

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

WRIT PETITION NO.4186 OF 2022

M/s. Ghai Constructions,
Through its sole Proprietor

...Petitioner

Versus

The State of Maharashtra and Others

...Respondents

...

Mr. Amol K. Gawali, Advocate for petitioner.

Mr. A.R. Kale, AGP for respondent-State.

Mr. S.V. Adwant, Advocate for respondent no.2.

...

**CORAM : R.D. DHANUKA &
S.G. MEHARE, J.J.**

DATED : 08th APRIL, 2022

PER COURT:-

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks an order or direction against respondent nos.2 and 3 to provide the detail calculation as to how the Vice Chairman and Managing Director has arrived at the figure of Rs.65,80,510/- which he has directed the petitioner to pay by the impugned order dated 29.03.2022 for the entire contract period starting from 31.10.2019 till the expiry of contract period which is 26.10.2022.

2. The petitioner also seeks a writ of certiorari for quashing the order dated 29.03.2022 passed by the Vice Chairman and Managing Director and seeks a writ of mandamus directing the

respondents to repay the amount of Rs.9,60,36,089/- with interest.

3. The petitioner was awarded the contract of IRDP Aurangabad which included operating three toll stations of the terms and conditions of the contract entered into between the parties. It is the case of the petitioner that during the nationwide lockdown declared on account of Covid 19 pandemic on 26.03.2020, the toll booth was closed from 26.03.2019 to 19.04.2020 and subsequently there was complete or partial lockdown by the State Government thereby adversely affecting the traffic intensity at IRDP, Aurangabad.

4. The respondents appointed UTES Consultancy on 28.10.2020 to carry out video graphic traffic intensity survey for 15 days. The said company submitted a report pointing out the average daily collection at three toll station of IRDP at Aurangabad. The respondents initiated action against the petitioner for non-payment of the amount under the contract entered into between the parties and invoked bank guarantee. The petitioner filed a writ petition before this Court bearing No.10963 of 2021 inter alia praying for various reliefs contending that the respondents had not considered second survey report recommending the reduction of the amount payable by the petitioner by way of royalty to the respondents under the said contract. By a judgment dated 10.01.2021 delivered by this Court in the said writ petition, this Court issued a direction against the respondents to reconsider the issue afresh on its own merits and fresh

decision be taken. The petitioner was directed to remain present before the Vice Chairman and Managing Director.

5. Pursuant to the said order passed by this Court, the Vice Chairman and Managing Director passed a fresh order on 29.03.2022 holding that the earlier order dated 07.07.2021 passed by him remained unchanged being valid and proper and holding that the petitioner would be liable to pay the already reduced upfront installment of Rs.65,80,710/- per month with effect from 31.10.2019 i.e. from the date of commencement of the contract till completion of road works by National Highways Authority or resumption of traffic or till expiry of the contract i.e. 26.10.2022 whichever is earlier. Being aggrieved by the said order passed by the Vice Chairman and Managing Director of MSRDC, the petitioner filed this petition.

6. Learned counsel for the petitioner invited our attention to the judgment delivered by this Court in the earlier round of litigation and would submit that though this Court had directed the Vice Chairman and Managing Director of respondent no.2 to consider the second survey report, the same is not considered. He submits that the respondents have already invoked bank guarantee of about Rs. 8 Crore illegally.

7. It is submitted that since the respondents have acted highhandedly and arbitrarily, this writ petition filed under Article 226 of the Constitution of India is maintainable. He submits that in the

earlier round of litigation also this Court has entertained the writ petition arising out of the same contract between the parties.

8. It is submitted by the learned counsel that according to the petitioner, the petitioner has made excess payment to the respondents under the said contract and thus, there was no question of the Vice Chairman and Managing Director raising a demand again for a larger amount.

9. It is submitted that according to the second report obtained by the respondents, the average loss suffered by the contractor was more and the average collection per day was lesser than the amount quantified in the first report. The respondents however did not consider the second report.

10. Learned counsel for the respondents on the other hand would submit that this petition is not maintainable. He invited our attention to some of the paragraphs of the judgment delivered by this Court in the earlier round of litigation.

11. It is submitted by the learned counsel that in the impugned order the Vice Chairman and Managing Director has already considered the effect of second UTES survey and thereafter has passed the order. He submits that in writ jurisdiction, no interference is warranted with the order passed by the Vice Chairman and Managing Director.

12. It is not in dispute that the parties have entered into a

contract by which the respondents have awarded the contract of IRDP, Aurangabad which included operating three toll stations on the terms and conditions recorded in the said contract. Due to nationwide lockdown from 26.03.2019 to 19.04.2020 and in view of the subsequent partial or complete lockdown all over the State of Maharashtra, the toll collection was affected. The respondents accordingly appointed a surveyor to look into the amount of loss, if any, suffered by the contractors during the pandemic period affecting the collection of toll. The first surveyor accordingly submitted a report followed by second surveyor.

13. In so far as the judgment delivered by this Court on 10.01.2022 in Writ Petition No.10963 of 2021 filed by the petitioner and relied upon by the petitioner is concerned, learned counsel for both the parties relied upon various paragraphs of both the judgments. Perusal of the said judgments would clearly indicate that it was clearly observed by this Court that the said writ petition was entertained only because the impugned order which was the subject matter of that petition did not depict the consideration of second report of UTES Consultancy Private Ltd appointed by MSRDC while carrying out 24 hours video graphic traffic count survey using video camera for 15 days. This observation is made by the earlier bench in paragraph nos.10, 17 and 20. In so far as the monetary claims made by the petitioner in the earlier writ petition is concerned, this Court

while disposing off the earlier petition made it clear that those reliefs seeking direction against the respondents to calculate monthly installment for a particular period and particular rate were beyond the scope of writ jurisdiction.

14. Though this Court invited the attention of the learned counsel for the petitioner to the prayers in the writ petition and to address the Court whether writ petition is maintainable for the relief sought by the petitioner in this petition, the learned counsel vehemently urged that in view of the respondents having acted arbitrarily and with a malafide intention, writ jurisdiction is rightly invoked by the petitioner.

15. On perusal of the impugned order passed by the Vice Chairman and Managing Director indicates that after remand of the matter by the earlier bench of this Court, in paragraph (d) on page 586 of the petition, the Vice Chairman and Managing Director has considered and observed that as regards the consideration of second UTES survey, the same could not be taken into consideration for the claim raised by the petitioner on the ground of work of NHAI and bad road condition, as the second UTES survey was conducted across the State of Maharashtra at all toll plazas within the jurisdiction of MSRDC and the relief determined as per the policy framed was granted, communicated and accepted by all the toll contractors including the petitioner. After considering this aspect on the basis of

which the earlier order was remanded for reconsideration, the Vice Chairman and Managing Director held that the earlier order dated 07.07.2021 remained unchanged being valid and proper. In our view, the order passed by the Division Bench of this Court is complied with by the Vice Chairman and Managing Director while passing a fresh order dated 29.03.2022.

16. This Court cannot render any finding of fact whether the petitioner has paid any excess amount to the respondents or not under the contract entered into between the parties as sought to be canvassed by the learned counsel for the petitioner. A writ petition cannot be converted into a suit for specific performance.

17. In our view, there is no infirmity in the order passed by the Vice Chairman and Managing Director warranting any interference in this writ petition. The prayer clause (C) is admittedly in the nature of money claim seeking directions to repay the amount paid by the petitioner. Writ petition is thoroughly misconceived and is dismissed with costs quantified at Rs.50,000/- which shall be paid by the petitioner to the High Court Legal Services Sub-Committee, Aurangabad within one week from today. Requisition made by the learned counsel for stay of this order is rejected.

(S.G. MEHARE. J.)

(R.D. DHANUKA, J.)