposal for recession of contract, while the petitioner is seeking extension of the contract.

5. By placing reliance upon a judgment reported at (1987) 2 SCC 160 (State of Karnataka .vrs. Shree Rameshwara Rice Mills), learned Senior Counsel submits that respondents cannot themselves pronounce upon guilt or otherwise of petitioner in the matter. If the petitioner admitted the lapses on his part, then only power to levy damages, flowing from Clause 2 can be exercised.

6. Shri Jagtap, learned counsel on the other hand submits that the default is admitted and though all documents were made available to the petitioner,

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petitioner did not commence the work at all. He submits that first extension was granted on 18.04.2012 and thereafter, in response to the application dated 08.02.2014, moved by the petitioner. Second and last extension was allowed on 08.05.2014. That extension is upto 30.06.2016. As the work was not started by the petitioner, impugned action has been taken. He further submits that while granting extension, the Schedule for work to be completed was handed over to the petitioner. He also wishes to rely upon some other documents which he has received after filing of the reply, to urge that all necessary drawings and other documents were received by the petitioner, and he was therefore in a position to commence the work. Learned Senior Counsel disputes this position.

7. Respondents have invited our attention to document no.1 filed along with the affidavit sworn by respondent no.5 vide Stamp No. 7732/2016, particularly page no.147 thereof to show that the work was not commenced at all. It was stated that as mentioned in Schedule "B", the excavation of soft stata estimated to 4,12,290.31 cubic meters and this was not undertaken at all. We have made reference

only to one item to show what the chart reveals.

8. The petitioner has in his application dated 08.02.2014, while seeking extension of time, pointed out that modified drawing of piers, duly approved by the competent authority were not made available to it till the date of that letter. Similarly, the modified drawing of pump house, delivery chamber and related appurtenant works were also not made available. Land required for laying rising main was also not acquired and was not made available. In the light of these difficulties, on 08.05.2015, the petitioner was given time till 30.06.2016. The communication giving extension to petitioner does not dispute the correctness or otherwise or relevance of reasons which prompted the petitioner to seek extension.

9. The Hon'ble Supreme Court in the judgment mentioned supra has in paragraph no.3 found that the penalty for delay can be levied by the employer only when the contractor admits the lapses on his part. Communication seeking extension dated 08.02.2014, does not show any such admission. No document showing such admission is placed along with the affidavit before this Court. Shri Jagtap,

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learned counsel has submitted that such documents have become available to him lateron.

10. Perusal of chart, particularly second page thereof (document no.1 mentioned supra), as per Schedule “B” shows completion of excavation of soft stata of 2,72,293.84 cubic meters upto 22nd R.A. Bill. It also records completion of some other work. The chart if presumed to be an estimate/program of work to be performed in future must have been prepared before 08.05.2014 i.e. before granting extension to petitioner. Thus, work undertaken by the petitioner after 08.05.2014 if any, could not have figured in this chart. Compliances sought for by it on 08.02.2014 are also not demonstrated by the respondents.

11. Admittedly petitioner is seeking extension of time to complete the work and respondents have already moved the Executive Director, V.I.D.C. seeking leave to resile the contract.

12. In this situation, as all disputed questions can be looked into by the Executive Director V.I.D.C., while taking a decision whether to permit the department to resile from contract or whether to permit extension to petitioner, we avoid to comment

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on any disputed question. We however, continue the interim order already operating in the matter and direct the Executive Director, V.I.D.C., to take suitable decision upon it within a period of three weeks.

13. Leaving all rival contentions open, and without above directions, we dispose of the present petition. No costs.

JUDGE

JUDGE

Rgd.