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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3679 OF 2025

Jai Balaji Industries

...Petitioner

Versus

State of Maharashtra through its Principal ...Respondents
Secretary, Water Supply & Ors

Mr Surel Shah, Senior Advocate, with D Banerji, i/b Sapana
Rachure, for the Petitioner.

Mr AI Patel, Addl. GP, with SS Bhende, AGP, for Respondents Nos.
1 to 3.

Mr Ajit Pitale, for Respondents Nos. 4 to 7.

CORAM G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATED: 9 APRIL 2025

ORDER:-

1. Leave to amend to delete respondent no. 3. Insofar as respondent no. 2 is concerned, the Secretary of the concerned department is permitted to be impleaded as party respondent. Also leave to amend the petition, to bring on record the relevant documents. Amendments to be carried out within a period of one

week from today. Amended copy of the petition be served on all the parties.

2. Taken up for admission and on urgent interim prayers.

3. We have heard Mr Surel Shah, learned senior counsel for the petitioner, Mr Patel, learned Additional Government Pleader for respondents nos. 1 to 3, and Mr Pitale, learned counsel for respondents nos. 4 to 7, Maharashtra Jeevan Pradhikaran Mandal (“MJP”).

4. It is the petitioner’s case that it has been supplying pipes to the MJP for various water supply works throughout the State of Maharashtra. It is contended that the petitioner was awarded a Rate Contract by the MJP dated 22 July 2022 under which the petitioner was to supply pipes for the project of the MJP for an amount of Rs. 300 crores. The validity of the said agreement was for the period from 22 July 2022 till 21 July 2024 that is for a period of 24 months and for a further extension of six months. It is the petitioner’s case that such contract was successfully completed. Thereafter, another Rate Contract Agreement was entered between the MJP and the

petitioner dated 23 May 2023, whereunder the petitioner was to supply pipes at an estimated cost of Rs. 720 crores. The period of the contract was for 24 months with effect from 23 May 2023 to 22 May 2025 and for an extended period of six months. Such contract is currently being executed by the petitioner.

5. In pointing out a robust contractual privity between the MJP and the petitioner, Mr Shah contends that about 130 supply orders were issued to the petitioner with effect from 22 September 2022 upto 31 May 2024, as also subsequent supply orders were issued under the current Rate Contract. It is submitted that although the petitioner was a supplier qua such large orders to the MJP, at no point of time, any issue in regard to the quality of pipes supplied by the petitioner to the MJP was raised against the petitioner by the MJP.

6. Mr Shah would submit that the reason for the petitioner to approach this Court in the present proceedings impugning the orders dated 5 March 2025, is on a purported issue of a supply made by the petitioner to one M/s. P.L. Adke (and not to the MJP directly), who was awarded a tender by the MJP for carrying out the work of the

Water Supply Scheme at Yavatmal. For such work there was a Tripartite Agreement dated 2 February 2018 to which the MJP was also a party along with the petitioner along with the contractor M/s. P.L. Adke, whereunder the limited obligation of the petitioner was to supply pipes to the contractor, M/s. P.L. Adke, who was implementing the Yavatmal Water Supply Scheme. Our attention is drawn to the clauses of the Tripartite agreement which is annexed to the petition at Exhibit "A" wherein the entire work in regard to the pipes was to be executed by M/s. P.L. Adke. In such context our attention is drawn to Clause 11 of the said contract, which reads thus:

"11. If the pipes procured and laid by M/s. P. L. Adke of the Second part are broken/fail during hydraulic testing /commissioning, the responsibility shall be of M/s. P. L. Adke of the Second part."

7. It is, hence, Mr Shah's submission that it was clear that the only obligation of the petitioner was to supply pipes to M/s. P.L. Adke and once they were accepted by M/s. P.L. Adke, it was solely the liability whatsoever of M/s. P.L. Adke, and obviously for the reason that the petitioner also had no control on what materials were

being installed by M/s. P.L.Adke and in what manner/method etc. in executing the contract. It is submitted that even the payment for the supplies was to be received by the petitioner from the contractor – M/s. P.L. Adke. It is thus submitted that any issue / dispute which could have arisen under the said contract firstly was required to be referred to the Secretary MJP for decision, and in case of any legal dispute, the jurisdiction was to be at Mumbai.

8. Mr Shah would submit, that it so happened that in relation to M/s. P. L. Adke's contract of the Yavatmal water supply scheme, an incident of a pipe burst had occurred which resulted in damages to some agriculture lands. He submits that such damage was compensated. Insofar as the petitioner was concerned qua such incident, it is submitted that the petitioner had no liability, legal or otherwise, as it was the sole liability of M/s. P.L. Adke, neither of the MJP or of the petitioner. It is submitted that in any event no grievance whatsoever was made by the MJP against M/s. P.L. Adke, much less against the petitioner. It is submitted that however one of the agriculturists, Mr Digambar S/o Haribhau Pajgade approached the Nagpur Bench of this Court in the proceedings of Criminal

Public Interest Litigation No. 2 of 2019 *inter alia* praying that in regard to such incident of pipe burst, action ought to be taken against the contractors. Our attention is drawn to orders passed on such proceedings by the Division Bench of this Court.

9. It is Mr Shah's contention that although there was no liability whatsoever of the petitioner under the Tripartite Agreement, the MJP by letter dated 17 September 2020 called upon the petitioner to show cause as to why the petitioner be not blacklisted for having not supplied quality pipes to M/s. P. L. Adke. The petitioner responded to such notice by its reply dated 29 September 2020, in which the petitioner furnished its say and/or set out its clarification on all the issues raised in the reply to contend that the supply of the pipes was of appropriate quality satisfying the ISO 10802 standards. It was set out that also the hydraulic testing at the site was successfully completed. It was pointed out that, in fact, despite there being no fault of the petitioner, the petitioner incurring huge losses, laid and replaced the entire pipeline, as also undertook the civil work and hydraulic tests. It is submitted that for such work being carried out, instead of the petitioner being appreciated, the impugned Show

Cause Notice was issued to the petitioner. The petitioner pointed out to the MJP that it was clear from the facts that there was no fault on the part of the petitioner in the incident of the bursting of the pipes. The petitioner hence contended that the Show Cause Notice be accordingly withdrawn. After such response was received, for a very long period no action whatsoever was taken by MJP giving an impression that the show cause notice was dropped.

10. Mr Shah submits that however, surprisingly, another notice dated 21 June 2021 was issued to the petitioner on a similar footing, without taking into consideration the petitioner's contentions as contained in petitioner's letter dated 29 September 2020. The petitioner again submitted its clarification by its letter dated 29 June 2021, after which for a period of almost three years, no action was taken.

11. Mr Shah submits that in fact in the intervening period, the petitioner was awarded Rate Contracts by the MJP under Agreements dated 22 July 2022 and 23 May 2023.

12. Mr Shah submits that on the aforesaid backdrop, what surprised the petitioner was issuance of the impugned Notice dated 6 August 2024 issued by the MJP to the petitioner, again on the same issue, purporting to be a show cause notice, and this time making a reference to the orders passed by the Division Bench of this Court in the proceedings filed by Mr Digambar S/o Haribhau Pajgade (supra). It is submitted that the petitioner replied the said notice by its letter dated 19 August 2024 and by a further letter dated 19 September 2024. The replies are extensive replies setting out all contentions that the Yavatmal Water Supply Scheme was undertaken by the contractor - M/s. P. L. Adke under which, in no manner there could be any liability, which could be attributed and/or passed on to the petitioner, in regard to the incident which had taken place.

13. Mr Shah would also draw the Court's attention to the petitioner's letters dated 11 August 2024, 19 September 2024, 11 November 2024 and 28 January 2025 addressed to the MJP. The petitioner also contended that considering the petitioners long standing contractual relations with the MJP and the ongoing

projects, the petitioner although not being under any obligation, had undertaken the work of replacements of the pipelines when the fault in installation of the pipelines was clearly of the contractor - M/s. P. L. Adke. It is submitted that after such replacement, there was no complaint whatsoever, as also the damage which was caused, was also compensated.

14. On the aforesaid contentions of the petitioner, a hearing was granted to the petitioner, and consequent thereto the impugned order dated 5 March 2025 came to be passed. The operative portion of the said order reads thus:

“After perusal of all the documents and replies submitted by the M/s. Jai Balaji Industries Ltd and Chief Engineer, MJP Amravati & Submissions of officials of MJP Headquarters it is concluded that M/s. Jai Balaji Industries Ltd is responsible for the delay in commissioning the Yavatmal Water Supply Scheme.

Considering all the above facts the following penal action is imposed against M/s. Jai Balaji Industries Ltd.

1) The compensation whatsoever nature shall be levied as per terms and conditions of the Tender agreement B-1/91 of 2017-18 and Tripartite Agreement dated 2nd February 2018, from the final bill and security deposit.

2) Vendor Registration of M/s. Jai Balaji Industries Ltd is hereby suspended for a period of one year from the date of this order.”

(emphasis supplied)

15. Mr Shah would submit that what is material is that the impugned order suspending the petitioner’s registration is merely on the ground of delay in commissioning the Yavatmal water supply scheme and not on any other issue of any pipe burst. It is submitted that the petitioner even remotely could not be held liable for any delay as the petitioner was not the principal contractor. It is submitted that the petitioner under the Tripartite Agreement in fact was a mere supplier of the pipes. It is submitted that even qua the supply of the pipes by the petitioner to M/s. P.L. Adke, quality control test were applied by the petitioner at its own cost in June 2021. In such context our attention is drawn to the following observation as made in the findings as recorded:

“According to the report received from all the Chief Engineers of MJP, the performance report of laid pipe supplied by M/s. Jai Balaji Industries Ltd between the years 2010 to 2025 is satisfactory and there is no pipe bursting anywhere except the Yavatmal water supply scheme.”

16. Mr Shah’s submission is to the effect, that insofar as the Yavatmal project was concerned, there was no contractual liability

whatsoever on the petitioner and that no action for breach of contract was taken, neither by MJP or by M/s. P. L. Adke. It is submitted that there were earlier two Show Cause Notices dated 17 September 2020 and 21 June 2021 issued to the petitioner which was after the filing of the Criminal PIL before the Nagpur Bench of this Court by Mr Digambar S/o Haribhau Pajgade (supra) and almost about six years from the happening of the incident, the third Show Cause Notice dated 6 August 2024 came to be issued, on which the impugned order has been passed.

17. Mr Shah would also submit that the orders passed in the PIL as initiated by Mr Digambar S/o Haribhau Pajgade (supra) cannot be construed to mean that although when it was not permissible in law, nonetheless the MJP could resort to take such actions against the petitioner. According to him, such reading of the High Court's order on behalf of the MJP is not well founded. His contention is that what was imperative for the MJP was only to look into the terms and conditions of the Tripartite agreement (contract) to resort to take any contractual action against the petitioner qua the Yavatmal water supply scheme, and not on any other consideration extraneous to

such contract. This more particularly as the petitioner has throughout maintained that there was never a breach of the Tripartite Agreement on the part of the petitioner, is Mr. Shah's submission.

18. It is also Mr Shah's submission that the impugned order is causing a serious prejudice to the petitioner as there are ongoing contracts and work of about Rs. 1000 crores is being executed. It is submitted that even for the Yavatmal project which was executed by M/s. P. L. Adke under the Tripartite Agreement, the petitioner had discharged all its obligations which cannot be now reopened by the Show Cause Notice in question and the impugned order. This, according to Mr Shah, has seriously prejudiced the petitioner as except for the Yavatmal incident, there was no grievance in regard to the supplies which was made by the petitioner to the MJP for its requirements all over the State. It is Mr Shah's submission that qua the Yavatmal contract, the fault was wholly attributable to M/s. P. L. Adke - the contractor, and under the terms and conditions of the contract, it was the contractor's (M/s. P. L. Adke's) liability to undertake all actions in regard to the contractual work.

19. On the other hand, Mr. Pitale, learned Counsel for MJP would oppose this petition. He would submit that the impugned action taken by the MJP against the petitioner is justified, although not disputing that no proceedings contractually were taken up by the MJP against the petitioner qua the Yavatmal project. With the assistance of Mr. Pitale, we have perused the relevant letters of the MJP as addressed to the petitioner and impugned order.

20. Having heard learned Counsel for the parties, *prima facie* we find substance in the several contentions as urged by Mr. Shah. It is clear that for a period of six years from the happening of the Yavatmal incident, no action was resorted against the petitioner. It is not the case that the petitioner had not complied with its obligation under the Tripartite Agreement. Even M/s. P. L. Adke had not taken any action against the petitioner, nor the MJP had taken any proceedings against the petitioner alleging any breach of contract.

21. We may also observe from the operative portion of the order, which we have extracted hereinabove, that the petitioner has been held responsible for the delay in commissioning the Yavatmal Water Supply Scheme. We wonder as to how merely on such belated

findings, that too in contractual matters after such long delay of more than six years, an action as the impugned order imposes in operative paras 1 and 2, could at all be foisted on the petitioner. Prima facie Mr Shah would also be correct in his submission that the order is wholly disproportionate and/or in the facts and circumstances of the case. The balance of convenience is certainly in favour of the petitioner as there are ongoing contracts between MJP and the petitioner, as noted by us, which are of substantial amounts of above Rs. 1000 crores.

22. In this view of the matter, we pass the following interim order:

ORDER

- (a)** Rule. Respondents waive service.
- (b)** Reply affidavit to the petition for final hearing of the petition, be filed on or before 27 June 2025.
- (c)** Pending the hearing and final disposal of this petition, the impugned order dated 5 March 2025 shall remain stayed.

23. List the proceedings for hearing on **09 July 2025**.
24. All concerned to act on an authenticated copy of this order.

(ADVAIT M. SETHNA, J)

(G. S. KULKARNI, J)