

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1871 OF 2023

Omkar Construction through Proprietor } ...Petitioner

V/s.

1. State of Maharashtra through Social }
Justice Department, Mantralaya, }
Mumbai. }

2. The Chief Executive Officer, }
Zilla Parishad, Kolhapur. }

3. The Additional Chief Executive }
Officer, Zilla Parishad, Kolhapur. }

4. The Zilla Samaj Kalayan Officer, }
Zilla Parishad, Kolhapur. }

5. The Executive Engineer]
(Construction), Zilla Parishad, Kolhapur. }

6. The Block Development Officer, }
Kolhapur. }

7. The Gramvikas Officer, }
Hatkanangale, Kolhapur }

8. The Sarpanch }
Hatkanangale, Kolhapur. }

...Respondents

WITH
WRIT PETITION NO. 5410 OF 2023

Mangaon Grampanchayat }
through-Sarpanch Shri Abhaykumar @ }
Raju Aappaso Magdum, Age-45 years, }
Occ-Social worker. Tal-Hatkanangale, }
Dist-Kolhapur }

...Petitioner

V/s.

State of Maharashtra	}
through Social Justice Department	}
Mantralaya, Mumbai.	}
	}
1 a) The Collector of Kolhapur	}
Nagala Park Kolhapur.	}
	}
2. Chief Executive Officer,	}
Zilla Parishad Kolhapur,	}
	}
3. Additional Chief Executive Officer,	}
Zilla Parishad Kolhapur	}
	}
4. Zilla Samaj Kalayan Officer	}
Zilla Parishad, Kolhapur	}
	}
5. Executive Engineer (Construction)	}
Zilla Parishad, Kolhapur	}
	}
6. Block Development Officer	}
Panchayat Samiti, Hatkanangale,	}
Dist-Kolhapur.	}
	}
7. Gramvikas Officer, Mangaon,	}
Tal-Hatkanangale, Dist-Kolhapur	}
	}
8. M/s. Omkar Construction	}
through Proprietor, Shri Sachin	}
Mahadev Koli, Age-43 years, Occu-	}
Contractor, R/o-Latwade, Tal-	}
Hatkanangale, Dist-Kolhapur.	}
	}
9. The District Planning Officer,	}
District Planning Commission, District-	}
Kolhapur.	}

...Respondents

Dr. Abhinav Chandrachud a/w. Mr. Sandeep Koregave for Petitioner in WP/1871/2023.

Mr. S.S. Borulkar I.by Mr. Ashok M. Misal for petitioner in WP/5410/2023.

Mr. R.M. Shinde-AGP for respondent nos. 1-State in both matters.

Mr. S.N. Biradar for respondent nos. 2 to 6 (both).

Mr. S.C. Mangle for respondent nos. 7 and 8 (both).

**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, J.J.**

DATE : 17th JULY 2023.

ORAL JUDGMENT : (PER SUNIL B. SHUKRE, J)

Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

2. This is a case wherein work order issued to the petitioner thereby awarding contract of 8 works has been abruptly cancelled after the petitioner started carrying out the work and after having changed his position in response to the work order issued to him.

3. The reason given for such cancellation of the work order is that the petitioner has not been found to be eligible for carrying out these works because the petitioner does not belong to any Schedule community or Neo-buddhist Category. In fact, initially, at the behest of the Guardian Minister, the stay of the work order was granted on

20.01.2023, but later on, there was cancellation of the work order by the order dated 07.03.2023 which is impugned in this petition.

4. According to learned counsel for the petitioner the Guardian Minister had no authority in law nor any rationale to grant stay to the work order but he did so arbitrarily. He further submits that the impugned order dated 07.03.2023 is based upon an erroneous impression that the contractor must belong to a backward community because the relevant clause of the Government Resolution dated 5.12.2011 has been substituted, by a Government Resolution dated 20.12.2012, by another clause whereby the authority to allot such works came to be granted to the Gram Panchayats.

5. Learned counsel for the Zilla Parishad submits that even though it is true that relevant clause of the Government Resolution dated 5.12.2011 has been substituted by another clause by Government Resolution dated 20.12.2012, there is one more reason for cancellation of the work order. He submits that since the approval was refused by Guardian Minister, Zilla Parishad had no other option than to cancel the work order issued to the petitioner and now the Zilla Parishad has issued another revised work order. Therefore, he submits that Writ Petition deserves to be dismissed.

6. We have considered, the rival submissions, in the light of material available on record. We find that the impugned order is based upon a wrong premise that the petitioner was not eligible for being awarded contractual works which are 8 in number. While it is true that the petitioner does not belong to any of the backward communities, which was the requirement of Government Resolution dated 5.12.2011, in our view, the petitioner does not suffer from any disqualification on this count as this requirement has been done away with the Government Resolution dated 20.12.2012. The Government Resolution dated 20.12.2012 delegates entire authority and power to the concerned Gram Panchayat for allotting the work and such delegation is in substitution of the said requirement. So, the Gram Panchayat could not have cancelled the work order on the ground that the petitioner does not belong to backward class and so could not have been allotted these works.

7. In this case, the Gram Panchayat, by following due procedure, has allotted 8 works to the petitioner. The petitioner was found to be eligible to participate in the tender issued by the Gram Panchayat and was not otherwise disqualified. He was the lowest bidder of all. That was the reason why he was allotted the contract

relating to 8 works as mentioned in the work order. There is thus no fault in the work order.

8. Now, the question is whether the Guardian Minister should have granted stay initially, and later on even to have refused to grant his approval or not. Granting of stay by the concerned Minister, in our view, is nothing but interference in the authority of the Zilla Parishad, which is against constitutional scheme of devolution of powers and responsibilities to the Panchayats as envisaged in the Article 243(G) of the Constitution of India. Then, there is no law or executive instruction shown to us which empowers a Minister to grant stay. Therefore, we find that no stay could have been granted by the Minister. The stay order issued by the Minister in the present case is, therefore, bad in law and in any case, now that is not relevant because the stay order has ultimately merged in the final order dated 07.03.2023, which we have found to be illegal. So now, we have to examine the legality or otherwise of the other action of the Minister refusing to grant approval to the work order.

9. There is a submission that the work order was cancelled because Guardian Minister disapproved it. We must say that there being no power conferred upon him to grant approval or refuse

approval after issuance of work order, there is no question of the Minister disapproving the work order already issued. But, the Minister has disapproved it, which is illegal.

10. There is a Circular dated 21.07.2022 relied upon by the learned counsel for the Zilla Parishad, which states that the approval of Guardian Minister is necessary and without the approval, the work order cannot be issued. There is no doubt that as per the circular dated 21.07.2022, the approval of the Guardian Minister is necessary, but such approval is only a prior approval and there is no need for seeking any approval post issuance of the work order. If any approval, after issuance of work order, was to be obtained, it would have been in the nature of power of ratification conferred upon the Guardian Minister, which is not the case here. Therefore, we find no substance in the argument of learned counsel for the Zilla Parishad that since the Guardian Minister has disapproved allotment of work to the petitioner, the work order granted was cancelled. In our opinion there is highhandedness on the part of the Zilla Parishad and it deserves interference by this Court.

11. At this stage, learned counsel for the Zilla Parishad states that if any interference is to be made, it should be restricted to four

works out of 8 works allotted to the petitioner as the petitioner is yet to start these works. The action taken by the Zilla Parishad in the present case has been found by us to be completely illegal and without any authority in law and therefore, the impugned order in its entirety must go. The argument is rejected.

12. The petition is, therefore, allowed. Impugned order dated 07.03.2023 is hereby quashed and set aside. The petitioner is permitted to carry out all the works in terms of work order issued to him by order dated 16.01.2023, upon his fulfilling all its terms and conditions, except the condition regarding completion of the works within a period of 6 months from the date of the work order. We grant further six months time to the petitioner to complete works accordingly. Necessary funds to enable the petitioner to carry out the works in terms of the work order shall be released.

13. Rule is made absolute in the above terms.

14. Writ Petition No. 5410 of 2023 is disposed of in terms of final order delivered in Writ Petition No. 1871 of 2023.

(RAJESH S. PATIL, J)

(SUNIL B. SHUKRE, J)