

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4221 OF 2020

Indrayani Constructions
A Proprietary Firm,
Through It's Proprietor
Sunil S/o. Madhukar Nagargoje

...Petitioner

Versus

The State of Maharashtra,
Through Its Principal Secretary
and Ors.

...Respondents

Mr R.N. Dhorde, Senior Counsel i/b
Mr V.R. Dhorde, Advocate for Petitioners
Smt R.P. Gour, A.G.P. for Respondents-State
Mr R.S. Deshmukh, Senior Counsel along with Mr Amol Joshi
Advocate i/b Mr D.R. Deshmukh, Advocate for Respondent No. 6

**CORAM : S.V. GANGAPURWALA
AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 18th MARCH, 2020

PER COURT :

1. We have heard Mr Dhorde, the learned Senior Counsel for the petitioner and Mr Deshmukh, the learned Senior Counsel for respondent No. 6 - Municipal Council.
2. Mr Dhorde, the learned Senior Counsel points out various letters issued by the Secretary and the Collector to the Chief Officer

and the President to substantiate his contention that the President and the Chief Officer are changing the terms of the agreement and because of the actions of the President and the Chief Officer, the work was stalled. The petitioner was not at fault. The learned Senior Counsel referred to the letters issued by the Collector and the Secretary from time to time.

3. According to Mr Deshmukh, the learned Senior Counsel for Respondent No. 6, the petitioner has stopped the work for more than one and half year. The measurements were carried out. The inspection report shows that the petitioner could not complete the work though twice extensions were given and in August, 2019, the extension was sought for the third time, the same was rejected.

4. The matter involves disputed question of facts and the liability pursuant to the contract entered into between the parties. It is not a case of undisputed questions of fact vis-a-vis the rights and obligations pursuant to the contract entered into between the parties.

5. It appears that for more than one and half year, the work is stopped. There are allegations and counter allegations by the petitioner and respondent against each other. The respondent has issued fresh tender for carrying out the balance work. We are not inclined to interfere with process for the issuance of fresh tender.

6. The notice of joint measurement was issued to the petitioner as per the contention of the respondent. According to the petitioner, the notice was sent by e-mail. The petitioner had met with an accident. He was bed-ridden. As such, did not get the knowledge of the joint measurement.

7. Before start of the work, it is necessary to get the joint measurement done so that the future dispute would be avoided.

8. The respondent may proceed further with the tender process. However, before start of the work by the new contractor, the respondent No. 6 - Municipal Council shall get the joint measurement of the work done by the petitioner. The respondent shall issue notice to the petitioner of the day, date and time, the joint measurement shall be conducted.

9. The notice may be served by e-mail and or by post. The petitioner in person or through his representative may remain present for the joint measurement. The joint measurement be recorded. The joint measurement be conducted as per the methodology provided in the agreement between the parties and after the joint measurement is conducted, then the respondent may proceed further with the work from the new contractor.

10. As far as the monetary claim is concerned, the petitioner may take appropriate steps for recovery as may be permissible. All contentions in that regard are kept open.

11. The writ petition is disposed of. No costs.

[SHRIKANT D. KULKARNI, J.] [S.V. GANGAPURWALA, J.]

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