

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5591 OF 2021

Patil Construction and Infrastructure Ltd.
Through its Authorised Signatory
Mr. Manamath Shivram Sakhare : Petitioner.

Vs.

The State of Maharashtra and ors. : Respondents.

Ms. Madhavi Ayyappan a/w Mr. Shubam Gurav i/by Talekar and Associates for the Petitioner.
Mr. P. P. Kakade, GP, a/w Mr. O. A. Chandurkar, Addl.GP and Mrs. R. A. Salunkhe, AGP for the Respondent No.1-State.
Mr. Kedar B. Dighe a/w Ms. Archana D Gaware for Respondent Nos. 2 to 4 – (PCMC).

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 19th DECEMBER, 2023**

P.C. :

1 Heard Ms. Madhavi Ayyappan, Learned Counsel representing the Petitioner, Learned AGP representing Respondent No.1-State and Mr. Kedhar Dighe, Learned Counsel representing the Respondent Nos. 2 to 4 - Corporation.

2 By instituting this Petition under Article 226 of the

Constitution of India, the Petitioner, who is a Civil Contractor, has challenged the communication dated 4th June 2021 whereby the claim of the Petitioner for revision of costs for the additional works carried out by the Petitioner was rejected by the Respondent-Corporation. Simultaneously, the Petitioner has also challenged the tender notice dated 16th June 2021 to the extent of re-tendering the work that was awarded to the Petitioner earlier in respect of the Sewage Treatment Plants at Pimple Nilakh, Bopkhel and Chikhali. The Petitioner also challenges the communication dated 13th July 2021 whereby the decision regarding termination of the earlier contract was intimated to it. Another prayer made in the Petition is to quash the order dated 27th August 2021 passed by the Commissioner, Pimpri Chinchwad Municipal Corporation whereby the representation made by the Petitioner, pursuant to an order dated 11th August 2021 passed in Writ Petition No.3732 of 2021, has been rejected.

3 At the outset, learned counsel representing the

Petitioner states that so far as the challenge to the tender notice dated 16th June 2021 is concerned, the Petitioner may be permitted to give up the said prayer, however, the other prayers made in respect of earlier contract/work may be adjudicated. Thus we reject the prayer clause (b) as not pressed, which reads as under :-

(b) To quash the impugned tender notice dated 16.06.2021 issued by the respondent no.4 to the extent of re-tendering the work that was awarded to the petitioner in respect of the Sewage Treatment Plants at Pimple Nilakh, Bopkhel and Chikhali (Exhibit "A-2"), by issuing a writ of certiorari or other writ, order or direction as the case may be."

4 As regards the other prayers, we may note that pursuant to a tender notice dated 31st October 2017 the Petitioner had participated in the tender process and the Respondent-Corporation allotted the work to the Petitioner vide Work Order dated 7th March 2018. It has been contended by learned counsel for the Petitioner that on account of certain delays, the Respondent-Corporation is under obligation to revise the cost for the additional work.

5 However, the submission of learned counsel for the Respondent-Corporation is that the prayer made in the Writ Petition lie in the realm of private contract between the parties, and hence this Writ Petition may not be maintainable.

6 Having heard the submissions made by the learned counsel representing the respective parties, we are of the opinion that the prayers, being pressed by the Petitioner, emanate from the contract between the parties which was entered into pursuant to the culmination of tender process which commenced with the publication of the tender notice dated 31st October 2017. Further, by pressing prayers made in the Writ Petition, the Petitioner, in fact, seeks enforcement of contractual rights and obligations which, in our considered opinion, would not be permissible for this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The Petitioner will have to take recourse to any other legal remedy which may be available to it under law.

7 At this juncture, our attention has been drawn to Clause 28 of the General Conditions of Tender which provides that in case any dispute arises during execution of works, no arbitrator shall be appointed for redressal of the dispute and that in this regard the decision of the Commissioner of the Corporation shall be final and remain binding on both parties.

8 Such a clause, in our opinion, may bar remedy of arbitration in absence of any such agreement between the parties. However, it will not be a bar for the Petitioner to take recourse to the ordinary civil remedy which may be available in law to the Petitioner by instituting appropriate suit seeking appropriate prayers before a Court of competent civil jurisdiction.

9 In view of aforesaid, we are not inclined to entertain this Writ Petition, which is hereby disposed of with liberty to the Petitioner to take recourse to any other legal remedy which may be available to it under law for redressal of its grievance,

including the remedy of instituting appropriate suit with appropriate prayers before the Court of competent jurisdiction.

10 We make it clear that in case such a remedy is invoked by the Petitioner, the findings recorded by the Municipal Commissioner in his order dated 27th August 2021 shall not come in the way of the Petitioner.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)