

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

CIVIL APPLICATION NO.1476/2016 IN
PUBLIC INTEREST LITIGATION NO.12/2016

Janmanch ..vs.. The State of Maharashtra through Additional Chief Secretary, Home
Department, Mantralaya, Mumbai and others.

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

Court's or Judge's orders

Mr. F. T. Mirza, Advocate for petitioner.
Mr. Rohit Deo, Advocate General with Mrs. Bharti Dangre,
Government Pleader for respondent nos. 1 to 4.
Mr. S. G. Jagtap, Advocate for respondent no.5.

CORAM : B. R. GAVAI & V. M. DESHPANDE, JJ.
DATE : SEPTEMBER 15, 2016

The present application has been filed by the
applicant-intervenor.

The application is basically filed by the applicant
since according to the applicant, the order has been passed
by this Court on 10.03.2016 directing the respondent no.5-
V.I.D.C. not to release any payment in relation to the award
passed by the Arbitrator in favour of M/s. Tapi Prestressed
Products Ltd., in Regular Darkhast No.57/2013 pending
before the learned 10th District Judge, Nagpur.

The present Public Interest Litigation has been
filed by the petitioner alleging therein that though a specific
assurance was given to the Court on 12.12.2014 that an
open house inquiry would be conducted in various irrigation
projects so as to find out the illegalities and irregularities
therein, nothing has been done in the matter. In the said

proceedings, Civil Application No.456/2016 was filed, contending therein that though an arbitral award was passed thereby directing to pay an amount of Rs.32,55,59,775/- to the present applicant, the said award was not challenged by the V.I.D.C. It was, therefore, contended that until the inquiry is completed by the State Government in the matter, the said amount should not be paid. This Court, accordingly vide order dated 10.03.2015, directed the V.I.D.C. not to release any payment in relation to the award passed by the learned Arbitrator.

It is the contention of the applicant that the award came to be passed by the learned Arbitrator in pursuant to the order passed by the Division Bench of this Court dated 08.10.2010. It is the case of the present applicant that the applicant has almost completed 80% of the work. It is, therefore, submitted that since the amount is to be paid as per the award passed by the Arbitrator, no purpose would be served by withholding the said amount.

Vide our order dated 02.09.2016, we had made it clear that we are not inclined to consider the prayer for disbursement of the amount only on the condition of solvent surety. We had, therefore, asked the learned counsel for the applicant to take instructions from the applicant whether it is ready to furnish bank guarantee of any Nationalized Bank for the said amount.

Today, when the matter was called out, we had asked Mr. Jagtap, learned counsel for the applicant to take instructions with regard to the quantity of the work completed by the applicant. Accordingly, when the matter

was called out in the post lunch Session, the Executive Engineer Mr. Sanjay Vishvkarma, who is dealing with the project in question, was present in the matter. Initially, a statement was made by Mr. Jagtap, on the instructions of the said Mr. Sanjay Vishvkarma, that an amount of Rs.21,70,35,032/- which forms part of the award is not disputed by the V.I.D.C. It was submitted that only the remaining amount is disputed by the V.I.D.C. with respect to which the litigation is pending before the learned Single Judge in Writ Petition No.2332/2016.

No doubt, we have also directed the State Government to conduct inquiry and find out as to why the award passed by the learned Arbitrator was not challenged. Mr. Deo, learned Advocate General states that the inquiry into the said matter is also being conducted by the State Government and he will be in a position to give some details about the outcome of the said inquiry on the next date.

We have made it clear time and again that though the inquiry and lodging of the FIR, etc. should go on, at the same time, the projects should not be stalled. We have observed in our earlier orders that if the project is not completed, benefits of the said project would not be available to the agriculturists. In that view of the matter, we had also asked the learned counsel for the applicant to take instruction as to whether he was willing to complete the project in a time bound manner.

We had specifically made a query to the learned counsel appearing on behalf of the V.I.D.C. as to whether the contract of the present applicant is terminated or not?

Mr. Jagtap, learned counsel for the V.I.D.C., on instructions from the Executive Director Mr. Avinash Surve, submitted that as on today, there is no communication to the V.I.D.C. from the Government with regard to the termination of the contract of the present applicant. He has further stated that taking into consideration the nature of the specialized project and the fact that about 80 % to 90% of the work is already completed by the present applicant, it will be in the public interest that the said project is completed by the present applicant.

In that view of the matter, we find that in view of the undisputed position that the V.I.D.C. does not dispute the amount of Rs.21,70,35,032/- and further that this applicant is willing to give an undertaking that it will complete the project in question within a stipulated time, it will be in the interest of justice that out of the amount, which is directed to be withheld by this Court vide order dated 10.03.2016 i.e. Rs.21,70,35,032/-, should be permitted to be withdrawn by the present applicant without any bank guarantee and the balance amount of Rs.10,85,24,743/- is permitted to be withdrawn on the condition that the applicant furnishes a bank guarantee of a Nationalized Bank to this Court.

We are inclined to pass this order taking into consideration the time provided for completion of the project in question and it is the contention of the applicant that unless the amount is paid to it, it will not be in a position to complete the project in the time bound manner.

In that view of the matter, this civil application is allowed on the following terms.

(i) The amount of Rs.32,55,59,775/-, which is restrained to be disbursed by this Court, is directed to be paid to the applicant on the applicant furnishing bank guarantee of a nationalized bank in the sum of Rs.11,00,00,000/- (Rs. Eleven Crore Only) to the satisfaction of the Executive Director of the V.I.D.C.

(ii) The applicant shall file an undertaking before this Court signed by Mr. Dipesh Motilal Kutecha, Whole Time Director of the applicant, that upon receipt of the aforesaid amount, the applicant shall complete the entire project by 30.06.2017.

(iii) The question regarding payment of balance amount of Rs.10,85,24,743/- or the question as to whether the bank guarantee furnished for that amount is to be encashed or not, would be decided by this Court after receipt of the report of the inquiry that is being conducted by the State Government in the matter.

(iv) The V.I.D.C. shall disburse the said amount within a period of one week from today.

(v) We make it clear that we are passing this order only with regard to the order of restraint passed by Division Bench of this Court on 10.03.2016. No observations herein shall weight with the learned Single Judge who is seized of the proceeding arising out of the order passed by the learned District Judge in the execution proceedings.

(vi) Needless to state that the V.I.D.C. shall render its cooperation for the completion of the project within the period specified including obtaining of the necessary permissions, etc.

The application stands disposed of accordingly.

JUDGE

JUDGE

kahale

CERTIFICATE

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by: Y. A. Kahale.

Uploaded On:19.09.2016