

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

WRIT PETITION NO.11682 OF 2024

M/s. F. A. Enterprises

..... Petitioner

Versus

The Managing Director & ORs.

..... Respondents

Mr. Vikram Nankani, Senior Advocate with Mr. Surel Shah, Senior Advocate and Mr. Chaitanya B. Nikte, Mr. Prashant P. Patil, Mr. Ritvij Atul Kale, Mr. Prajit S. Sahane and Ms. Esha Malik for the petitioner

Mr. G. S. Hegde, Senior Advocate i/b. Ms. P. M. Bhansali for respondent Nos.1 and 2 – CIDCO

Mr. P. P. Kakade, Government Pleader with Mr. O. A. Chandurkar, Additional Government Pleader and Smt. G. R. Raghuwanshi, AGP for respondent Nos.3 to 5 - State

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

DATE : AUGUST 22, 2024

ORAL ORDER (PER : CHIEF JUSTICE)

1. Heard Shri Vikram Nankani, learned Senior Advocate representing the petitioner, Mr. Hegde, learned Senior Advocate along with Ms. P. M. Bhansali for respondent Nos.1 and 2 – CIDCO and Mr. P. P. Kakade, learned Government Pleader with Mr. O. A.

Chandurkar, learned Additional Government Pleader and Ms.Raghuwanshi, AGP appearing on behalf of the respondent Nos.3 to 5 – State.

2. This petition filed under Article 226 of the Constitution of India, prays for quashing of the tender notice, dated 9th August 2024 issued for construction of Kondhane Dam, Taluka Karjat, Dist. Raigad, Maharashtra.

3. Certain facts which are necessary for proper adjudication of the issues involved in the instant petition need to be noted, which are as under.

4. On 22nd July 2011, a tender notice was published by respondent No.4 – Konkan Irrigation Development Corporation for construction of a dam. The petitioner participated in the said tender and having been declared successful, was awarded the work relating to the construction of the dam and accordingly, the work order was issued in favour of the petitioner. Subsequently, respondent No.4 decided to increase the height of the dam and also its water storage capacity. Height of the dam was increased from 39 mtrs. to 71 mtrs. and its width was increased from 250

mtrs. to 600 mtrs. To carry out the work with the altered height and width of the dam, a work order was issued on 24th August 2011 in favour of the petitioner which was directed to carry out the additional work. It is stated by the petitioner that in terms of the work order, dated 24th August 2011, the petitioner arranged for the necessary equipments, machineries, manpower and material and started the work on the site and further that the petitioner spent an amount of approximately 99.15 crores on the site for carrying out the work. However, by means of a stop-work notice, dated 11th April 2012, respondent No.4 restrained the petitioner from continuing with the construction and subsequently by means of an order dated 29th December 2012 respondent No.4 cancelled the work order issued in favour of the petitioner.

5. Prior to cancellation of the work order by means of order dated 29th December 2012, a PIL petition No.63 of 2012 was filed on 13th April 2012 with certain allegations. The petitioner also filed writ petition No.404 of 2013 before this Court challenging the stop-work order and order of termination of contract by respondent No.4. This Court, in writ petition No.404 of 2013 passed an order on 6th January 2013 providing therein that till further orders equipments of the petitioner lying at the location

shall not be removed. The interim order further provided that if the location of the equipment requires adjustment, the respondents shall be entitled to do so after giving notice to the petitioner's advocate, 24 hrs in advance. The order further provided that the parties shall be entitled to take measurements without prejudice to their rights and contentions. In pursuance of this order, the petitioner states that the equipments and machineries of the petitioner are still lying on the location.

6. This Court, in PIL petition No.63 of 2012 passed an order on 17th February 2015 observing therein that the learned Advocate general had tendered a report by an Officer of the Anti Corruption Bureau, dated 13th February 2015 in a sealed envelope recording the scope of open inquiry initiated by the State Government. The Court directed that the report shall be treated as confidential and declined the prayer for interim relief looking to the scope of open inquiry at that stage. The Court also recorded certain allegations made in the writ petition regarding the alleged irregularities relating to Kondhane Dam Project to the effect that the work proceeded without environmental clearance and non-forest activities were carried on the forest land in contravention of law.

7. In the said order dated 17th February 2015, the Court also referred to the affidavit filed by the petitioner, wherein it was stated that proposal for forest and environmental clearance was being applied for and that the Forest Department had already filed a complaint in the Court of Judicial Magistrate, at Karjat, Dist. Raigad and the same was pending. The Court further directed the State Government to produce a copy of the report of the concerned officer who was entrusted with the open inquiry as regards the progress made.

8. During pendency of the PIL petition No.63 of 2012 and the writ petition No.404 of 2013 filed by the petitioner, the State Government issued Government Resolution, dated 18th August 2017, whereby the proposal made by the CIDCO to transfer the Kondhane Project to CIDCO was approved in accordance with certain terms and conditions. It appears from a perusal of the said Government Resolution, dated 18th August 2017 that the project of Kondhane Dam was transferred from respondent No.4 to the CIDCO on "as is where is basis".

9. This Court disposed of a bunch of writ petitions by means of order dated 8th June 2021, which were filed by the petitioner in

respect of certain other contracts awarded by respondent No.4 to the petitioner. In the said order, a statement was noted that on 19th June 2020 the Anti-Corruption Bureau had informed the authorities of respondent No.4 that the inquiry initiated in respect of its projects were closed and further that though some administrative irregularities were noticed, however, sufficient evidence was not found to allow criminal complaint. Accordingly, it was noted by the Court in its order, dated 8th June 2021 that the Anti-Corruption Bureau had closed the inquiry. The order, dated 8th June 2021 further records a prayer made by the then learned Counsel representing the petitioners in the said bunch of writ petitions that all the writ petitions and connected applications may be disposed of so as to enable the Corporation (respondent No.4) to restart the contractual work through the original petitioner for the reason that the very foundation of issuing notice for termination of contract did not survive. The Court also noticed certain averments made in the interim application made by respondent No.4 and modified the interim orders passed in all such writ petitions by giving liberty to respondent No.4 to execute the project through the original petitioner (the petitioner herein) or through an interested party by following due process. The writ

petitions, interim applications and the civil applications were accordingly disposed of. Paragraph 8, where prayer made by the learned Counsel for the petitioner to permit respondent No.4 to restart the contractual work through the petitioner was made, is extracted hereinbelow:

"8. Mr. Sakhare, learned senior counsel appearing for the original petitioner submits that in view of the stand taken by the Konkan Irrigation Development Corporation as expressed in paragraphs 12 and 13 of the interim applications, all the Writ petitions and the connected applications may be disposed of so as to enable the Corporation to restart the contractual work through the original petitioner because the very foundation for issuing the notices for termination of contract no longer survives."

10. We also extract the operative portion of the order dated 8th June 2021 passed by the Coordinate Bench of this Court in the aforesaid bunch of writ petitions, leading writ petition being Writ Petition No.1755 of 2017 which were all filed by the petitioners, which is as under:

"11. Having regard to the stand so taken, we modify the interim orders passed in the related writ petitions by giving liberty to Konkan Irrigation Development Corporation to execute the projects through the original petitioner or through an interested party by following the due process."

12. All the writ petitions and the accompanying interim applications and civil applications are accordingly disposed of."

11. It has been stated by the learned counsel for the petitioner that on disposal of the aforesaid bunch of writ petitions, respondent No.4 decided to start the work in respect of certain other projects relating to construction of dams.

12. The PIL petition No.63 of 2012 and writ petition No.404 of 2013 along with writ petition No.11974 of 2013 and various interim applications and civil applications were taken up by this Court which were finally disposed of by means of order, dated 9th March 2023. This Court noticed in the said order, dated 9th March 2023 that in writ petition No.404 of 2013, respondent No.4 had filed an affidavit stating that the amount which was due shall be paid to the petitioner and since the amount was not paid a contempt petition was filed wherein a show cause notice was issued by this Court. The order further records that the said show cause notice was assailed by respondent No.4 before the apex court, wherein the apex court passed an order requiring this Court to decide the PIL petition No.63 of 2012 and writ petitions including writ petition No.404 of 2013 expeditiously, preferably, within a period of six months. The Court in the order dated 9th March 2023, further noticed the Government Resolution dated 18th August 2017 whereby the Kondhane Dam Project was handed over to CIDCO and that CIDCO had deposited the sum of Rs. 99.15 crores with the State Government. A direction was then issued by the Court that the State Government will ascertain payment to be

made to the contractor i.e. the petitioner in writ petition No.404 of 2013.

13. The Court, in its order dated 9th March 2023 also recorded that in the criminal case, the contractor and other officials have been discharged.

14. Noticing the aforesaid facts, the Court found that nothing remained to be decided in the petitions including PIL petition which were disposed of while recording the statement made on behalf of the present petitioner that the petitioner was ready to execute the project at the same cost.

15. This Court, accordingly, by means of order dated 9th March 2023 granted liberty to CIDCO to execute the subject project through the petitioner or other interested party by following due process. The Court also directed that the State Government shall take steps with regard to the payment as may be permissible and which according to the State, the petitioner would be entitled to.

16. The operative part of the order, dated 9th March 2023 by which the PIL petition No.63 of 2012 and writ petition No.404 of 2013 and other connected matters were disposed of, is extracted hereinbelow:

"9. Having regard to the stand of the KIDC and the Government and that today also the petitioner is ready to do the work at the same cost, we grant liberty to the CIDCO to execute the instant project through the petitioner or other interested party by following due process. As far as the payment is concerned, the CIDCO has deposited an amount of Rs.99.15 Crores with the State Government. The State Government shall take steps with regard to the payment, as may be permissible and which according to the State Government, the petitioner would be entitled to. The said decision shall be taken preferably within three months.

10. The public Interest Litigation along with all the Writ Petitions and Interim Applications stand disposed of. No costs."

17. In the aforesaid background facts, it has been argued by the learned Senior Advocate representing the petitioner that the petitioner has got a limited right of consideration by the CIDCO for executing the work related to construction of Kondhane Dam in view of the orders, dated 9th March 2023 and 8th June 2023 passed by this Court. He has argued that while disposing of PIL No.63 of 2012 along with writ petition No.404 of 2013 filed by the petitioner, this Court had granted liberty to the CIDCO to execute the said project through the petitioner or any other interested party and accordingly, it was incumbent upon the CIDCO to have considered the petitioner for awarding the work relating to the project in question. His submission is that however, by issuing the impugned tender, the CIDCO appears to have flouted the order dated 9th march 2023, thereby frustrating the limited right of the

petitioner of consideration flowing from the said order dated 9th March 2023.

18. Learned Senior Advocate for the petitioner has also drawn our attention to the order dated 8th June 2021 passed by this Court in the bunch of writ petitions filed by the petitioner in respect of other projects and has stated that in the said order as well this Court had given liberty to respondent No.4 to execute the projects through the original petitioner or through an interested party by following due process. He has submitted that in view of the said liberty granted by the Court vide its order dated 8th June 2021 the CIDCO was legally bound to consider the petitioner for award of work relating to construction of Kondhane Dam.

19. According to learned Counsel for the petitioner in view of the orders, dated 9th March 2023 and 8th June 2021 passed by this Court, the CIDCO was to take an informed decision as to whether the work of Kondhane Dam is to be executed through the petitioner or through some other party and that the petitioner is entitled to know the reason as to why the project is not being allotted to the petitioner in view of the directions issued by the Court in the aforesaid two orders, dated 9th March 2023 and 8th

June 2021. He has stated that the petitioner has not received any information as to why the petitioner has not been considered. It is also the case of the petitioner that bringing all these facts to the notice of CIDCO, the petitioner has made a detailed representation on 12th August 2024 and accordingly, a direction needs to be issued by the Court to the CIDCO to decide the same. Further submission on behalf of the petitioner is that the machinery and other equipments and material etc. are still lying on the site pursuant to the earlier interim order passed by this Court and after having invested heavily, the petitioner, at this juncture cannot be sidelined, in the sense, that without his consideration, the work relating to Kondhane Dam Project cannot be allowed to restart thorough the impugned tender process.

20. It has also been submitted by the learned Senior Counsel for the petitioner that the petitioner was awarded the projected for the sum of approximately Rs.630 crores, whereas now the value of the tender as indicated in the impugned tender notice is 1348 Crores and odd and since the petitioner is still ready to complete the construction of the dam at the same rate on which it was earlier issued the work order, if recourse to tender process for awarding the work relating to construction of Kondhane Dam

Project is allowed to be taken by CIDCO, the same would result in huge loss to the coffers of the CIDCO. It has, thus, been prayed that petition be allowed.

21. On the other hand, vehemently opposing the prayers made in this petition, Mr.Hegde, learned Senior Advocate representing the CIDCO has argued that the petitioner has utterly failed to establish its right to execute the work relating to construction of Kondhane Dam without participating in tender process. It is his submission that the petitioner, if interested, can participate in the tender process and in case the petitioner succeeds, it will be accordingly, allotted the work. He has also argued that the submission made by the learned Counsel for the petitioner to the effect that no one else should be considered for allotment of work but the petitioner, is not tenable as the same would be in violation of the settled principle of law that in the matter of State largesse every eligible person or party should be provided with an opportunity to participate in the process of allotment.

22. It has also been submitted by Mr. Hegde that the impugned tender notice has been issued only after revising the project. In this regard he has stated that a fresh design of the dam has been

prepared in consultation with the experts and earlier the dam which was to be constructed was Concrete Face Rockfill Dam (CFRFD), whereas the present design of the dam which is now to be constructed is Roller Compacted Concrete Dam (RCCD). His submission is that with the changed design, giving a contract to the petitioner without any bid process or public tender process cannot be justified.

23. Having considered the competing submissions made by learned Counsel for the respective parties and perused the records available before us on this petition, we are not convinced with the submission made by the learned Counsel for the petitioner that without participation in public bid or tender process the work relating to construction of the dam in question should be awarded to the petitioner. The emphasis for seeking the prayer made in the writ petition on behalf of the petitioner is on two orders, dated 9th March 2023 and 8th June 2021 passed by this Court. It is to be noticed that this Court, by means of order dated 9th January 2023 disposed of the PIL Petition No.63 of 2012 wherein assertion was made about certain irregularities having been committed in award of contracts relating to construction of dams. By the same order, writ petition No.404 of 2013, which was filed by the

petitioner against cancellation of the earlier work order issued in its favour, was also disposed of. However, it is noticeable that the order terminating the work order granted in favour of the petitioner earlier has not been set aside by the court. Accordingly, the order whereby the earlier contract was rescinded, having not been quashed or set aside by the Court, though such a prayer was made by the petitioner in writ petition No.404 of 2013, is still in existence. In the wake of existence of cancellation of work order, insistence of the petitioner to reallocate the same work for construction of the subject dam, cannot be said to be justified.

24. We may also notice that this Court, while passing the orders dated 9th March 2023 and 8th June 2021 in two different sets of petitions, only granted liberty to the CIDCO to execute the project through the petitioner or other interested party by following due process. Such liberty granted to the CIDCO by the Court would not mean, in our considered opinion, that the petitioner solely is entitled to be considered for award of the work relating to the construction of the dam in question. The said orders, in our considered opinion, also do not create or vest any right in the petitioner to seek a prayer that it is the petitioner alone who

should be considered for award of contract. To the contrary, we are of the opinion that the Court, while passing the aforesaid two orders dated 9th March 2022 and 8th June 2021 had permitted the CIDCO to execute the project in question either from the petitioner or any other interested party by following due process. In the instant case, in our opinion, due process is being followed by the CIDCO by issuing the impugned tender notice in which the petitioner, if eligible, can participate and if successful, can also be awarded the contract. Without participation in the tender process by the petitioner, no direction can be given by the Court to CIDCO to award the contract or even to consider the petitioner for award of contract straightway, which in our opinion, will be clearly violative of the principles enunciated in Article 14 of the Constitution of India, according to which in the matter of State largesse, every eligible party or persons should be given liberty to participate in the process of consideration of award.

25. We may also notice that while passing the order dated 8th June 2021, the Court had noted the submissions made on behalf of the petitioner that the petition may be disposed of so as to enable the Corporation to restart the contractual work through the

original petitioner, however, the said prayer was not granted and accordingly, the said prayer had not been acceded to by the court. At this juncture, it is not open, in our opinion, for the petitioner to ask for its sole consideration for award of the project without participation in the public bid or public process.

26. We may record yet another reason why the prayers made in this petition cannot be acceded to and the reason is that even the project has been revised in terms of the fresh design which has been prepared by the CIDCO in consultation with experts. Earlier the dam was to be constructed as Concrete Face Rockfill Dam however, now the dam is to be constructed as Roller Compacted Concrete Dam. Accordingly, the very nature of the work has changed. The petitioner cannot be permitted to insist that the subject work should be allotted to it without any competitive process.

27. Mr. Nankani, learned Senior Advocate for the petitioner has argued feebly that the petitioner is entitled to execute the work on the principle of legitimate expectation. The said submission, in our opinion, is highly misconceived for the reason that from the facts and circumstances of the case, we are unable to gather that

the CIDCO or any other authority, in the past, had ever made any promise or representation to the petitioner to award the work in question on the basis of which the petitioner would have altered its decision. In this view, the principle of *promissory estoppel* cannot be put to service by the petitioner to seek prayers made in this petition.

28. For the discussions made and the reasons given above, the petition lacks any force, which resultantly, is hereby dismissed.

29. However, there will be no order as to costs.

30. Interim application(s), if any, stand disposed of.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)

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signed by
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