

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD  
WRIT PETITION NO.2101 OF 2023  
WITH WP/2125/2023 WITH WP/2115/2023 WITH  
WP/2113/2023 WITH WP/2123/2023**

**SUYOG CONSTRUCTIONS THROUGH ITS AUTHORIZED  
SIGNATORY PARVEZ MOHAMMED SHARIF SHAIKH  
VERSUS  
THE CHIEF ENGINEER AND OTHERS**

...

Mr. Mahesh K. Bhosale, Advocate for the Petitioner.

Mr. R. B. Bhosale, Standing Counsel and Mr. A. G. Talhar, DSG  
for Respondent Nos.1 to 3.

...

**CORAM : NITIN W. SAMBRE AND  
S. G. CHAPALGAONKAR, JJ.  
DATE : 15<sup>th</sup> MARCH, 2023.**

**P.C:-**

1. Heard.

2. The petitioner, a registered contractor with the respondent nos.1 to 3 has questioned the communication dated 29<sup>th</sup> December, 2022 whereby the work order/contract awarded to the petitioner came to be canceled. The petitioner has further prayed for issuance of the direction to the respondents to decide his representations dated December 31, 2022 and January 14, 2023.

3. This is the second round of litigation by the petitioner before this Court, as the petitioner in earlier round through Writ Petition No.4927/2022 with connected writ petitions has approached this Court seeking relief of granting extension for the execution of work in question.

4. The nature of work which was entrusted to the petitioner was execution of the construction of buildings for the respondents. As per scheduled, the last date for completion of

construction work was 16<sup>th</sup> March, 2020 as against the date of commencement of work on 18<sup>th</sup> March, 2019.

5. According to the petitioner in view of the pandemic (Covid) so also non-cooperation on the part of the respondents on the following issues, the petitioner was unable to complete the construction within the scheduled period:-

*“In view of all above points, delay in works beyond our kind control. Other Hindrances in work difficulties and problems in completing the project are summarised as under:-*

- a) Location and layout of all building not finalized in time. (2 month's delay).*
- b) Delay in approval of our own RMC plant and mix design of concrete. (4 month's delay)*
- c) Delay in approval of external services like location of boundary wall/fencing, road, area drainage with drawing and design. Due to ongoing court case there was stay to Army & Civil area compound wall work all stopped for 4 months. (1-year delay).*
- d) Non-payment against foundation DO and other extra item deviation order payment. (2 years delay)*
- e) Delay in approval for extra work suggested by users for huge amount blocked from deviation. (1-month delay)*
- f) Due to strike of stone crusher in Ahmednagar district stone aggregate and crushed stone not available in Ahmednagar work also delayed due to this reason.*
- g) Delay in approval of transformer. (1 year)”*

6. According to the petitioner even today he is also willing to complete the work in question within the half of period as that of prescribed and provided in the new tender process as his machinery and the man power is very much available on the spot for execution of the work in question. In the aforesaid background his contention is that, if an opportunity by way of last chance in the interest of justice is given to the petitioner, the petitioner shall complete the work in question within a period of 125 days.

7. Apart from the above, the learned counsel for the petitioner has invited the attention of this Court to the discriminatory treatment meted out to the petitioner qua the other similar contracts executed at other places by the petitioner. According to him, at other places, the reasonable extension for execution and completion of the work is granted on the same set of facts.

8. While countering the aforesaid submission, the learned Deputy Solicitor General Mr. Talhar would oppose the prayer. According to him, the scheduled period of completion of work was 16<sup>th</sup> March, 2020. Considering the pandemic situation and other reasons till this date the petitioner is granted in all eight extensions. He has placed on record various extension orders granted to the petitioner. According to him, in spite of there being sufficient accommodation granted to the petitioner, the petitioner is able to complete only 78% of the work. As such, the respondents having regards to the non-cooperative attitude of the petitioner, and his non-committal approach has constrained to cancel the contract awarded to the petitioner. He would urge that already fresh tender notices are issued. He would further urge that the order of cancellation of the contract cannot be questioned in the present petition particularly when the petitioner has appropriate alternate remedy of claiming the damages, if so he desired, in accordance with law.

9. We are appreciated the submissions.

10. The grant of extension to the petitioner in the matter of execution of the civil contract in question which pertains to the construction of the building is not in dispute. Rather this Court

while showing indulgence to some extent has directed the petitioner to submit a road map as to the period within which he shall be completing the execution of the work. It appears that, in spite of there being repeated extension granted by the authorities, the fact remains that the petitioner is unable to complete the execution of work and the petitioner was unable to maintain the time schedule as was prescribed.

11. The respondents-authorities as such, have formed subjective satisfaction that the petitioner will not be in a position to complete the work within the time stipulated and has proceeded to cancel the contract of the petitioner.

12. Having heard the learned counsel for the petitioner at length, we are not convinced with any of the reasons including that of assurance that the balance work shall be completed in time bound manner, so as to order the extension of period for completion of the execution of work under the contract. The authorities are the best judges in such an eventualities who have formed subjective satisfaction of cancellation of contract in question.

13. The nature of work executed by the petitioner is for the Defence Department and urgent requirement of the building in question. The other difficulties faced by the respondents because of non-execution of the work within the time stipulated cannot be gone into and the Court cannot substitute its reasons for the same.

14. Considering the nature of the contract executed *inter se* between the petitioner and the respondents and having regard

to the remedy of seeking damages available to the petitioner, we do not see any reason to cause interference particularly when for the reasons cited, the contract awarded to the petitioner came to be canceled.

15. For cancellation of the contract the respondents-authorities have already furnished sufficient reasons.

16. The Apex Court in catena of judgments have already laid down that in a contractual matters, the Courts should be slow in causing interference under Article 226 of the Constitution of India particularly when the aggrieved parties has a remedy of claiming damages.

17. In view of the above, keeping the rights of the petitioner intact to move for damages, if so desire, we do not see any reason to cause interference in the order of cancellation of the contract awarded to the petitioner.

18. Writ Petition as such is dismissed.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**

**(NITIN W. SAMBRE)**  
**JUDGE**