



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5392 OF 2025

Swapnil D. Nikam .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

**AND
WRIT PETITION NO. 5411 OF 2025**

Swapnil D. Nikam .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

**AND
WRIT PETITION NO. 5450 OF 2025**

Swapnil D. Nikam .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

...
Advocate for the petitioners in all Petitions : Mr. Ameya N. Sabnis
AGP for the respondent – State : Mr. Amar V. Lavte
...

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATE : 24 APRIL 2025

ORDER (MANGESH S. PATIL, J.) :

Issue notice. Mr. Lavte, learned AGP waives service for
all the respondents in all the three petitions.

2. Heard learned advocate for the petitioners Mr. Sabnis in all
the three matters, as also the learned AGP Mr. Lavte.

3. By way of separate writ petitions, the petitioner, who is the same, is taking exception to the impugned orders whereby the work orders issued to him in respect of three public works regarding which tenders were floated, have been recalled or directed to be stopped pursuant to the impugned notice dated 07.03.2025.

4. Mr. Sabnis would take us through the papers and would submit that the petitioner was allotted the works of widening and improving of the roads on 06.11.2023. The work was to be completed within six months at estimated cost of Rs.2,41,83,365/-. It could not be completed due to extreme weather, lack of funds, non clearance of running bills and oral instructions of the respondents to stop the work. Faced with the situation, the petitioner, by communication dated 07.01.2025 sought extension of time for completing the works. He was served with a notice dated 07.01.2025 for measurement of the work carried out by him as per clause no. 3(C) of the tender condition which provided for and enabled the respondents to rescind the contract.

5. However, since it is a matter of rescission of contract, the respondents were bound by clause 3(C) of the tender condition which required to carry out the remainder of the work departmentally, debiting the contractor with the cost of the work and provide all other details to be worked out for settling the equities etc. In spite of such details and stipulation providing for a contingency of the kind involved in the

present matter, the work was straightaway withdrawn from the petitioner. However, he was not served with any notice and was never extended any opportunity of being heard. The decision to rescind the contracts was taken in a lopsided manner, requiring the petitioner to serve the respondents with a notice under section 80 of the Code of Civil Procedure and the petitions may be entertained.

6. Per contra, the learned AGP Mr. Lavte submits that it is a matter of breach of contract. There is *prima facie* no arbitrariness. The petitioner has been in know of all the facts. Admittedly, he could not complete the work within the time stipulated in the contract. Though he sought extension of time for completion of the work, the time was never extended and at the most, the petitioner could have his remedies cut out under the law of contract, to be determined by a civil court in a properly instituted civil suit. There is likelihood of number of factual disputes arising in the petition which all cannot be gone into by this Court and the petitioner may be relegated to the remedy as is available to him in law, including filing of a suit.

7. Having carefully considered the submissions of the learned advocate Mr. Sabnis and learned AGP Mr. Lavte, indeed, the matter seems to be arising out of alleged breach of contract *albeit* the petitioner is terming it to be rescission of a contract. In our considered view, we need not go into such intricacies at this stage.

8. Suffice for the purpose to observe that apparently, the work orders were issued to the petitioner and he could not complete the work within the stipulated time. There was no extension though he solicited one, which resulted in the respondents apparently calling upon him to stop the work and even now stated to have resorted to a fresh tender process.

9. If such is the nature of the dispute, when it is not a matter of taking any administrative decision so that all the principles of natural justice would get attracted, assuming for the sake of arguments that those were not followed, when, admittedly, for failure of the petitioner to complete the work, that the consequences have ensued, including issuance of a fresh tender notice, apart from the fact that there is a high possibility of numerous factual disputes forthcoming, coupled with the fact that the petitioner has his remedies cut out for seeking appropriate relief for alleged breach of contract in a lopsided manner, in our considered view, when the petitioner has already issued notices to the respondents under section 80 of the Code of Civil Procedure, it would be appropriate for the petitioner to resort to a common law remedy and we should refrain from invoking the powers under Article 226 of the Constitution of India.

10. The petitions are dismissed in *limine* with liberty to the petitioner to resort to the appropriate remedies as are available to him in law, including filing of suits.

11. It is clarified that we shall not be taken as having decided any factual or legal dispute.

[Y. G. KHOBRADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/