

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7719 OF 2022

Ganesh s/o Samb Vharkat,
Aged 50 years, Occupation Business,
R/o : At Post Arali (Bk.)
Tq. Tuljapur, Dist.Osmanabad.

...Petitioner

VERSUS

- 1) The Chief Executive Officer,
Zilla Parishad, Osmanabad
- 2) The Executive Engineer,
Rural Water Supply Department,
Zilla Parishad, Osmanabad.
- 3) The District Water Conservation Officer,
Zilla Parishad, Osmanabad.
- 4) The Sub Divisional Engineer,
Rural Water Supply Department,
Zilla Parishad, Osmanabad.
- 5) The Village Panchayat Ratnapur,
Through its Sarpanch/Gramsevak,
Tq. Kallam Dist.Osmanabad. **...Respondents**

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Advocate for the Petitioner : Mr. A. T. Jadhavar

Advocate for Respondent Nos.1 to 4 : Mr. B. B. Bhise

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**CORAM : RAVINDRA V. GHUGE &
ARUN R. PEDNEKER, JJ.**

Date of Reserving the Judgment : 24/08/2022

Date of Pronouncing the Judgment : 14/09/2022

JUDGMENT : (Per ARUN R. PEDNEKER, J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties heard finally.

2. Heard learned Advocate Mr. A. T. Jadhavar for the petitioner and learned Advocate Mr. B.B. Bhise for respondent Nos.1 to 4.

3. In the present writ petition, the petitioner is challenging the order dated 31/05/2022, passed by Executive Engineer, Rural Water Supply Department, Zilla Parishad, Osmanabad, to the extent of imposing penalty of 6.5% on the petitioner for non-completion of the work of construction of a Well within stipulated time and for granting extension of time for completion of the said work till 30/04/2022.

4. The facts leading to the filing of the present writ petition can be summarised as under :-

Under the 'Rashtriya Gramin Peyjal Yojna' (National Rural Drinking Scheme), the Water Management and Supply Scheme was implemented in the village Ratnapur, District Osmanabad. Respondent No.2 - Executive Engineer, Rural Water Supply Department, Zilla Parishad, Osmanabad, had issued a notification calling tenders for construction of Well for the purpose of

implementation of the said scheme, in the month of February 2019. The petitioner participated in the tender process and was declared successful bidder and work order for construction of a well for tender price of Rs.43,40,818/- was issued to the petitioner on 03/06/2019. One of the conditions for the construction of a Well was that the work had to be completed within 18 months from the date of issue of the work order. The tender also provided for a penalty Clause for delayed completion of work at the rate of minimum of 0.5 % to maximum of 10 % per month of the tender amount.

5. The location for the construction of the Well was decided by the respondent authorities within the boundaries of nearby village Bangarwadi. The said location was on the land acquired by the Government for the purpose of construction of percolation tank. On 01/08/2019, permission came to be issued by the Water Conservation Officer, Zilla Parishad to respondent No.5 – Village Panchayat Ratnapur, for construction of a Well in village Bangarwadi. The petitioner started its work at the location as directed by the authorities. However, objections were raised by the local villagers who caused obstruction in the construction of the Well, due to which the work was discontinued. On the intervention of the

Sub-Divisional Engineer, the issue with the villagers was resolved and the petitioner was permitted to resume the work of construction of the Well.

6. However, between the months of August and September 2019, on account of heavy rain fall, huge water accumulated at the location where the well was to be constructed. The petitioner informed the Zilla Parishad, Rural Water Supply Sub-Division, that it is not possible to construct a Well as there is water accumulated on the site earmarked for construction of the Well.

7. Thereafter, by letter dated 29/09/2021, an alternate site was marked for construction of the Well by the authorities. The Geological Department visited the alternate location in the month of November, 2021 and verified the probable location where the Well was to be constructed. Thereafter, the petitioner started fresh construction of a Well at the new location as instructed by Geological Department, Zilla Parishad, Osmanabad.

8. In the month of February 2022, a warning letter was issued to the petitioner by respondent No.4 – Sub-Divisional Engineer Rural Water Supply Division Zilla Parishad, Osmanabad, to complete the

entire work by 15th March, 2022. The petitioner responded to the same enumerating the difficulties faced as mentioned above and requested for grant time to complete the construction of the Well. The petitioner completed the construction of the Well by 30/04/2022.

9. The petitioner submits that in spite of the request made by the Village Panchayat and the Zilla Parishad to the Executive Engineer, the respondent No.2 passed an order dated 31/05/2022 for extension of time with penalty to the petitioner to the extent of 6.5 % over the total cost of the tender. The petitioner contends that the 18 months granted to complete the project should have been computed from November, 2021 from the date where the new location was given to the petitioner for construction of the Well. He further contends that he has completed the project within six months of the assigning of the new location and as such the order of extension of time with a penalty of 6.5 % over the total cost of the tender, is unlawful and beyond the terms of the contract. The order passed by respondent No.2 has overlooked that the authorities responsible for implementation of scheme have altered the site on account of the heavy rains and accumulation of water at the original

site. The respondents have not disputed the fact that the Well was shifted from the original place to a new location in November, 2021 and that the Well was completed within six months at the new location.

10. Since it is not disputed that the location of the Well was shifted on account of accumulation of water at the original site when the Well was to be constructed, we hold that the time to construct the Well ought to have been complied from the grant of new site for the construction of the Well i.e. from November 2021. We hold that the petitioner has constructed the Well within the time stipulated in the contract. Thus, we are of the view that penalty imposed of 6.5 % on the overall cost of the tender, for extension of the period for construction of the Well, is unjustified. We accordingly set aside the penalty imposed of 6.5 % for grant of extension of time for completion of the work.

11. In view of the above, this writ petition is allowed. Rule is made absolute in above terms.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

gawade/-.