

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION 4480 OF 2022

M/s. Dattatraya Construction
Padaswada, through its proprietor
Shri Narendra s/o. Sheshrao Pawade,
Aged about 47 yrs,
R/o. Surya Colony, Near S.T. Depo,
Tahsil Warud, District Amravati

.....PETITIONER

...V E R S U S...

1. The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai 32

2. The State of Maharashtra,
through its Secretary, Public Works
Division, Mantralaya,
Mumbai 32

3. The Superintending Engineer,
Public Works Division, Amravati
Division, Bandhkam Bhavan,
Camp Amravati 444 602

4. The Chief Engineer,
Public Works Division, Amravati
Division, Bandhkarm Bhavan,
Camp Amravati, 444 602

5. The Executive Engineer,
Public Works Division, Amravati
Division, Bhandkam Bhavan,
Camp Amravati 444 602

6. The District Collector,
Amravati, Camp Amravati

..RESPONDENTS

Mr. C.R. Shaarma, counsel for petitioner,
Mrs. K.S. Joshi, Addl.GP for respondents 1 to 6/State.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 02.03.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard with consent of the parties.

3. The petition is preferred seeking the following prayers:

i) Direct the respondents herein more particularly the respondent nos. 3 to 5 – Superintending Engineer, Chief Engineer and Executive Engineer, Public Works Division, Amravati to consider the representations dated 20.10.2020, 11.6.2021, 26.8.2021 and 7.3.2022 (Annexure-F colly.) made by the petitioner for disbursement of the due amount for construction/repairing from Warud-Isambri Road as per work order dated 24.10.2017.

ii) direct the respondents herein more particularly the respondent nos. 3 to 5 – Superintending Engineer, Chief Engineer and Executive Engineer, Public Works Division, Amravati to release the amount of Rs. 18,36,065/- and Rs. 7,09,569/- along with interest @ 18% p.a. in favour of the petitioner for completion of the construction/repairing from Warud-Isambri Road as per work order dated 24.10.2017 issued by respondent no. 5 (Annexure-B), forthwith;

iii) direct the respondents herein more particularly the respondent nos. 3 to 5 – Superintending Engineer, Chief Engineer and Executive Engineer,

Public Works Division, Amravati to pay additional 12% GST amount on the total due amount for payment of the GST towards the Government.

4. Ordinarily, we would have been slow to exercise writ jurisdiction in matters in the realm of contract.

5. Having so observed, it is well settled, that alternate remedy is not an absolute bar, and even in contractual matters, the State is expected to act fairly. One situation in which the constitutional Court would be justified in stepping in would be if the State is not making the payment of undisputed dues. While we are not burdening the order by referring to the plethora of decisions holding the field, illustrative reference may be made to the decision of the Hon'ble Supreme Court in ***Unitech Limited and Others...vs..Telangana Sate Industrial Infrastructure Corporation (TSIIC) and Others, (2021 SCC Online SC 99)*** and in particular to paragraph 41, which reads thus:

“41. Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of

fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the jurisdiction under [Article 226](#) cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does oust the jurisdiction under [Article 226](#) in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked. The jurisdiction under [Article 226](#) was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh in this case, when the foundational representation of the contract has failed. TSIIC, a state instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal”.

6. In the present matter, it is not in dispute that vide Government Resolution dated 16.3.2017, the Tribal Development Department accorded administrative approval to the construction and repairs of Warud-Isambri road (“subject work”).

7. Respondent 2 initiated e-auction process for allocation of the subject work. The petitioner emerged as the successful bidder. On 24.10.2017, respondent 5 issued the work order in favour of the petitioner.

8. The petitioner asserts that in the year 2018-19, he completed the entire work which was in two parts, laying of stone and tarring. The petitioner asserts that respondent 5 also issued form 65 – Completion Certificate.

9. Petitioner submitted two bills. The first bill of Rs. 18,36,065/- was submitted in 2018 and the second bill of Rs. 7,90,569/- was raised in 2019. The petitioner did not receive any amount from the respondent and he addressed representations dated 20.10.2020, 11.6.2021, 26.8.2021 and 7.3.2022, which went unheeded. The petitioner contends that he made inquiries and was informed that on 11.6.2018, respondent 1 issued Government Resolution cancelling several works, including the subject work for which administrative approval was accorded. The petitioner asserts that he was kept in dark and was rather led down the garden path and was induced to complete the subject work.

10. We have perused the affidavit in response dated 20.2.2023 filed on behalf of respondents 3 to 5. We find that there is no dispute whatsoever raised in the said affidavit as

regards the completion of the work, and indeed to the entitlement for the payment. It is admitted that the petitioner completed the subject work. The stand is that after issuance of the work order dated 24.10.2017, on 11.6.2018, the administrative approval was cancelled. It is stated in the affidavit in response, that by the time the administrative approval was cancelled, the petitioner had completed almost the entire work except the premixed carpet and seal coat. Respondents 3 to 5 submits that in the peculiar situation, there was no option other than getting the rest of the work executed through the petitioner. It is further submitted that as a fact, respondent 5 has addressed communication seeking *post facto* administrative sanction for the subject work. It is further candidly admitted that the amount of Rs. 30 lakhs for which sanction is sought is required to pay the dues of the petitioner.

11. The affidavit in response filed on behalf of respondent 1 is not inconsistent with the affidavit in response filed by respondents 3 to 5. Respondent 1 asserts that the subject work does not fall under Tribal-Sub-Plan, and therefore, the Tribal Development Department is not in a position to discharge the liability.

12. On a holistic consideration of the stand of the respondents, we find that there is no dispute whatsoever that the petitioner did execute the subject work. In the absence of any factual dispute, we find it wholly unnecessary to consider whether the petitioner could have approached the civil Court.

13. We allow the petition partly and direct the respondents to make the payment to the petitioner, in accordance with the contractual terms within eight weeks from the uploading of this order on the High Court website.

14. We clarify that if the petitioner is not satisfied with the calculations, he is free to approach the civil Court for recovery of such amount, which according to him is the shortfall.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

belkhede