

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

**WRIT PETITION NO.11992 OF 2023**

Hule Constructions Private Limited  
through its Manager,  
Mr. Shrikant s/o Digambar Kawade

**... PETITIONER**

**VERSUS**

1. The State of Maharashtra  
through its Addl. Chief Secretary  
Water Resources Department  
Government of Maharashtra  
Mantralaya, Mumbai – 400 032
2. The Executive Director,  
Godavari Marathwada Irrigation  
Development Corporation  
"Sinchan Bhavan", Jalna Road,  
Aurangabad-431001
3. The Chief Engineer,  
Water Resources Department,  
"Sinchan Bhavan", Jalna Road  
Aurangabad
4. The Superintending Engineer,  
Osmanabad Irrigation Circle,  
"Sinchan Bhavan", Anand Nagar  
Osmanabad, Dist. Osmanabad
5. The Executive Engineer  
Lift Irrigation Division,  
Anand Nagar, Osmanabad,  
Dist. Osmanabad

**... RESPONDENTS**

**AND  
WRIT PETITION NO.12002 OF 2023**

C.P. Bagal Infra Pvt. Ltd.  
formerly known as C.P. Bagal  
& Company, a Company incorporated

under, Indian Companies Act, with  
 Registered Office at Office No.6,  
 3<sup>rd</sup> Floor Sumansudha opposite  
 Olive Hotel, NDA, Pashan Road,  
 Bavdhan Pune-411021, through its  
 Chief Executive Officer,  
 Mr. Prashant s/o Chandrakant Bagal

... PETITIONER

**VERSUS**

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 Lift Irrigation Division,  
 Anand Nagar, Osmanabad,  
 Dist. Osmanabad

... RESPONDENTS

Advocate for petitioner/s : Mr. J.N. Singh  
 AGPs for respondent – State : Mr. G.A. Kulkarni and Mr. S.V. Hange  
 Advocate for respondent Nos.2 to 5 : Mr. Sudhir G. Bhalerao

**CORAM**

: MANGESH S. PATIL &  
 NEERAJ P. DHOTE, JJ.

**DATE**

: 01.12.2023

**ORDER (MANGESH S. PATIL, J.) :**

Heard the learned advocate for the petitioners in both these petitions. Rule in both the petitions. It is made returnable forthwith. Learned AGPs waives service for the respondent No.1 and Mr. Bhalerao waives service on behalf of the respondent Nos.2 to 5, in both the petitions. At the joint request of the parties the arguments have been heard and the petitions are being disposed of finally by this common order.

2. Though the petitioners are different, the respondents and the nature of the dispute being the same, pertaining to the action of the respondent Nos.2 to 5 in going for E-tender notice No.8/2023-24 dated 04.09.2023 regarding 'Construction of Gravity Main Pipeline from Gormala Hill Top to Songiri Storage Tank of Lift Irrigation Scheme No.1, Stage-4 under Krishna Marathwada Irrigation Project, Tq. Bhoom District Osmanabad,' with a estimated cost of Rs.181.4074 Crores, to be responded by the willing persons between 08.09.2023 and 03.10.2023.

3. Learned advocate Mr. Singh files a rejoinder across the bar which is taken on record. He would vehemently submit that in fact, the respondents had awarded two contracts for the same work to these petitioners pursuant to the E-tender notice No.2/2009-10. The agreements with the respective petitioners were also entered into in the year 2011. The respective works were to be completed within 36 months against costs of around Rs.37 Crores each. However, giving a complete

go by to these earlier contracts, keeping the petitioners in dark and under the guise of floating a fresh tender which is impugned in these matters the respondents have unilaterally abandoned both the earlier contracts. This is nothing but blatant breach of the contracts.

4. The nature of the contracts awarded to the petitioners was in the form of digging of open canals, however, the only change that is sought to be affected was to go for an underground pipeline. It is nothing but a change in scope of the work that has been sought to be changed. The contracts entered into, between the parties expressly stipulated for the manner in which either of the party could bring it to an end in clause 15 which contemplated prior intimation to the other side. He would further submit that even clause 14 provided for the modalities to be worked out in case of change of nature and scope of work. The respondents could have but did not follow these terms and unilaterally the decision is in blatant violation of the principles of natural justice apart from being in breach of the terms and conditions of the respective contracts.

5. Mr. Singh would also tender across the bar a copy of the communication dated 21.02.2023 addressed to the respondent No.3 who is the Chief Engineer of the Water Resources Department' by the respondent No.4 who is the Superintendent Engineer of the Osmanabad Irrigation Circle. He would argue that even the respondent No.4 had merely allowed to go for the fresh tender process and the new work put a

rider that the fact that already the petitioners' contracts were intact and to explore the possibility of undertaking the new work through the petitioners in the existing contract could be borne in mind and explored. He would further submit that in spite of such state of affairs the impugned tender notice has been published which is grossly illegal and adversely affects the petitioners whose contracts are still in existence.

6. To buttress his submission that even in the matters of government contracts, if it comes to cancellation of the contracts a public law is involved and principles of natural justice are expected to be followed and there is always a scope for the High Courts to cause inference by undertaking a judicial review, Mr. Singh relies on the decision in the matter of **State of U.P. Vs. Sudhir Kumar Singh and Ors.;** 2020 SCC OnLine 847.

7. The learned advocate Mr. Bhalerao would refer to the affidavit-in-reply filed by the respondent No.5. He would submit that there is no dispute that the contracts were awarded to both the petitioners for excavation of earth for the canals in the year 2011 and about floating of the fresh E-tenders impugned in the petitions. However, he would submit that though the fresh work to be undertaken is in respect of the same project, the nature and scope of the work is entirely different.

8. He would submit that it is a matter of sharing of water for the drought prone Marathawada Region. Though the works were

allotted to the petitioners in the year 2011, for whatever reason, barely anything had progressed in respect of those works in spite of lapse of more than 15 years. In the meantime, taking into account the fact that public money could be saved, on the basis of a report of expert committee headed by Mr. Madhav Chitale the decision was taken to go for laying of underground pipeline instead of using the old technique of open canals. It could save the financial burden on the public exchequer as lesser land would be required to be acquired. Therefore in the larger public interest and in the interest of public exchequer the decision has been taken to switch over to the underground pipeline. There are no *mala fides*. If at all it is a matter of causing any loss or prejudice to the petitioners they would have appropriate remedy to claim damages. There was no arbitrariness in going ahead with the work with drastic change in the nature.

9. Mr. Bhalerao would further submit that a bare look at the contract awarded to the petitioners and the impugned tender notice would reveal that the formers' contracts were merely of excavation of earth for canals, where as impugned tender is in respect of laying of underground pipeline requiring several other kind of works of fabrication and use of steel. It is not a mere matter of change of nature and scope as is being put forth by the petitioners.

10. Mr. Bhalerao would then submit that even otherwise the petitioners are playing hide and seek. They could have, if at all they were

interested, responded to the impugned tender notice which was published on 04.09.2023. Instead of doing that they filed these writ petitions on 20.09.2023 attempted to obtain interim relief to create hurdles. Having failed to secure one for the reasons expressly recorded in the order dated 27.09.2023, they realized the shortcomings in the pleadings and the prayers and still could only amend the petition and add a prayer without seeking any specific relief. He would, therefore, submit that the conduct of the petitioners disentitles them from having discretionary relief from this Court by resorting to Article 226 of the Constitution.

11. Mr. Bhalerao would submit that considering the over all conspectus, there are inherent limitation for this Court in undertaking a judicial review since it is a matter of public work. He would rely upon the decision of the Supreme Court in the matter **Tata Cellular Vs. Union of India; (1994) 6 SCC 651** and **M/s. NG Projects Ltd Vs. M/s. Vinod Kumar Jain and Ors.; (2022) 6 SCC 127**.

12. The rival submissions now fall for our consideration. We have carefully considered those and perused the record.

13. As can be noticed from the rival pleadings and the submissions, there is no dispute about the fact that the petitioners were awarded contracts in the year 2011 for part of work for excavation of earth and laying of canals for the same project being undertaken by the respondent Nos.2 to 5. Apparently, the respondents have not expressly

abundant or annulled the contracts.

14. As is being claimed by the petitioners, if the respondents have committed breach of the contract circuitously going for the impugned tender work, it would be a matter of their right to either enforce the contract or claim damages. It is interesting enough to note that they do not seem to be interested in either, at least going by the prayer clause which including the amended prayer clause is as under :

*“B. By issuing Writ of certiorari or any appropriate Writ of like nature, the Hon’ble court may be pleased to quash and set aside the impugned E-Tender Notice No.8 for the year 2023-2024 dated 08.09.2023 Exhibit–“F” and further be pleased to declare that the action of the respondent authorities in issuing fresh tender notice is illegal null and void.*

*B-1. The Hon’ble Court may be please to hold and declare that the action of the respondent Executive Engineer in issuance of fresh E-tender notice No.8 of 2023-2024 dated 08.09.2023 in respect of same stretch of work i.e. K.M. 00 to 30/00 allotted to the petitioner as well as one C.P Bagal Infra Pvt. Ltd. another petitioner when both the contracts were alive and valid are illegal null and void.*

*C. The Hon’ble Court may by issuing writ of mandamus or any appropriate writ of like nature be pleased to direct the respondent authorities not to act illegally and arbitrarily pursuant to E-Tender notice No.8 for the year 2023-2024 dated 08.09.2023.”*

15. A bare look at these prayers shows that the petitioners seem to be merely interested in preventing/obstructing the impugned E-tender process. There is no prayer seeking any declaration either in respect of their own contracts or seek to enforce them. Even the petitioners having realized the shortcomings in their pleadings as well as the prayer clauses

sought amendment in the light of observations made by this Court in the order dated 27.09.2023. Paragraph No.6 of the order reads as under :

*“6. Apparently, the petitioner is merely complaining about the alleged breach. If at all the conduct of the respondents in floating the fresh tender for a work which is ex facie different one, constitutes breach, in our considered view, stalling of the fresh tender process would not be appropriate more so when the petitioners would be at the most entitled to claim damages for the alleged breach. We are not inclined to grant any interim relief.”*

16. In spite of being aware that even while refusing to grant any interim relief on the very ground that they were merely interested and were complaining about the breach of their respective contracts, and if at all there was any such breach it would always be open for them to claim damages by alleging breach, only the prayer clause B-1 and necessary pleadings for that have been incorporated by way of an amendment. It is thus well nigh clear that without expressly seeking any relief in respect of the contracts which the petitioners have entered into, they seem to be trying to secure some advantage and if we may say so unfairly by merely seeking to stall a public project.

17. True it is that even in public law element, there is a scope for judicial review where the principles of natural justice are not followed, as has been extensively dealt with and laid down in the matter of **Sudhir Kumar Singh** (supra). However, simultaneously one cannot ignore the fact that it is not that factually the petitioners were in dark and everything was happening behind their back.

18. In fact, the very fact that after floating of the impugned E-tender notice, they had filed the petition without even making any attempt to either participate in the fresh tender. They have merely sought to obstruct it. The communication dated 21.02.2023 tendered across the bar during the course of argument between respondent No.5 and 4 *inter se* which is placed on record by Mr. Singh clearly demonstrates that even the possibility was explored as to if the fresh work could be undertaken through the petitioners, which in all probability could not have been the case had there been no deliberation between the petitioners on the one hand and the respondent Nos.2 to 5.

19. For that matter, as is mentioned herein above, in spite of filing the petition and even amending it, no specific relief is being claimed by the petitioners demonstrating that they are willing to undertake the fresh work of laying down underground pipeline and seem to be content in stalling the impugned tender process. If at all it is their stand that the nature and scope of the work which was already awarded to them was merely being changed, it was always open for them to have sought such a relief expressly by making necessary pleadings and demonstrating their willingness and ability to perform the work. That being not the case, in our considered view, the petitioners are not entitled to bank upon **Sudhir Kumar Singh** (supra). That apart, the fact situation in the matters in hand is drastically different than the one that was before the Supreme Court.

20. It is to be noted that the decision to undertake the project of laying down underground pipeline distribution was preceded by scrutiny of various aspects and was being thought appropriate in the peculiar facts and circumstances. A report of the committee recommended such work of laying distribution system through underground pipeline. It would save burden on the public exchequer as the lesser lands were required to be acquired for the project pursuant to of a State level technical advisory. It cannot be said that the decision is arbitrary or has been taken with some *mala fide* intention to cause prejudice to the petitioners.

21. It has been expressly and in detail mentioned in the affidavit-in-reply filed by the respondent No.5 that though the contracts were awarded to the petitioners with costs of the entire work to be undertaken by them of around 18 Crores each way back in the year 2011, there was hardly any progress. The work only worth around few lakhs could be completed. Even the communication dated 21.02.2023 produced by Mr. Singh supports the stand in the affidavit-in-reply. In spite of lapse of so many years still there was no progress. Public money being saved to the tune of 26.6 Crores would be an additional fact to demonstrate that the decision to undertake laying of underground pipeline instead of open canal was not an arbitrary one.

22. Though Mr. Singh was able to demonstrate to us that indeed there is a pleading regarding *mala fides* in the petition, *ex facie* only a word 'mala fide' has been used without giving any particulars as to in

what manner respondents were interested either in awarding the contract to some one else or were acting to the detriment of the petitioners deliberately with an ulterior motive to cause loss or prejudice to them. Mere use of word 'mala fide' would not suffice.

23. The upshot, there is no arbitrariness in floating the impugned fresh tender and the petitioners are not entitled to stall it.

24. The petitions are dismissed.

**[ NEERAJ P DHOTE ]**  
**JUDGE**

**[ MANGESH S. PATIL ]**  
**JUDGE**