



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 10518 Of 2024

Jain Irrigation Systems Ltd.
Having its Register Office at:
Jain Plastic Park, P.O. Box:72,
N.H. No.6, Jalgaon-425001.
Through its Authorized Officer
Pramod Huna Chaudhari,
Age: 63 years, Occu.: Consultant,
R/o. Plot No.12,
Pimprala Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The State of Maharashtra
Through its Principal Secretary,
Water and Sanitation Department,
Mantralaya, Mumbai.
3. The Chief Officer,
Bhusawal Municipal Council,
Near Bus Stand, Shanti Nagar,
Bhusawal.
4. The Member Secretary,
Maharashtra Jeevan Pradhikaran,
Express Tower, Nariman Point,
Mumbai.
5. The Chief Engineer,
Maharashtra Jeevan Pradhikaran,
Age: 38 years, Occu.: Contractor,
Nashik Region, Nashik

Opposite Divisional Commissioner Office,
ISP Road, Nashik Road,
Nashik.

6. The Executive Engineer,
Maharashtra Jeevan Pradhikaran,
Division Jalgaon, Jalgaon.
7. The Assistant Engineer,
Maharashtra Jeevan Pradhikaran,
Sub-Division, Bhusawal,
Behind City Police Station,
Tar Office Road, Bhusawal.

.. Respondents

- * Mr. P.R. Katneshwarkar, Senior Advocate i/by Mr. A.N. Sikchi,
Advocate for the petitioner.
- * Mrs. V.N. Patil-Jadhav, Additional Government Pleader for
respondent No.1 and 2/State.
- * Mr. R.S. Deshmukh, Senior Advocate i/by Mr. N.R. Dayama,
Advocate for respondent No.3.
- * Mr. Vinod Patil, Advocate for Respondent Nos. 4 to 7.

**CORAM : MANGESH S. PATIL AND
SHAILESH P BRAHME, JJ.**

Date On Which The Arguments Were Heard : 04 OCTOBER 2024

Date On Which The Judgment Is Pronounced : 15 OCTOBER 2024

J U D G M E N T [Per Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard both the sides finally at the admission stage.

2. Petitioner, a Private Limited Company, is approaching this Court under Article 226 of the Constitution of India seeking quashment of e-tender notice dated 14.09.2024 issued by the respondent no.3, for direction to the respondent no.3 to permit the petitioner to continue with work order dated 26.10.2017 and further direction to the respondents to comply with the technical approval dated 01.03.2024 and administrative approval dated 14.08.2024.

3. The petitioner is already executing work under order dated 26.10.2017 issued by the Municipal Council for Water Supply Scheme for Bhusawal City under Amrut Mission sponsored by Central Government. The respondent no.3 is the implementing agency and the Maharashtra Jeevan Pradhikaran and its officers are Project Management Consultant. The matter proceeds on following factual matrix.

4. For implementing Water Supply Scheme at Bhusawal technical sanction was issued on 18.05.2017 and thereafter administrative sanction was issued on 22.05.2017. Accordingly, the respondent no.3/Municipal Council floated tender vide notice dated 06.06.2017. The petitioner participated in it and emerged to be successful bidder. It was issued with a work order on 26.10.2017. The work was to be completed within a period of 24 months.

5. Though work order was issued, it is grievance of the petitioner that site of raw water pumping station was not finalized, there was

change in location of water treatment plant and the nature of the work was revised due to the lapses attributable to the respondents. The work could not be commenced and completed. Due to revised nature of the work or the additional work, a confirmation was sought from the petitioner which was responded to positively by it.

6. It is further contended that petitioner was assured that it was required to carry out the revised work after soliciting approval from the competent authority. There was delay in execution of the scheme due to inability to obtain the approval. Due to the supervening events after entrusting the work to the petitioner, the time lapsed and it was required to be extended by passing resolutions by the respondent no.3/Municipal Council. Last such extension was granted up to 30.06.2024 by communication dated 05.02.2024.

7. It is a case of the petitioner that it was ready to perform the contract with the revised work. Due to delay it was suffering the losses. It was required to issue notice on 28.11.2023 to the respondent no.3. The technical sanction was issued on 13.12.2023 for closing down the Amrut Scheme 1.0 and merging the remaining work therein into Scheme 2.0. The petitioner was executing the work. However respondent no.3 failed to supply necessary technical information regarding location, tender work, revised plan and the revised rates for which couple of notices were issued in the month of December 2023.

8. Ultimately, technical approval was granted by respondent no.5

on 01.03.2024 under Amrut Mission 2.0. Anticipating that the respondent no.3 was about to issue fresh tender notice, the petitioner issued notice on 12.03.2024. Despite that respondent no.3 secured administrative approval vide Government Resolution dated 14.08.2024 and floated the fresh tender through e-tender notice dated 14.09.2024. Though the contract with the petitioner was subsisting, therefore, the fresh tender notice is a cause of action for the petitioner to file present petition.

9. The case of respondent no.3/Municipal Council has been put forth vide affidavit-in-reply. It is contended that the petition is premature and liable to be dismissed. The Municipal Council attributed lapses and dereliction to the petitioner. Though work order was issued on 26.06.2017, the petitioner delayed the work of ESR and distribution system. From time to time, it was instructed to complete the work speedily but there was no progress. A fine had to be imposed which was stayed ultimately, considering a larger public interest. The petitioner was casual. The time was extended on numerous occasions. The petitioner was giving false assurances for completion of the work. The petitioner failed to secure further extension.

10. It is further contended that the State Level Technical Committee in its meeting 15.12.2022 reduced magnitude of the work as well as expenditure from Rs.90.85 Crore to Rs.48.24 Crore. The respondent nos. 4 to 6/Project Management Consultancy prepared a panchnama

on 27.10.2023 to show the work status performed by the petitioner. It is alleged that the petitioner failed to complete ten Water tanks within eight years.

11. Considering reduction of work, technical sanction was issued on 01.03.2024 followed by administrative sanction on 14.08.2024 for foreclosing Amrut Scheme 1.0 and merging the balance work in Amrut Scheme 2.0. The new tender notice was issued on 14.09.2024. It is further contended that Amrut Scheme 1.0 and 2.0 are totally different and there are distinct technical and administrative sanctions. It is further contended by the respondent no.3 that entire claim of the petitioner is false. The petitioner can participate in a newly floated tender process. It has no right to continue the work. The project of Water Supply has been delayed and there is public uproar as water is not supplied for 15 to 16 days.

12. Respondent nos. 4 to 7 also filed affidavit-in-reply which is in tune with the contentions raised by the respondent no.3. Additionally, it is contended that they have limited role to play being Project Management Consultants. The petitioner did not challenge Government Resolution dated 14.08.2024. It is reiterated that the petitioner was lethargic and unable to complete the work of Amrut Scheme 1.0, despite assurances and contractual obligation.

13. Learned Senior Counsel Mr. P.R. Katneshwarkar appearing for the petitioner submitted that action of respondent no.3 in floating

tender on 14.09.2024 is unreasonable, arbitrary and extremely highhanded. When the petitioner was entrusted the work and the contract was subsisting, it is impermissible for the respondents to propose to allot same work by calling for new bidders. It is submitted that the petitioner was not responsible for the delay. The respondents themselves were not sure about the site of raw water pumping stations and there was change in location of Water Treatment Plant leading to revision of work. It is vehemently submitted that without informing the petitioner or issuing any notice of termination of the contract/work order, respondent no.3 resorted to fresh tender process which is arbitrary and callous. It is further submitted that so called reduction of work or the proposed expenditure was never intimated to the petitioner. The petitioner was willing to continue with the work and extension of time was also sought by it vide notice dated 12.03.2024 which was conveniently overlooked.

14. Learned Senior Counsel would vehemently submit that Writ Petition is maintainable against action of respondent no.3 which is in brazen violence of principles of natural justice, arbitrary and unreasonable. For that purpose, a reliance is placed on the three Judges bench judgment of the Supreme Court in the matter of **Subodh Kumar Singh Rathour Vs. Chief Executive Officer and Others**, 2024 SCC OnLine SC 1682. Learned Senior Counsel also tendered on record a comparative chart showing nature of work in Amrut Schemes, 1.0 and 2.0.

15. Learned Senior Counsel Mr. R.S. Deshmukh appearing for

respondent no.3 submitted that the present petition is premature. There is alternate remedy under Clause 44 of the tender conditions and the petitioner has actually resorted to it but without prosecuting it further the petition is filed. It is submitted that the petitioner is responsible for the delay and despite extension of time there was no progress. The respondents were constrained to foreclose Amrut Scheme 1.0 and resort to Scheme 2.0. It is vehemently submitted that the petition is not maintainable as it is not challenging the decision making process. It is submitted that there are disputed questions of facts. Fresh tender has been floated in larger public interest. The petitioner can participate in the fresh process as well.

16. Mr. Deshmukh submitted that the judgment of the Supreme Court in the matter of Subodh Kumar Singh Rathour (supra) is not applicable though the principles laid down therein cannot be disputed. He also adverts our attention to couple of contingencies enumerated in the judgment. Additionally, he placed reliance on the judgment of Supreme Court in the matter of **N.G. Projects Limited Vs. M/S. Vinod Kumar Jain & Ors.**, 2022 LiveLaw (SC) 302. He also tendered on record two charts to demonstrate comparison of work included in Amrut Scheme 1.0 and Scheme 2.0.

17. Learned Counsel Mr. Vinod Patil appearing for respondent nos. 4 to 7 adopts the submissions of respondent no.3. So is the case with learned AGP appearing for the respondent no.1 and 2.

18. We have considered the rival submissions advanced across the bar. We have carefully gone through the judgments cited by the parties.

19. From the rival pleadings, following undisputed facts can be culled out :

- i. The Water Supply Scheme for Bhusawal was given technical sanction on 18.05.2017 and administrative sanction on 22.05.2017.
- ii. The tender process was floated on 06.06.2017 by respondent no.3. The petitioner was the successful bidder. He was issued with the work order on 26.10.2017.
- iii. The petitioner was unable to complete the work in stipulated period of two years.
- iv. The time for completion of the work was extended by the respondent no.3 by passing various resolutions and the last extension was up to 31.06.2024. There was no extension beyond that.
- v. There was no correspondence from the respondents to the petitioner terminating his contract.
- vi. The balance work from Amrut Scheme 1.0 was shifted to Amrut Scheme 2.0 vide technical sanction dated 13.12.2023.
- vii. Thereafter there was revised technical approval on 01.03.2024 followed by administrative approval vide Government Resolutions dated 14.08.2024.
- viii. Respondent no.3 floated fresh tender vide e-tender notice dated 14.09.2024.

20. We shall take up the preliminary objection regarding maintainability of the petition in view of Clause 44 of the tender conditions. Clause 44 reads thus :

“44. Resolving the disputes :

In case of disputes, between a Contractor and M.C./MJP, the decision of the C.O./Chief Officer/Chief Engineer shall be final and binding. In case of any further dispute, the decision of Secretary UDD-2/Member Secretary MJP or any other person appointed by the Secretary UDD-2 will be final.”

. It reveals from record that vide representation dated 08.08.2024, the petitioner approached the Chief Officer of respondent no.3/ Municipal Council raising various grievances. Therefore it is the contention of respondent no.3 that the petition is premature. The petitioner is challenging action of respondent no. 3 on the ground of principles of natural justice, arbitrariness and being highhanded. Learned Senior Counsel for the petitioner referred to the judgment of the Supreme Court in the matter of Subodh Kumar Singh Rathour (supra) in which principles are culled out in Paragraph Nos. 54, 56, 61 and 62, to show that the petition is maintainable in the contractual matters and especially in the case of breach of contract. We are therefore, not inclined to dismiss the petition on this count. We overrule the preliminary objection.

21. The rival pleadings and the submissions of the parties would reveal following disputed facts which cannot be gone into in writ jurisdiction exercisable under Article 226 of the Constitution of India :

- i. The party responsible for delay.
- ii. Inaction or the lapses on part of either the petitioner or

respondent no.3 in implementation of the Scheme.

- iii. The quantity of the work executed and remained to be executed.
- iv. The nature of the work included in Amrut Scheme 1.0 and Scheme 2.0.
- v. Revised work or need for switching over to Amrut Scheme 2.0.
- vi. Losses to the public exchequer and on whom the liability would rest.
- vii. Liability of continuing with the work with the petitioner.

22. The ratio laid down by three judges bench in the matter Subodh Kumar Singh Rathour (supra) is binding on this Court. In paragraph no.54 earlier decision of the Supreme Court in the matter of **Joshi Technologies International Inc. Vs. Union of India** reported in (2015) 7 SCC 728 was referred to, summarizing the principles. In paragraph no.55 earlier judgment of the Supreme Court in the matter of **M.P. Power Management Co. Ltd., Jabalpur Vs. Sky Power Southeast Solar India Pvt. Ltd.**; (2023) 2 SCC 703 is referred to, to highlight scope of judicial review in the matter of contractual disputes. It is relevant to reproduce paragraph no.56, which is as follows :

“56. What can be discerned from the above is that there has been a considerable shift in the scope of judicial review of the court when it comes to contractual disputes where one of the parties is the State or its instrumentalities. In view of the law laid down by this Court in ABL (supra), Joshi Technologies (supra) and in M.P. Power (supra), it is difficult to accept the contention of the respondent that the writ petition filed by the appellant before the High Court was not maintainable and the relief prayed for was rightly declined by the High Court in exercise of its Writ jurisdiction. Where State action is challenged on the ground of being arbitrary, unfair or unreasonable, the State would be under an obligation to comply with the basic requirements of Article of the Constitution and not act in an arbitrary, unfair and unreasonable manner. This is the constitutional limit of their authority.

There is a jural postulate of good faith in business relations and undertakings which is given effect to by preventing arbitrary exercise of powers by the public functionaries in contractual matters with private individuals. With the rise of the Social Service State more and more public-private partnerships continue to emerge, which makes it all the more imperative for the courts to protect the sanctity of such relations.”

23. Then we have gone through paragraph nos. 61, 62 and 123 to 127 and the concluding paragraphs as pointed out by Mr. P.R. Katneshwarkar. The principles laid down therein cannot be disputed but it is necessary to look into the facts which were before the Supreme Court in that matter. The appellant before the Supreme Court was the successful bidder who was issued with work order of maintenance of two underpasses on 18.10.2022. On 01.12.2022, Urban Development and Municipal Affairs Department had issued order, directing the maintenance of the roads, drainage including underpasses to Kolkata Metropolitan Development Authority (KMDA). On 07.02.2023, the appellant was served with a notice cancelling his work of maintenance citing certain grounds like ambiguity, financial losses, technical faults etc. The notice was challenged by the appellant before a Single Judge of the High Court. It was dismissed. Being aggrieved, intra Court appeal was filed before the Division Bench which resulted in dismissal. Thereafter the appellant approached the Supreme Court. There was no occasion for any challenge to the fresh tender process proposed by the employer after termination of the contract, unlike in the case in hand. There was a very little time in the work order that was issued to the appellant, the one issued to the KMDA and the notice of cancellation of appellant’s work order.

24. The Supreme Court in the final conclusion of that judgment held that notice dated 07.02.2023 terminating work order was illegal and non est. It is apposite to refer to paragraph nos. 132 to 134 which are follows :

“132. As, we have held the Notice of Cancellation dated 07.02.2023 to be non-est, the issuance of a fresh tender to any third-party in respect of the same work would not defeat the vested rights that accrued in favour of the appellant. Similarly, the handing over of the operation and maintenance of the E.M. Bypass to the KMC also would have no bearing whatsoever, on the rights that stood vested in the appellant as on the date of cancellation of the tender. Such vested rights would continue to operate notwithstanding any change in the control and maintenance of the underpasses.

133. The order dated 16.09.2023 passed by the Urban Development and Municipal Affairs Department, Government of West Bengal merely transferred the operation and maintenance of the underpasses including the right to receive revenue from KMDA to KMC and therefore will have no effect on any rights that accrued in favour of the appellant as such rights are independent of the authority in control of operations and maintenance.

134. Thus, for all the foregoing reasons, the appeal succeeds and is hereby allowed. The notice of cancellation dated 07.02.2023 is quashed and the impugned judgment and order passed by the High Court is hereby set aside.”

25. From the same judgment, learned Senior Counsel Mr. R.S. Deshmukh also adverted our attention to paragraph no.55 and more specifically Clause No.2 to buttress the submission that procedural impropriety has not been challenged by the petitioner in the present petition. Thereafter our attention is adverted to paragraph no.65 which is as follows :

“65. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned action is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, the performance of the act otherwise and

in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you.”

26. Testing the facts involved in the petition, on the touchstone of the principles referred above it emerges that the principal prayer of the petitioner is quashment of the fresh tender process. Many disputed questions of facts are involved in the petition. The petitioner has already resorted to the remedy under Clause No.44 of the tender conditions, by making representation on 08.08.2024 to the Chief Officer of respondent no.3. In paragraph no.132 and 133 of the judgment in the matter of Subodh Kumar Singh Rathour (*supra*), the Supreme Court recognized vested rights accrued in favour of the appellant which were recorded to be unaffected over the operation and maintenance of the bypasses to Kolkata Metropolitan Development Authority, meaning thereby appellant in that matter was given liberty to agitate the grievance or the right by resorting to appropriate remedy. The work entrusted to Kolkata Metropolitan Development Authority was not quashed and restored to the appellant.

27. We propose to follow the same course. We are not inclined to quash the fresh tender process. The petitioner can resort to remedy as is permissible in law.

28. The Supreme Court in the matter of N.G. Projects Limited

(supra) has culled down several principles, which needs to be followed. There is no dispute that in the present case public project is involved and observations of the Supreme Court in following paragraphs are relevant :

“**21.** Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India.”

“**23.** In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present- day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary ex-pertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”

29. If the petitioner proves that contract with him is terminated illegally, then he can claim damages. Simultaneously, it can even participate in the fresh tender process. Due to disputed questions of facts, we are unable to address most of the submissions of the parties. We find that the petitioner can resort to appropriate remedy to ventilate his grievances and/or to claim the damages. The matter

pertains to water supply scheme of Bhusawal City which has been already dragged for eight years. It is a high time to take the scheme to the logical end. Thus keeping in mind the large public interest, we are not inclined to quash the tender notice dated 14.09.2024.

30. The Writ Petition is dismissed. However the petitioner shall be at liberty to resort to appropriate remedy as is permissible in law. Rule is discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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