

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

**WRIT PETITION NO.3634 OF 2024**

**BASAVRAJ  
GURAPPA  
PATIL**

M/s. Madhoor Buildwell Pvt. Ltd.

..... Petitioner

**Vs.**

Yeola Municipal Council & Ors.

..... Respondents

Dr. Abhinav Chandrachud a/w. Shri Saurish Shetye i/b. Ms.Meena Sharma for the petitioner

Shri Shriram S. Kulkarni for respondent nos.1 and 2.

Shri P. P. Kakade, Government Pleader a/w. Shri O. A. Chandurkar, Additional Government Pleader and Smt. G. R. Raghuwanshi, AGP for respondent Nos.3 and 5 – State

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &  
AMIT BORKAR, J.**

**DATE : SEPTEMBER 12, 2024**

**P.C. :**

- 1.** Heard learned counsel representing the respective parties.
- 2.** On the oral prayer made by the learned Counsel for the petitioner, leave is granted to amend the petition enclosing the communication, dated 1<sup>st</sup> August 2024, which is said to have been received by the petitioner on 28<sup>th</sup> August, 2024 and challenging the same. Re-verification is dispensed with.
- 3.** Invoking our jurisdiction under Article 226 of the Constitution of India, the petitioner which is a company,

incorporated under the provisions of the Indian Companies Act, 1956, assails the validity of the Government Resolution dated 20<sup>th</sup> February 2024, whereby the State Government has directed to float a tender in respect of implementation of a project to be carried out by the Yeola Municipal Council (respondent No.1) concerning certain works relating to sewerage disposal under the Maharashtra Golden Jubilee Urban Renewal Mega Mission.

By amending the writ petition, the petitioner has also challenged the communication dated 1<sup>st</sup> August 2024 said to have been received by the petitioner on 28<sup>th</sup> August 2024, whereby respondent No.1 has intimated to the petitioner that since the petitioner had not participated in the tender process, therefore, it would not be appropriate to issue work order in its favour.

**4.** It has been stated by learned Counsel representing the petitioner Dr. Abhinav Chandrachud, that respondent No.1 published a tender notice on 21<sup>st</sup> January 2014 in respect of the subject work inviting bids through e-tender process. The petitioner participated in the bid process and was awarded the contract vide decision of the Standing Committee of respondent No.1 on 26<sup>th</sup> April 2014. The work order was also issued in favour of the petitioner on 28<sup>th</sup> April 2014, whereby the petitioner was

required to complete the entire work within a period of 24 months from the date possession of the site was handed over to it.

**5.** The petitioner, thereafter, started the work and four bills were raised in respect of the work done by the petitioner between 1<sup>st</sup> June 2014 and 17<sup>th</sup> September 2014, which are said to have been verified by the Project Management Consultant on 18<sup>th</sup> January 2016. However, it is the case of the petitioner that funds were not made available to the State Government by the Central Government on account of which no payment against the aforesaid four bills was made to the petitioner. According to the petitioner, 35% of the total work was already completed by the petitioner.

**6.** When the bills, as aforesaid, were not cleared by the respondent No.1, the petitioner instituted writ petition No.11584 of 2016 seeking a direction to the Government of India as also the State Government to make available requisite funds to respondent No.1 so that its bills, as aforesaid, against 35% completion of work may be cleared. The aforesaid writ petition No.11584 of 2016 was, however, dismissed by a Division Bench of this Court by means of judgment and order dated 16<sup>th</sup> November 2017 stating

the reason that the relief sought by the petitioner could not be granted by the Court in exercise of its writ jurisdiction. While dismissing the writ petition, the Court also recorded the submissions made on behalf of the petitioner that in case the State Government desired to continue with the project in the circumstances that may occasion in future, the petitioner should not be precluded from adopting the said project and completing the same in view of the reasons recorded in the said order. The Court further observed that it had not restrained the State Government in any manner by the said order and since it was not observed by the Court that it would not be within the domain of State Government to continue with the project undertaken by the petitioner, the order dated 16<sup>th</sup> November 2017 would not preclude the State Government from adopting the project.

**7.** The petitioner challenged the said order dated 16<sup>th</sup> November 2017 passed by this Court before the Hon'ble Supreme Court by instituting Special Leave Petition (Civil) No.13626 of 2018 where, after grant of leave to appeal, the SLP was converted into Civil Appeal No.7798 of 2019. The said Civil Appeal No.7798 of 2019 was disposed of by Hon'ble Supreme Court by means of an order dated 4<sup>th</sup> October 2019 with a direction to the State

Government to consider and approve the scheme of the respondent No.1 and further that the State Government shall take necessary steps for its approval under the State Scheme. Hon'ble Supreme Court also provided in the said order that if the State Government was unable to provide funds for its policy, it would seek funds from the Central Government under the AMRUT Scheme. Hon'ble Supreme Court expressed its expectation that the Central Government will consider and take appropriate decision in view of the recommendations of the State Government. The operative portion of the said order dated 4<sup>th</sup> October 2019 is extracted hereinabove:

*"9. ....Therefore, we deem it appropriate for the State Government to consider and approve the sewer Scheme for Yeola Municipal Council. The State Government shall take necessary action within three months from approval of the sewer system under the State Scheme but if the State Government is unable to provide funds in terms of its policy, it shall seek funds from the Central Government under the present AMRUT Scheme. We hope that the Central Government will be able to consider and take an appropriate decision within three months thereafter in view of the recommendation of the State Government, if any. This course of action is considered appropriate in view of approval of the Scheme earlier by the State Level Committee and by Ministry of Urban Development.*

*10. With the said direction, the appeal stands disposed of."*

**8.** Thereafter, by means of Government decision dated 15<sup>th</sup>

September 2022 certain amounts were paid to the petitioner by respondent No.1 and accordingly, a letter dated 19<sup>th</sup> January 2023 was written by the petitioner to the Administrator & Chief Officer of respondent No.1 stating therein that while agreeing with the entries made in the measurement book at pages 179 to 184, the petitioner had nothing to receive from respondent No.1 and further that the petitioner would not demand or complain about the same in future. By the said letter, the petitioner also intimated to the respondent No.1 that "the agreement executed by us with you for the above work has now ended. No complaints as to that".

**9.** On receipt of the said letter dated 19<sup>th</sup> January 2023, it appears that treating the agreement to have been terminated by the petitioner itself, the State Government took the impugned decision to initiate the fresh tender process which is under challenge herein. It has been contended by the learned Counsel for the petitioner that before treating the agreement to have been terminated, the petitioner was not offered any opportunity of hearing and hence, such a decision is vitiated for want of observance of principles of natural justice. He has further argued that the sentence occurring in the letter of the petitioner, dated 19<sup>th</sup> January 2023, "the agreement executed by us with you for

the above work has now ended” has to be construed only qua the bills which were pending in relation to the work already executed by the petitioner and that the said sentence has wrongly been construed by the respondents to mean that the petitioner terminated the agreement in respect of the entire work. It is his submission that since the impugned Government Resolution directing respondent No.1 to invite fresh tender has been issued on the wrong premise of termination of agreement by the petitioner with respondent No.1, hence, the direction issued by the Government in the impugned Government Resolution is liable to be quashed.

**10.** Having regard to the over-all facts and circumstances of the case, especially the contents of the letter of the petitioner, dated 19<sup>th</sup> January 2023, we are unable to agree with the submissions made by the learned Counsel for the petitioner. The letter dated 19<sup>th</sup> January 2023 is categorical in its terms and does not leave any ambiguity. The exact words occurring in the said letter are “the agreement executed by us with you for the above work has now ended”. Such an expression, in our considered opinion, does not create any ambiguity and it conveys only one meaning that the agreement executed between the petitioner and respondent

No.1 in relation to the work allotted in the year 2014, stood terminated. To give a restricted meaning to the said sentence as contended by the learned Counsel for the petitioner, in our opinion, does not appear to be appropriate.

**11.** Once the agreement executed between the petitioner and the respondent No.1 itself was terminated by the letter dated 19<sup>th</sup> January 2023, the question of giving any opportunity of hearing to the petitioner before treating the agreement to have been terminated by the State or respondent No.1, does not arise at all. Once the agreement between the petitioner and respondent No.1 stood terminated, we do not find any illegality in the decision of the State Government whereby, it has directed respondent No.1 to execute the work by issuing a fresh tender.

**12.** For the reason aforesaid, we are not inclined to interfere with the impugned decision of the State Government.

**13.** Resultantly, the writ petition is dismissed.

**14.** We may, however, observe that dismissal of this writ petition will have no bearing on the claim of the petitioner regarding any unpaid bills. It is further clarified that this observation by the

Court shall not be construed as our opinion on merits of any such claim.

**15.** Costs made easy.

**(AMIT BORKAR, J.)**

**(CHIEF JUSTICE)**