



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9253 OF 2023

M/S N.K. CONSTRUCTION THROUGH ITS PROPRIETOR
NAVNATH KESHAV KAPSE
VERSUS
THE CHIEF EXECUTIVE OFFICER AND OTHERS

...
Advocate for the Petitioner : Mr. Jadhavar Aashish T.
AGP for Respondents No.1 and 2 : Mr. Patil Nileshsingh J.
...

CORAM : R.G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.

DATE : 02.12.2025

PER COURT:

1. Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.
2. The petitioner is challenging the order dated 31.03.2023 passed by the Executive Engineer, Rural Water Supply Department, Zilla Parishad, Osmanabad, thereby, imposing penalty of 10% upon the petitioner while granting extension of time to complete the project.
3. The learned counsel for the petitioner submits that the delay in completing the said project within the stipulated time frame

was due to lack of necessary permission of the Railway Department for work related to the laying pipeline. Additionally, the delay was caused by non-availability of labours and construction materials due to nation wide lockdown imposed due to covid-19 pandemic. It is, therefore, contended that the Executive Engineer, Rural Water Supply Department, Zilla Parishad, Osmanabad, however, by impugned order has imposed penalty of 10% upon the petitioner while granting extension to complete the said project which is erroneous. The learned counsel for the petitioner invited our attention to the judgment delivered by this Court in the case of **M/s. N.K. Construction Vs. The Chief Executive Officer and Ors.;** (WP No.9238/2023 passed on 25.04.2024), wherein, this Court set aside the order passed by the Executive Engineer, wherein, the penalty was imposed on the petitioner therein of 1.5% for granting extension of time to complete the project. No doubt in the matter of **M/s . N.K. Construction Vs. The Chief Executive Officer** (supra) the ground for non-completion of project was due to Covid-19 pandemic, however, this Court held that the contractor cannot be faulted for delay in completion of the project if the contingency arises which is beyond the control of the contractor and thus this Court allowed the said writ petition by setting aside the impugned

order of imposing the penalty of 1.5% upon the petitioner therein by the Executive Engineer, Rural Water Supply Department, Zilla Parishad, Osmanabad.

4. We are thus of the view that the case in hand is squarely covered by the judgment of this Court in the case of **M/s . N.K. Construction Vs. The Chief Executive Officer** (supra) and, therefore, we pass the following order

ORDER

- i. The writ petition stands allowed.
- ii. The impugned order dated 31.03.2023 passed by the Executive Engineer, Rural Water Supply Department, Zilla Parishad, Osmanabad i.e. respondent No.2 to the extent of imposing penalty of 10% upon the petitioner while granting extension of time is hereby quashed and set aside.
- iii. Rule is made absolute in the above terms.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)