



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9238 OF 2023

M/s. N.K. Construction,
Through it's Proprietor,
Navnath Keshav Kapse,
Age 72 yrs., Occ. Contractor,
R/o Jawalgaon, Tq. Barshi,
Dist. Solapur.

... Petitioner

... Versus ...

- 1 The Chief Executive Officer,
Zilla Parishad, Osmanabad.
- 2 The Executive Engineer,
Rural Water Supply Department,
Zilla Parishad, Osmanabad.
- 3 The District Water Conservation Officer,
Zilla Parishad, Osmanabad.
- 4 The Sub Divisional Engineer,
Rural Water Supply Department,
Lohara, Zilla Parishad, Osmanabad.
- 5 The village Panchayat Kalnimbala,
Through it's Sarpanch/Gramsevak,
Tq. Omerga, Dist. Osmanabad.

... Respondents

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Mr. A.T. Jadhavar, Advocate for petitioner

Mr. N.J. Patil, Advocate for respondent Nos.1 and 2

Respondent Nos.3 and 4 – served

Mr. R.R. Imale, Advocate for respondent No.5

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**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

RESERVED ON : 16th APRIL, 2024

PRONOUNCED ON : 25th APRIL, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioner challenges order dated 03.06.2022 passed by the Executive Engineer, Rural Water Supply Department, Zilla Parishad, Osmanabad to the extent of imposing penalty of 1.5% upon the petitioner while granting extension of time to complete the project.

3 The fact which is not in dispute is that under the Chief Minister Peyjal Yojna the water management and supply scheme; work was carried out in village Kalnimbala, Tq. Omerga, Dist. Osmanabad. The work order came to be issued in favour of petitioner on 09.04.2018 and as per the said work order it was expected that respondent No.2 should complete the work of construction of well within a period of 18 months. The location as suggested

and decided by respondent authorities came to be fixed nearby the said village. However, some citizens had raised objection in respect of location of the well. Due to the said dispute the work started by the petitioner was stopped and it could not be continued for a considerable time. After settling the said dispute the petitioner could start the work around December, 2018. However, there was nationwide lock down due to Covid-19 pandemic situation from the month of March, 2020. It resulted in non availability of labours and material for construction such as cement, steel, sand etc. Respondent No.5 submitted an application in the month of February, 2022 to respondent No.2, thereby confirming that due to dispute of location of the well and Covid-19 pandemic situation the work has not been completed within stipulated time. Extension was sought. It was then informed that the petitioner has completed the work by 10.12.2020. The extension of time till 31.12.2020 ought to have been granted. But by impugned order respondent No.2 though granted extension but imposed penalty. Prior to that respondent No.2 had called upon an explanation from respondent No.4 by letter dated 25.03.2022. Respondent No.4 had given report that the explanation should be accepted without imposing penalty, but respondent No.2 has not considered the said recommendation. Since the impugned order by respondent No.2 of imposing penalty is without reasons and illegal, petitioner has prayed for setting aside the said order.

4 Heard learned Advocate Mr. A.T. Jadhavar for the petitioner, learned Advocate Mr. N.J. Patil for respondent Nos.1 and 2 and learned Advocate Mr. R.R. Imale for respondent No.5. Perused affidavit-in-reply filed by Mr. Narendra Ambrish Bhusare serving as Sub Divisional Engineer, Water Supply Department, Zilla Parishad, Osmanabad. It has been stated in the affidavit-in-reply that though it is accepted that the villagers had stopped the work and petitioner could not carry out it till the dispute was settled, however, the work ought to have been completed by 09.10.2019. Extension was granted for six months. However, for extending the time till December 2020 the petitioner had moved the application on 24.02.2022. That means, he had taken about 1½ year's period to file such application for extension. As per the provisions of Section 148 of the Maharashtra Zilla Parishads and Panchayat Samitis Account Code, 1968 such application for extension of time ought to have been given at least 15 days before the expiry of the time limit and, therefore, penalty has been rightly imposed.

5 As aforesaid, the facts are not in dispute. The petitioner could not start the work as there was opposition from the villagers themselves which it appears that the respondent authorities could not solve till December, 2018 and in fact, from 09.04.2018. Practically the 18 months period ought to have been started thereafter i.e. after December, 2018, but

due to lock down due to Covid-19 Pandemic situation the entire country had come to a halt. We are taking note of the fact that it was very difficult situation and for long period there was no availability of labours and the construction material. It is also not in dispute that the petitioner had completed the work by 10.12.2020. It also appears that immediately thereafter the respondent authorities had not taken steps if the petitioner would have forgotten to make an application for extension of period. Respondent authorities could have taken it upon themselves. There ought not to have been technical hurdle. Further, in application dated 24.03.2022 the petitioner has stated that due to inadvertence he forgot to file such application. He had not even claimed the bill till that date. That means, he has not utilized the extended period with any *mala fide* intention. The Engineers are not disputing that the work was completed by end of December, 2020. It can be seen from the documents on record that by communication dated 29.02.2022 the Sub Divisional Engineer had made recommendation for extension without penalty, but the Executive Engineer called upon his explanation. The tenor of the said communication dated 25.03.2022 would show that as if the Sub Divisional Engineer was at fault. If that is so, then the petitioner cannot be blamed. The explanation called upon was tendered along with the application for extension by the petitioner. In spite of recommendation of not to impose penalty the Executive Engineer has

imposed the penalty. While imposing the same he has not assigned any reason. Therefore, the said order deserves to be set aside. Though the Rule 148 of the Maharashtra Zilla Parishads and Panchayat Samitis Account Code, 1968 prescribes that such extension ought to have been sought 15 days prior to the time limit; yet, it is not a mandatory and unflexible rule. When it comes to imposition of penalty, then such order/communication should reflect the reason.

6 For the aforesaid reasons, following order is passed.

ORDER

1 The Writ Petition stands allowed.

2 The impugned order dated 03.06.2022 passed by the Executive Engineer, Rural Water Supply Department, Zilla Parishad, Osmanabad i.e. respondent No.2 to the extent of imposing penalty of 1.5% upon the petitioner while granting extension of time is hereby quashed and set aside.

3 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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