

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.529 OF 2015

M/s. Aryan Construction through its
proprietor Shri Mukund Jaishankar
Dhariya

...Petitioner

Versus

The Executive Director & Ors.

...Respondents

.....

Mr. A.V. Anturkar, Senior Advocate with Mr. Dormaan J. Dalal
i/b. Mr. Sugandh B. Deshmukh for the Petitioner.

Mr. N.N. Singh with Mr. Anoop Patil for the Respondents.

CORAM : SHANTANU KEMKAR &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 30th OCTOBER, 2017.

P.C.:-

Through this Petition filed under Article 226 of the
Constitution of India, the Petitioner has prayed for following reliefs:-

[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, quashing and setting aside that part of the decision of the Claims Committee of Maharashtra Krishna Khore Vikas Mahamandal dated 10th July 2014 rejecting Demanding No.A for the incentive payment of 5%, Demand No.C for the Idle Charges along with interest

and Demand No.D for interest @ 15% p.a. that are payable to the Petitioners.

[B] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, directing the Respondents to release forthwith Incentive Charges of 5% with interest payable by the Respondents to the Petitioner as mentioned above in the grounds of objection.

[C] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, to forthwith pay the amount for the Idle Charges of Rs.4.46 Crore with interest payable by the Respondents to the Petitioner as mentioned above in the grounds of objection.

[D] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, directing the Respondents to pay interest @ 15% p.a. to the Petitioner as mentioned above in the grounds of Objection.

[E] That during the pendency of this Petition this Honourable Court be pleased to direct the Respondents to deposit the amount as referred to in prayer Clause (B) to (D) in this Honourable Court, and further allow the Petitioner to withdraw the said amount by directing the Petitioner to deposit an appropriate amount as Bank Guarantee.

[F] Ad-interim relief in terms of Prayer Clause [E] be awarded in favour of the Petitioner.

[G] That this Petition be disposed of at the admission stage itself.

[H] That the costs of this Writ Petition be awarded in favour of Petitioner against Respondent, by this Honourable Court.

[I] For such other orders as justice and convenience may demand from time to time be passed in favour of the Petitioner by this Honourable Court.”

2. The learned counsel for the Petitioner during the course of argument has submitted that he is not pressing the aforesaid reliefs but he is praying only for disposal of the Petition by directing the

Claim Committee of the Respondents to take a fresh decision after giving due opportunity of hearing to the Petitioner, as before passing the impugned order in pursuance to the earlier orders passed by this Court on 25th January, 2006 in Writ Petition No.261 of 2006 the Claims Committee has taken a decision but without affording opportunity of hearing to the Petitioner and thus there is clear violation of the principles of natural justice.

3. The learned counsel for the Respondent has submitted that before taking the decision the Petitioner has been given opportunity of hearing by the Officers on different levels but has fairly admitted that the Claims Committee has not given opportunity of hearing to the Petitioner. He submits that in the absence of there being any provision in clause 30.3 of the agreement for giving opportunity of hearing by the Claims Committee, the Petitioner's contention that there is a violation of principles of natural justice, cannot be accepted.

4. We have gone through the clause 30.3 of the agreement, which reads thus:-

“Clause 30.3 If the contractor is not satisfied with the order passed by the Chief Engineer as aforesaid the

contractor may within 30 days of receipt by him of any such order appeal against it to the Executive Director, Maharashtra Krishna Valley Development Corporation, Pune, who, if convinced that prima-facie the contractor's claim rejected by Superintending Engineer/Chief Engineer is not frivolous and that there is some substance in the claim of contractor as would merit detailed examination and decision by the Executive Committee/Claim Committee, shall cause to put up it up to the Executive Committee/Claim Committee at Corporation level for suitable decision.”

5. A plain reading of said clause makes it clear that if the claim of the Contractor is found prima facie not frivolous then the matter is required to be referred to the Claim Committee. In the present case, admittedly the Petitioner's claim was placed before the Claims Committee. In the circumstances, in our considered view before rejecting the part of the Petitioner's claim the Petitioner ought to have been given an opportunity of hearing.

6. In the circumstances, by setting aside the impugned order

we grant liberty to the Petitioner to submit afresh detailed representation in support of its claims which have been rejected. In case the Petitioner submits such representation before the Claims Committee within a period of one month from today, the Claims Committee shall consider the Petitioner's said claims afresh and pass reasoned order after giving him due opportunity of hearing, uninfluenced by the earlier decision, within four months from the date of receipt of such representation.

7. With the aforesaid observations and directions, the Petition stands disposed of.

(ANUJA PRABHUDESSAI, J.)

(SHANTANU KEMKAR, J.)