

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6516 OF 2017

Subhash S/o Katalu Bapmare

.. Petitioner

VS.

The State of Maharashtra and others

.. Respondents

AND

CIVIL APPLICATION NO. 9485 OF 2017 IN WP/6516/2017

(Haridas Pralhad Ghumre

Vs.

Subhash Katalu Bapmare and ors.)

Mr. N.R. Thorat, Advocate i/b. Mr. A.J. Kalhapure, Advocate for the petitioner

Mr. D.R. Kale, A.G.P. for the respondent/State

Mr. V.D. Salunke, Advocate for intervenors - applicant in CA/9485/2017

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 17-07-2017

ORAL ORDER :

1. By this Petition under Article 226 of the Constitution of India, the petitioner is seeking a direction to the respondent no.3 to make an enquiry as per orders dated 02-11-2016 and 16-12-2016

passed by respondent no.2. A further direction is sought not to pay the water charges, as per the bill raised by the Contractor.

2. This Petition was filed on 24-04-2017 and was initially placed before our Bench. Both the petitioner and the Advocate was absent. The Petition was placed for dismissal on 09-06-2017. Thereafter, we were informed on 09-06-2017 that the petitioner's Advocate has been hospitalized, hence, we did not dismiss the Petition for want of prosecution but placed it on 10-07-2017.

3. We would narrate a few facts, for we have to be cautious and careful in not expressing any opinion on the merits of the controversy. More so, when Civil Application no. 9485 of 2017 is filed by the applicant – Haridas S/o Pralhad Ghumare against petitioner and respondents to this Petition, alleging that all the allegations in the Petition are directed against him, and yet he is not made a party respondent.

4. We have, therefore, allowed Mr. Salunke, learned counsel to intervene on behalf of the applicant. The Civil Application no. 9485 of 2017 is thus allowed to the extent of intervention.

5. The petitioner claims to be a social worker and law abiding citizen. The first respondent is the State and respondent no.2 and 3 are controlling and implementing Authorities, whereas respondent no.4 is the Engineer in the Department of Water Supply, Zilla Parishad, Beed. Fifth respondent is the Regional Transport Office, Beed.

6. An E-Tender was floated so as to supply water in Beed district. There are conditions mentioned in the Tender and the intervenor – Haridas Pralhad Ghumre was declared as successful bidder. He was awarded the contract of supplying water. He started his work pursuant to the work order. However, it is alleged that while bringing in water tankers, he did not abide by the Rules and Regulations of the Transport Authority. In other words, both the provisions of Motor Vehicles Act, 1988 and the Motor Vehicles Taxation Act, 1988 have not been obeyed and followed. It is in these circumstances, the petitioner made a serious grievance and requested that enquiry be held and water bills should not be paid nor the amount released, until the facts are ascertained. It is stated that the number of water tankers has been inflated, so as to obtain money by way of clearance of bills. The petitioner alleges that the vehicles should be 10

in number. They should be loaded only to the capacity and in terms of the Rules and Regulations, to be implemented by the Regional Transport Authority. However, the contractor who was incharge of providing water to the entire district, got more vehicles, which were rented and loaded them beyond the capacity. In these circumstances, it is alleged that the bills are bogus.

7. The petitioner has annexed a copy of his complaint made to the Collector, District – Beed and prior thereto, reference to communication dated 02/11/2016 from the office of the Collector, Beed to the Chief Executive Officer, the Executive Engineer, Rural Water Supply Division, Zilla Parishad, Beed and others. There, he referred to the complaint of the petitioner and informed these Authorities as early as on 02/11/2016, that the contractor has allegedly shown excess tonnage and obtained money by inflating the bills. This is a serious act and for which he should be proceeded and in accordance with law. It is in these circumstances, that he cautioned all of them, not to release the money / bills, without ascertaining the correctness or otherwise of the charges against the said Contractor. This was reiterated by the Collector's office on 16-17/12/2016.

8. Despite this, when no action at the end of all Authorities was taken, that the petitioner approached the State Government by addressing representation to the Principal Secretary, Department of Water Supply.

9. In that, he alleged that 969 Tankers were arranged through which water supply was made by the contractor allegedly. The terms and conditions of the tender stipulated that 10 tankers in terms of the loading capacity under the R.T.O. Rules and Regulations, have to be registered. No tanker other than the ones which are registered, should be utilized for supply of water. Despite agreeing to such terms and conditions, the Contractor has violated them and in the manner, as alleged above.

10. It is on such a petition and finding these communications from the Collector of the District, that we enquired from the learned A.G.P, as to why the necessary action has not been taken. In other words, why there has not been any follow-up of the action taken at the Collector's end.

11. Today an affidavit-in-reply is tendered on behalf of respondent No.2 - Collector, which is affirmed by the Chief Executive Officer, Zilla Parishad, Beed. He has stated in paragraph No. 2 and 3, as under :-

“2) I say that, on the basis of complaint of the petitioner dt. 26/8/2016 and 28/10/2016 this respondent vide its letter dt. 2/11/2016 asked the CEO Z.P Beed to take necessary and proper action regarding the complaint of the petitioner after verifying rules and regulation of the state government as well as terms and condition of the agreement to avoid excess payment. The CEO Z.P Beed in response to above letter vide its letter dt. 6/12/2016 asked for advice from this Respondent whether payment to the contractor be made as certified by Deputy Engineer Rural Water Supply of Z.P Beed or as per capacity of vehicle certified by RTO Beed on R.C book. This Respondent issued letter dt. 17/12/2016 & directed Chief Executive Officer, Z.P Beed prior to payment of bills to contractor, take action against the contractor to after satisfying himself about violation of provisions of Motor Vehicle Act, 1988 at the hands of the contractor with the help of competent authority i.e. RTO Beed. It is also directed to go through the notifications issued by State Government in this regard. As per Motor Vehicle Act, R.T.O. is empowered to impose fine on the contractor for violation of Act.

3) I say that, on the basis of above direction and information given by this Respondent RTO Beed proposed the action to be taken against the contractor for violation of sec. 113 of M.V Act, 1988 and to recover compounding amount of Rs.9,59,100/- and Rs. 21,20,420/- dt. 29/3/2017 and 5/4/2017 respectively.”

12. The Chief Executive Officer of Zilla Parishad, Beed sought opinion from the other respondents about payment of bills to the contractor and a Committee was constituted on 29/04/2017, headed by the Additional Collector, Beed and other 8 members. The Committee has decided on 04/05/2017, to make payment to the contractor as per the terms and conditions of the agreement and if it is found that the contractor has violated the provisions of Motor Vehicles Act, 1988, fine should be imposed on the Contractor. The Chief Executive Officer was also present at the time of above referred decision.

13. The Contractor in the meanwhile has approached the State Government seeking directions from the Hon'ble Minister, Water Supply and Sanitation Department to make payment as certified by Deputy Engineer, Rural Water Supply. The State Government informed that the Hon'ble Minister of this Department has directed to act in accordance with law, by taking into consideration the Rules and Regulations regarding payment to the contractor. That is how, the further action would be taken by the Chief Executive Officer, Zilla Parishad, Beed. He has issued same communication to all the Tahsildars, Block Development Officers and Deputy Engineers, Water

Supply, Zilla Parishad, to verify the tonnage of tankers used in scarcity, so that proper payments can be made to the Contractor.

14. It is based on this that, it is urged by the learned Assistant Government Pleader, that payments which have to be made over to the Regional Transport Office, Beed, would be recovered from the water bills submitted by the Contractor. Hence, the action is complete.

15. Mr. Salunke, learned Counsel would submit that firstly this Petition is not maintainable, as the petitioner has made all the allegations against the Government Contractor but has not impleaded him as a party respondent. This Court should not therefore pass any order in this Petition, unless the applicant is impleaded as a party respondent and an opportunity is given to him to file an affidavit-in-reply. It is a serious misconduct on the part of the petitioner, which this Government Contractor would like to place on record.

16. After having heard learned Advocate for the petitioner, learned A.G.P. and Mr. Salunke, learned Counsel and perusing the reply filed by the State, it is apparent that neither this Court has directed that any final orders be passed against the applicant nor the

tenor of the affidavit reveals that any recovery has been effected from the pending bills, as apprehended by Shri Salunke. This is merely a proposed action. The Regional Transport Office has computed the amount of fine / amount of alleged fine and penalty. When the Collector has directed, so also the eight-member Committee, to recover from the pending bills and payable by the Rural Water Supply Division of the Zilla Parishad, Beed. It is that Authority which has appointed the applicant as a Contractor and pursuant to the directions of the Collector of the District. That is to ensure that water supply is made to rural areas in times of scarcity and by water tankers. In the event, there is any irregularity or illegality or breach of the terms and conditions of the contract by the Contractor, it goes without saying that any recovery will have to be made in accordance with law. Prior to making any recovery from the bills, a notice will have to be addressed to the Contractor. His version will have to be taken on record. He would be allowed to inspect the original documents while giving reply to the notice of recovery. After considering his reply and the cause shown by him, necessary orders in terms of the applicable legal provisions would be passed. Today, there is no apprehension that the recoveries would be effected or before effecting them, no opportunity will be given to the said Contractor.

17. Our order only ensures that the Authorities take a decision and to implement their own resolutions or proposals. We were surprised as to how after two letters and directions/communications from the Collector, was the Chief Executive Officer unable to take any decision or whether he was avoiding taking any decision. That is why we have cautioned the Collector of the District. It is for him that requisite steps in accordance with law are taken. Once we have an affidavit before us and tendered today, which says that necessary action will be taken in accordance with law, nothing survives in the Writ Petition.

18. We once again clarify that we have not expressed any opinion particularly on the point whether Contractor – Haridas Pralhad Ghumre has violated the terms and conditions of the contract or any Rules and Regulations or the provisions of Motor Vehicles Act, 1988 or Motor Vehicles Taxation Act, 1988. Every such measure and action would have to be taken in accordance with law and after considering version of the said Contractor. Therefore, it will be open for the Contractor to raise all contentions, including the point that no cognizance be taken of the complaint of the petitioner.

19. We dispose of the Writ Petition and Civil Application in the above terms.

Sd/-
[MANGESH S. PATIL]
JUDGE

Sd/-
[S.C. DHARMADHIKARI]
JUDGE

arp/