

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9953 OF 2016

The Nisarga Consultancy Nashik
Through its Partner R. B. Patil .. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Shri S. P. Brahme, Advocate for the Petitioner.

Mrs. A. V. Gondhalekar, Addl.G.P. for the Respondent No. 1.

Shri Milind M. Patil (Beedkar), Advocate for the Respondent No.
2.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 04TH SEPTEMBER, 2017.

FINAL ORDER :

. The respondent No. 2 engaged the petitioner as a technical consultant for the water supply scheme. On or about 02nd September, 2008, the work of consultancy commenced. Subsequently under order dated 11.07.2016 the contract entered into with the petitioner was terminated by the respondent No. 2. Aggrieved thereby present petition.

2. Mr. Brahme, the learned counsel for the petitioner submits that, the respondents have rescinded the contract without issuing any notice to the petitioner and the same tantamounts

violation of principles of natural justice. According to the learned counsel just two months prior to the order of the respondent No. 2 rescinding the contract, the Chief Officer of the respondent No. 2 had issued a certificate that the performance of the petitioner is the best. The learned counsel submits that, in a meeting dated 07th May, 2016 convened for discussing extension to be given to the contractor Vijay Construction without any agenda the matter with regard to the petitioner was discussed and thereafter, the impugned action terminating the contract has been taken. According to the learned counsel, the contract could not have been terminated without recourse to the principles of natural justice. The learned counsel relies on the judgment of the Apex Court in a case Popcorn Entertainment and another Vs. City Industrial Development Corporation reported in (2007) 9 SCC 593. The learned counsel submits that, the bill of the petitioner is also outstanding.

3. Mr. Patil, the learned counsel for the respondent No. 2 submits that, the petitioner has an alternate remedy. The matter involves disputed facts. The performance of the petitioner was not satisfactory, so resolution was passed in the General Body thereby taking decision to discontinue the service of the petitioner. Similar contract of the petitioner was terminated by Yeola Municipal Council, which was also challenged by the petitioner before the Principal Seat at Bombay in Writ Petition

No. 4235 of 2014. The same came to be dismissed on October 07, 2016 on the ground of alternate remedy.

4. We have considered the submissions.

5. Perusal of the contract, it transpires that the work was to be completed within six months. The agreement is dated 02nd September, 2008. It appears that, the work was not concluded within the period six months.

6. According to the respondent No. 2, the work of the petitioner was not satisfactory and as such, action has been resorted to discontinue the services of the petitioner.

7. It is more than a year the services of the petitioner are discontinued. The parties would be governed by the terms of contract between them. The petitioner has a remedy available to prosecute it's claim, in case the petitioner feels that it is case of illegal termination of contract.

8. In a case of Popcorn Entertainment and another (supra), the Apex Court was dealing with the individual right of a person wherein the person was allotted a plot by the City and Industrial Development Corporation and the allotment was sought to be cancelled. The right in the immovable property was in jeopardy.

In the present matter, the petitioner was engaged as a technical consultant for water supply scheme of Kopergaon region. The respondent No. 2 in the General Body discussed about the performance of the petitioner and then came to the conclusion that services of the petitioner are no longer required.

9. The agreement between the parties would govern the relations between the parties. In fact, the work was to be completed within a period of six months only. It appears that, after about nine years, said agreement is rescinded. It is not a case that, before completion of six months action is taken by the respondents. The respondent No. 2 has come forward with the case of unsatisfactory performance of petitioner, whereas the petitioner pleads otherwise. The petitioner has remedy under law to claim damages and/or such other relief.

10. As the petitioner has an alternate remedy available, the writ petition is dismissed with liberty to the petitioner to avail the alternate remedy as may be permissible in law. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]