

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 313 OF 2021

Sagar s/o Dilip Bajaj,
aged about 30 years, Occ. Contractor,
R/o Gurunanak Nagar, Murtijapur,
District – Akola.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through Secretary,
Tribal Development Division,
Mantralaya, Mumbai.
2. State of Maharashtra,
through Secretary,
Public Works Department,
Mantralaya, Mumbai.
3. Executive Engineer,
Public Works Division, Akola.
4. Superintending Engineer,
Public Works Division, Akola.

RESPONDENTS

Shri Amol M. Jaltare, Advocate for the petitioner.
Ms. S.S. Jachak, Assistant Government Pleader for the respondents/ State.

CORAM : A.S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : JANUARY 19, 2023

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
Counsel for the parties.

2. In response to a tender notice dated 10/11/2017 issued by
the Public Works Department for undertaking the work of construction of

a small bridge for joining Villages Makrampur and Umra on the Pohra river the petitioner submitted his bid. Having been found successful, the petitioner was issued work order on 20/2/2018 by the Executive Engineer, Public Works Department, Akola. Pursuant to the aforesaid, the petitioner commenced the work in question in accordance with the said work order. It appears that on 11/6/2018, the Tribal Development Department issued a Government Resolution seeking to exclude certain works from its purview in the financial year 2018-19. There was a reference to work No. 16(10) pertaining to the present work as being beyond the tribal sub-plan area. The Public Works Department on 4/7/2018 informed the Tribal Welfare Department that 90% of the work of construction of the bridge on Pohra river was completed. On 25/7/2018 the Executive Engineer of the Public Works Department informed the Project Officer of the Tribal Development Department that the above work be re-included in the financial budget for the year 2018-19. It is in this backdrop that the petitioner has sought to raise challenge to the said Government Resolution dated 11/6/2018 to the extent the work of construction of the bridge on Pohra river was sought to be excluded from the budgetary estimate. A direction has been sought to include the said work in the budgetary estimate issued by the Tribal Development Department. In addition, it is prayed that the petitioner having completed the work in question, he be held entitled for the

amounts under the contract.

3. On 28/2/2022, after hearing the learned Counsel for the parties, the following order was passed :

“Heard the learned counsel for the parties for sometime.

The facts on record indicate that pursuant to the petitioner being allotted the work order with regard to construction of bridge over Pohra river for joining Makrampur Umra village with other villages, the petitioner commenced the said work. According to the petitioner 90% of that work has been completed as certified by Superintending Engineer, Public Works Division, Akola. The work in question has been granted administrative approval. In this context the details thereof are “आविवि 2017/प्र.क्र.16(11)/ का.05 दिनांक 16.3.2017”. As 90% work has been completed, it is the case of the petitioner that Government Resolution dated 11.06.2018 that proposes to exclude those works which have not started from inclusion in the budget would not be applicable.

The learned Assistant Government Pleader for the respondents however has sought to rely upon the annexure to the said Government Resolution in relation to District Akola and has submitted that the exclusion is with regard to following work:

“आविवि 2017/प्र.क्र.16(10)/ का.05 दिनांक 16.3.2017” It is thus submitted that while the petitioner concerned with the Work No.16(11), the exclusion is with regard to Work No.16(10). The respondent no.1 shall accordingly clarify as to whether Work No.16(11) has been excluded from the purview of Government Resolution dated 11.06.2019.

In the reply filed by the respondent no.3 it has been stated in paragraph 4 that the Superintending Engineer has issued a communication to the respondent no.1 to include Work No.16(11) in the budget. This aspect would also require to be clarified by the respondent no.1.

Time of three weeks is granted to the respondent no.1 to file affidavit in that regard on the points stated hereinabove.

Stand over three weeks.”

4. In response, the Executive Engineer, Public Works Department, Akola has sworn affidavit dated 12/10/2022 and has stated therein as under :

“4. The aforementioned work i.e. Construction of bridge on Pohra River Makrampur-Umra Road Tq. Akot Dist. Akola was given administrative approval by the Tribal Development Department (Respondent No.1) vide Govt. Resolution आ.वि.वि/२०१७/प्र.क्र. १६(१०)का-०५ दिनांक १६.३.२०१७ with budgetary provision of Rs.25.50 lakh for year 2017-18.

5. Accordingly the Respondent No.3 i.e. the Executive Engineer, Public Works Division, Akola invited the tenders for aforementioned work to the costing Rs.1,28,22,116/-. After completing the entire tender process the petitioner was found qualified for the said work and bid of petitioner to the tune of Rs.1,25,47,723/- is accepted. Accordingly respondent no.3 issued work order to petitioner to commence work vide letter dated 20.2.2018. The time limit for work was 9 months i.e. till 19.11.2018.

6. As the work was of construction of bridge wherein no work is

possible during monsoon session. The respondent has started the work in full swing deploying all possible resources. The petitioner has completed the bridge proper work before June 2018 and approaches were in progress. The progress of said work was regularly updated to the tribal development department by the respondents through Monthly Progress report (MPR).

7. Later on, the Tribal Development Department (Respondent No.1) vide Govt. Resolution आदिवासी विकास विभाग/रस्ते २०१७/प्र. क्र०६/का-५ दिनांक ११.६.२०१८ has ordered the cancellation of total 588 works which included the aforementioned work. The copy of Government Resolution dated 11.6.2018 is annexed herewith as Annexure R-1.

8. By the time the respondent 3 received the order from tribal development department (Respondent No.1), the bridge portion was already completed and approaches were in progress. The cost of completed work was tune to Rs.100 Lakh. As the work was substantially completed; to avoid the wasteful expenditure on the work done and to make the government asset (bridge) fully functional; the Respondent No.3 and 4 had regularly requested the Tribal Development Department (Respondent No.1) to re-include the cancelled work in budget.”

5. An affidavit has also been filed by the Deputy Commissioner, Tribal Development, Nagpur wherein in paragraphs 3 to 5, it has been stated as under :

“3. I say and submit that Tribal Development Department has given approval for the work of “Construction of bridge on Pohra River which connects Makrampur Umra village with other

villages” (said project) by Government Resolution dated 16.03.2017 with outward no. आविवि/२०१७/प्र.क्र.१६(१०).

4. I say and submit that it is specifically written in clause 14 of the abovementioned Government Resolution dated 16.03.2017 that work orders must only be issued in areas covered by Tribal Sub Plan (TSP), MADA or MINI-MADA and not otherwise. As the above said project does not come under Tribal Sub Plan area, it is not within the purview of Tribal Development Department and hence the work of “Construction of bridge on Pohra River which connects Makrampur Umra village with other villages” was excluded in issuing Government Resolution dated 11.06.2018.

5. I say and submit that this Hon’ble Court by an order dated 28.02.2022 directed respondent no.1 to clarify as to whether work no.16(11) is excluded from the purview of Government Resolution dated 11.06.2019. In pursuance to the order dated 28.02.2022, I hereby humbly clarify that work no.16(10) which is related to the petitioner was excluded by issuing Government Resolution dated 11.06.2018 and not 16(11).”

6. From the aforesaid, it is clear that work No. 16(10) which was allotted to the petitioner was initially given administrative approval by the Tribal Development Department on 16/3/2017 with budgetary provision for the year 2017-18. The said work was however excluded by the Government Resolution dated 11/6/2018 issued by the Tribal

Development Department. It can be seen that work in question was completed by June – 2018 and its cost was about Rs.1,00,000,00/-. For that reason, it was suggested that the Tribal Development Department ought to re-include the cancelled work in the budget for 2018-19. Thus on one hand, the Tribal Development Department in its affidavit has taken a stand that in view of the Government Resolution dated 16/3/2017 the said work was included in the list of works but later on as it was found that as the said work did not come under the Tribal Sub-Plan, it was excluded by issuing Government Resolution dated 11/6/2018. On the other hand, the Public Works Department in its affidavit has stated that the decision taken by the Tribal Development Department of excluding the work in question from the financial budget was not within the knowledge of the Public Works Department. It requested for its inclusion by the Tribal Development Department to avoid wasteful expenditure.

In these facts we find that though the work of construction of bridge over Pohra river for joining villages Makrampur and Umra had received administrative approval from the Tribal Development Department on 16/3/2017 it excluded the said work on 11/6/2018 on the ground that the said work did not come under the Tribal Sub-Plan area. On this count, since the impugned Government Resolution dated

11/6/2018 excludes work not falling in the Tribal Sub-Plan area such exclusion cannot be faulted with. The petitioner's challenge to the said Government Resolution therefore cannot succeed.

7. Despite the aforesaid, we find that having issued the tender notice and thereafter the work order on 20/2/2018, it would be initially the responsibility of the Public Works Department to take into consideration the fact of completion of the said work undertaken by the petitioner. For want of clarity between two departments of the State Government, the claim of the petitioner has been delayed for no reason. In these facts therefore the Public Works Department can be initially directed to act in accordance with the tender notice published by it and the work order issued by it. In case the Public Works Department is of the view that such budgetary allocation has to be undertaken by the Tribal Development Department, it is free to pursue the matter at its own level and seek reimbursement of the work in question from the Tribal Development Department

8. Accordingly, respondent Nos. 2 to 4 are directed to consider the petitioner's representations dated 3/10/2019 and 14/2/2020 and take a decision thereon. It is made clear that the representations shall not be rejected on the ground that the work in question pertains to the Tribal

Development Department in view of Government Resolution dated 16/3/2017. In view of issuance of the tender notice and work order by the Public Works Department, it shall take a decision in accordance with law in the light of the aforesaid. The petitioner shall appear before respondent No.4 on 1/2/2023. A decision on the representations be taken within a period of four weeks thereafter and the same be communicated to the petitioner.

9. With these directions, the Writ Petition is allowed in the aforesaid terms. Rule accordingly. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

SUMIT