

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

WRIT PETITION NO. 6930 OF 2015

(M/s. Ujwal Constructions thr. its Partner Smt. Sunanda w/o Yogesh Samrit vs. The Chandrapur
Municipal Corporation thr. the Municipal Commissioner & Anr.)

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 &
KUM. INDIRA JAIN, JJ.
AUGUST 09, 2016.**

Heard finally Shri S.P. Bhandarkar, learned counsel for the petitioner, Shri M.I. Dhatrak, learned counsel for respondent No. 1 and Shri P.V. Kulkarni with Shri S.K. Sable, learned counsel for respondent No. 2.

The petitioner has entered into an agreement on 28.09.2011 with the respondent – Municipal Corporation for privatisation of its Water Supply for Municipal Corporation, Chandrapur. The arrangement has come into force from 01.10.2011. As per clause 2 of the agreement, the petitioner has furnished Bank Guarantee of Rs.100 lakh. The Bank Guarantee is in lieu of any losses to plants, machineries, buildings, compensation or fine payable and leviable for breach of any of the conditions or agreement, as Security deposit.

The petitioner received a communication dated 19.09.2015 by which he was called upon to pay an amount of Rs.15,12,000/- on account of Water

charges used for non irrigation purposes for the year 2014. On 28.09.2015, the petitioner made a representation and complained that the said amount was on account of charges for water used between 1991 to 2014. He, therefore, demanded break-up and also wanted proportionate demand for the period after his contract began. It appears that that was never done and ultimately out of above mentioned amount of Rs.100 lakh, that amount has been appropriated by the Municipal Corporation.

Shri Bhandarkar, learned counsel has submitted that the Bank Guarantee given is for the particular purpose and, therefore, such adjustment is not legal. Bank guarantee is also not unconditional and as such it could not have been invoked except in accordance with the principles of natural justice. He is also relying upon the additional affidavit placed on record today.

However, in view of the nature of controversy before us, we do not find it necessary to look into that additional affidavit.

Shri Dhattrak, learned counsel for respondent No. 1 – Corporation is relying upon the reply affidavit. He submits that the demand has been made as a sequent to similar demand made by the Irrigation department of the State Government at Chandrapur. He submits that the amount recovered from the

petitioner is only for the year 2014. According to him, there was some error when initial demand was communicated by the Irrigation department vide its communication dated 02.03.2015 and that was rectified on 08.03.2016. He, therefore, states that huge amount is due and outstanding from the petitioner.

Though the learned counsel for the petitioner is objecting, we have taken the communications dated 02.03.2015 and 08.03.2016 sent by the Executive Engineer of the Irrigation Department, Chandrapur, through Respondent No. 1 on record as Exh. "X" and "Y".

A perusal of clause 2 which requires Bank guarantee to be furnished, itself shows that the amount can be recovered only on account of losses or then as a compensation or as a fine. Here, the petitioner admits his liability to pay the charges of Irrigation department for water used for non irrigation purposes. He is only demanding break-up thereof so that for the period after 01.10.2011 he can discharge his liability. Even today, the exact amount payable by the petitioner for the period after 01.10.2011 has not been worked out.

The communication at Exh. "X" dated 02.03.2015 shows that for the year 2011, @ Rs.1.50 per 10000 litres, amount of Rs.24,48,000/- was demanded. For the year 2012, @ Rs.1.05 per 10000 litres, demand was of Rs.15,12,,0000/-. Even for the year 2013, the

demand is same. After pointing out total demand of Rs.2,54,31,000/- for the period from 1991 to 2013, again for the year 2014 Rs.15,12,000/- has been added. In the later communication at Exh. "Y" dated 08.03.2016, for the year 2011 onwards, rate of Rs.1.58 for 10000 litres has been applied and amount worked out for the year 2011 is Rs.9,58,230/-. This amount is constant till the year 2015.

It is, therefore, obvious that when on 19.09.2015, Respondent No. 1 demanded an amount of Rs.15,12,000/- from the petitioner, it was aware that it was acting as per communication dated 02.03.2015. Thereafter, demand has been brought down to Rs.9,58,230/-.

In view of this position on record, as we find that in the Bank guarantee, there is no other clause containing machinery or providing for invocation thereof, in this situation, the petitioner ought to have been given an opportunity of hearing. Without extending him that opportunity, amount could not have been appropriated. We also add that the amount could not have been appropriated out of Bank guarantee furnished by the petitioner.

This Court has on 22.12.2015 directed the parties to maintain status quo and, therefore, the further demands of the Irrigation department could not be recovered from the petitioner by Respondent No. 1.

The petitioner has fairly stated that if the demands are as per law, he is ready and willing to discharge his contractual obligation.

We, therefore, find that the interest of justice can be met with by directing the Municipal Commissioner of Respondent No. 1 to extend an opportunity of hearing to the petitioner in the matter. The petitioner shall appear before Respondent No. 1 for this purpose on 22.08.2016. Respondent No. 1 shall, after hearing the petitioner, pass necessary further orders as per law within next two weeks.

If the amount already appropriated is found payable and recoverable from the petitioner, in this situation, we permit Respondent No. 1 to retain it though we have found that in terms of contract, such a course is not open.

With liberty to the parties to proceed further in the matter after such order of Municipal Commissioner, we dispose of the present writ petition. However, in the facts and circumstances of the case, there shall be no order as to costs.

JUDGE

JUDGE