IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14239 OF 2025

TAPI Prestressed Products Limited
A Compay duly registered under the
provisions of Companies Act, 1956,
having it registered office at Siddhi Tower,
S. No.5A/1A, Office No.4 & 5, 2nd Floor,
Kondhwar Main Road, Kondhwa Khurd,
Pune – 411 048.
Through its authorized representative/signatory,
Dipesh Motilal Kotecha (Director), TAPI Prestressed
Produces Limited, aged 51 years,
R/o. Padam Bungalw, Tapi Nagar, Bhusawal,
Dist. Jalgaon – 425 201. …. Petitioner

VERSUS

1. State of Maharashtra,
Through its Secretary,
Water Resources Department,
Mantralaya, Mumbai
Maharashtra – 400032.

2. TAPI Irrigation Development Corporation,
Through its Executive Director,
having its office at Akashwani Chowk,
Jalgaon – 425 002.

3. TAPI-HVEL-MAHALAXMI (JV),
A Joint Venture Consortium duly registered
with the Registrar of Partnership Firms,
and having its registered office at
Tapi building, Tapi Nagar, Bhusawal,
Dist. Jalgaon – 425001 and 363/11,
Flat No.2, Balaji Niwas, Off Cosmos
Bank lane, Deep Bunglow Chowk,
Shivajinagar, Pune – 411016
Through its partners.

4. Integrated Joint Venture of Holzmann
   Videocon Engineer Limited &
   Shri Mahalaxmi Construction Corporation,
   Pune (Presently known as Mahalaxmi Infra
   Projects Pvt. Ltd.)
   A company duly registered under the
   provisions of Companies Act, 1956,
   Having its office at 363/11,
   Flat No.2, Balaji Niwas, Off Cosmos
   Bank lane, Deep Bunglow Chowk,
   Shivajinagar, Pune – 411016
   Through its partners.

5. Mahalaxmi Construction Corporation,
   Pune (Presently known as Mahalaxmi Infra
   Projects Pvt. Ltd.)
   A company duly registered under the
   provisions of Companies Act, 1956,
   Having its office at 363/11,
   Flat No.2, Balaji Niwas, Off Cosmos
   Bank lane, Deep Bunglow Chowk,
   Shivajinagar, Pune – 411016
   through its Managing Director. …. Respondents

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Mr. N.B. Khandare, Senior Counsel i/b Mr. S.V. Dixit, Advocate for Petitioner
Mr. Abhijit M. Phule, AGP for Respondent No.1-State
Mr. R.N. Dhorde, Senior Advocte i/b Mr. A.M. Gaikwad, Advocate for Respondent No.2
Mr. Kapil Arora, Advocate (through V.C.) a/w Ms. Ekshita Chaudhary and G.V. Padalkar, Advocates for Respondent No.5

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CORAM : SMT. VIBHA KANKANWADI AND HITEN S. VENEGAVKAR, JJ.

DATED : 05 MARCH, 2026

JUDGMENT [Per Hiten S. Venegavkar, J.] :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. The present writ petition is filed by the petitioner-company through its authorized representative. Reliefs prayed are as follows:

> "*A) For writ in the nature of mandamus or any other writ order or direction, thereby direct the Respondent No.2 and 5 to forthwith deposit the amount to the account of Respondent No.3 JVC which is paid to the Respondent No.5 directly by the Respondent No.2 for the works carried out under the Work Order dated 11.06.2002 issued by the Respondent No.2 TIDC in favour of the Respondent No.3 JVC (EXHIBIT-I);*
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> *B) For writ in the nature of mandamus or any other writ order or direction, thereby directing the Respondent No.2 TIDC to henceforth make the payment for the works carried out by the Petitioner or the Respondent No.4/5 under the Work order dated 11.06.2002 (EXHIBIT-I) issued in favour of the Respondent No.3 JVC in the account of the Respondent No.3 and the bills be released in the name of the Respondent No.3;*

3. The substantive grievance raised in the petition is that respondent no.2 – Tapi Irrigation Development Corporation, has allegedly diverted contractual payments in favour of respondent no.5 directly, though the original work order dated 11.06.2002 issued in favour of respondent no.3, namely the joint venture consortium. On that basis the petitioner seeks a direction that the amount already paid to respondent no.5 be deposited in the account of respondent no.3 joint venture and a further direction that all future payments in respect of the works executed under the said work order be made only in the account and in the name of respondent no.3 joint venture.

4. The background facts, as pleaded by the petitioner, are that respondent no.2 had issued a tender notice on 24.05.1999 in relation to a large irrigation project concerning design, planning and construction of the dam at Bhagpur together with intake well, approach channel, connecting pipeline, jack well, sump well, pump house, allied civil works, pumping machinery, electrical accessories, electrical substations and rising mains for Bhagpur-Nashirabad Sinchan Yojana, Jalgaon, on Turnkey Basis. The estimated value of the tender was stated to be Rs.30,543 lakhs and the time for completion was seven years. The petitioner's case is that the tender was a "C form" lump sum Turnkey tender, in which the quantities indicated in the tender documents were only approximate and by way of broad indication, while the contractor had to prepare its own designs and drawings, get them vetted by CDO, Nashik, obtain approval of the Chief Engineer, and execute the work for the lump sum contract price. The petitioner has heavily relied upon the clauses which, according to it, make it clear that increase or decrease in quantities after preparation of the contractor's own designs would not entitle either side to additional payment or deduction.

5. The petitioner has further pleaded that, since no single constituent independently possessed the entire technical eligibility for all components of the work, a joint venture was permitted by the tender

terms. Accordingly, respondent no.3 joint venture came to be constituted under an agreement dated 22.09.1999 between the petitioner on one side and respondent no.4, namely the HVEL-Mahalaxmi joint venture, on the other. Under that arrangement the petitioner was the lead partner with 60% share, while the other constituent had 40% share. The scope of work was also internally distributed. According to the petitioner, the “lift portion”, namely the intake well, pump house, pumping machinery, electrical accessories, sub-station and rising mains, fell to its share, whereas the “dam portion” fell to the share of the other constituent. It is also pleaded that the petitioner’s nominee was authorized to act for and on behalf of the joint venture in day-to-day administration.

6. It is the petitioner’s case that respondent no.3 joint venture was declared the successful bidder; the bid was accepted in November 1999; security deposit was furnished; a letter of intent was issued; forest clearance came to be granted on 22.05.2002; and thereafter the formal work order dated 11.06.2002 came to be issued in favour of respondent no.3 joint venture for the contract value of Rs.36,338 lakhs at 4.92% above. The petitioner states that after issuance of the work order, respondent no.3 mobilized machinery, manpower and resources. It is then pleaded that, in October 2002, a broad conceptual layout was

submitted through the petitioner, but respondent no.2 insisted, contrary to the contractual allocation, that land acquisition for service road and farmer consents for rising mains would have to be procured by the contractor. According to the petitioner, though the tender terms made land acquisition the responsibility of respondent no.2, respondent no.3 was compelled to submit an undertaking on 07.03.2003 in that regard under duress. The petitioner asserts that such insistence was wholly inconsistent with the contractual terms.

7. The petitioner has then narrated that, though detailed engineering for the rising mains was vetted and approved in July 2003, the project did not proceed because respondent no.2 had no funds. The petition proceeds on the footing that, from about 2003 till 2018, the project remained substantially stalled for want of funds on the part of respondent no.2 and that the duration of contract had to be extended from time to time. The petitioner has stated that this delay of nearly fifteen years entirely changed the project conditions; the law relating to acquisition was also changed; land prices got increased; a Government Resolution dated 13.01.2017 allegedly dispensed with the need of land acquisition for underground pipeline in agricultural lands; the location of the pump house shifted owing to siltation and storage conditions; design norms changed; the national highway and railway crossing

conditions changed; and the introduction of GST had further financial implications. The petitioner's case throughout is that all these changes were consequences of the inaction and delay on the part of respondent no.2.

8. The petition further states that in view of the Government Resolution dated 22.06.2009, a sub-committee and thereafter a standing committee were required to finalize layout and design parameters for lift irrigation projects. According to the petitioner, when the matter was revived in 2017-2018 and respondent no.3 was called upon to resume survey and preparatory work, the previously approved layout had to be placed before the sub-committee afresh. The grievance of the petitioner is that the sub-committee and thereafter the standing committee, while approving revised parameters in March 2018, also observed reduction in the length, diameter and thickness of the rising mains and, by invoking clause 6 of the tender conditions, directed that payment be made on reduced quantities and that a supplementary agreement be executed. The petitioner asserts that this was wholly contrary to the basic architecture of a lump sum "C form" Turnkey contract, in which the quantities in the tender were only indicative and the contractor's own approved designs governed execution. The petitioner says that under such a contract neither could the contractor

claim more if the quantities increased, nor could the employer deduct if the quantities reduced. The petitioner therefore contends that the insistence on deduction and on execution of a supplementary agreement was itself a fundamental breach committed by respondent no.2.

9. The petitioner has also referred to earlier disputes in other irrigation corporations where, according to it, similar deductions in Turnkey "C form" contracts had been resisted and arbitral awards or departmental stands had recognized that increase or decrease in quantities in such contracts would not justify pro rata alteration of the lump sum price. The petition then narrates prolonged correspondence from 2018 onwards, in which the petitioner objected to the invocation of clause 6 and refused to accept reduced-quantity payment or to execute a supplementary agreement. The petitioner says that despite repeated communications its objections were ignored.

10. The controversy which has now brought the parties to this Court, however, is not confined merely to the 2018 issue of reduced quantities. The petition, as finally presented, centres around events of 2025. According to the petitioner, the contract and work order continued to remain in the name of respondent no.3 joint venture alone. The petitioner contends that respondent no.2 thereafter

addressed communications dated 26 May 2025 and 31.05.2025 in such a manner as to enable respondent no.5 (Mahalaxmi Infra Projects Pvt. Ltd.) to take over the lift portion which, under the internal joint venture arrangement, fell to the share and duty of the petitioner. The petitioner has pleaded that respondent no.5 is not an independent party to the original work order; that respondent no.5 is, at the highest, only a constituent party within the HVEL-Mahalaxmi side of the arrangement; that respondent no.2 deliberately addressed communications directly to respondent no.5 and not to respondent no.4 joint venture in its proper juristic description; and that this shows collusion, favouritism and a design to throw out the petitioner from the contract. The petitioner relies upon the communication dated 29.05.2025 of respondent no.5 to suggest that respondent no.5 itself proceeded only because of pressure and threat of foreclosure and penalties from respondent no.2.

11. The petition thereafter makes a serious grievance that, though the work order is in the name of respondent no.3 joint venture and though all earlier payments were made to the account of the joint venture, respondent no.2 has started making direct payment to respondent no.5 for works carried out under the same contract without any independent work order in its favour. The petitioner characterizes this as illegal diversion of public money, financial impropriety, arbitrary

exercise of power and even financial fraud. It is specifically pleaded that distribution of money between partners is not a matter on which respondent no.2 can act on its own, and that so long as the contract remains with respondent no.3 joint venture, all bills and payments must be raised and disbursed only in the name and account of respondent no.3. It is also urged that respondent no.5 is not a direct partner of respondent no.3 and that the status of Holzmann Videocon Engineers Limited, which is under liquidation, itself creates further serious complications. The petitioner has thus sought interdiction of any payment by respondent no.2 to respondent no.5 and restoration of the payment stream to respondent no.3 joint venture.

12. On the strength of these facts, learned Senior Advocate Mr. Khandare for the petitioner submits that respondent No.2, being an instrumentality of the State, cannot act in disregard of the express contractual structure accepted by it at the time of the tender. He has argued that the tender conditions, the work order and the joint venture arrangement accepted by respondent no.2 together clearly show that the contract is with respondent no.3 joint venture and not with any individual constituent. It is submitted that the work allocation between the petitioner and the HVEL-Mahalaxmi side was also known to respondent no.2 from inception and stood embodied in the approved

joint venture arrangement. It is contended that there is no clause authorizing respondent no.2 to dislodge one constituent and to permit another constituent or sub-constituent to execute that portion of the work in its own right while simultaneously routing payment directly to it. It is further submitted that clause 19 relating to joint ventures and clause 5 of the joint venture arrangement cannot be read as conferring such a drastic unilateral power upon respondent no.2, especially without determination of breach through due process. The argument is that a subsisting contract cannot be split, reallocated and financially rerouted by administrative correspondence.

13. The learned Senior Advocate for the petitioner has then submitted that the stand of respondent no.2 regarding petitioner's alleged delay, incapacity or failure is itself disputed. According to him, the real cause of delay was respondent no.2's own inability to provide funds, to resolve design issues in time, to act consistently with the original tender conditions in relation to acquisition and service road, and to honour the lump sum Turnkey structure after the 2018 standing committee meeting. It is submitted that, having itself committed breaches and withheld legitimate dues including GST reimbursement, respondent no.2 cannot now rely on the alleged incapacity of the petitioner as a pretext to shift the work and payment to respondent

no.5. The petitioner has further urged that the withholding of a very large amount towards GST difference reimbursement and the insistence upon reduced-quantity deductions form part of the larger arbitrary conduct of respondent no.2.

14. Per contra, respondent no.2 has filed affidavit in reply and made oral submissions. The stand taken by respondent no.2 is substantially that the petitioner has suppressed its own defaults and is trying to convert a commercial and operational decision into a public law issue. Respondent no.2 has denied the allegations of fraud, collusion and favoritism, and has asserted that the Corporation is duty-bound to protect the State interest and public funds. Respondent no.2 has specifically contended that the petitioner failed to perform its scope of work despite repeated opportunities, memos and penalties; that the project involved very high financial stakes; that the petitioner was required to demonstrate financial capacity by furnishing solvency material and failed to do so in time; and that even with respect to the claim for GST reimbursement the petitioner did not submit a proper proposal despite repeated communications dated 27.03.2020, 04.01.2021, 02.08.2021, 31.03.2023 and 05.10.2023, and the proposal furnished shortly before the writ petition was said to be defective and incomplete.

15. Respondent no.2 has further contended that under the tender conditions, particularly clause 19(e), read with clause 5 of the joint venture arrangement regarding joint and several liability, it was entitled, in the given circumstances, to secure performance through the other joint venture partner. According to respondent no.2, the petitioner had failed to perform its agreed scope, and since the works were required to be completed in public interest, respondent no.2 took the decision to transfer the petitioner's scope to the other side of the joint venture. It is also specifically pleaded that the petitioner had, by its letter dated 02.04.2025, consented to payment of amount to the account of the joint venture partner, respondent no.5, and that acting upon such consent and the actual work done by respondent no.5, respondent no.2 credited the amounts directly to that account. It is thus contended that the payment was not arbitrary at all, but followed the reality of actual execution, the petitioner's own conduct, and the contractual power available to the Corporation.

16. Respondent no.2 has also emphasized that the petitioner is denying even its participation in meetings held on 10.11.2022, 20.06.2024 and 17.03.2025, though according to respondent no.2 the minutes and attendance register establish the petitioner's participation. It is the specific stand of respondent no.2 that the petitioner had

knowledge of the developments, was unable to take the work forward, and is now seeking to stall further execution. Respondent no.2 has also pleaded that actual progress has been made by respondent no.5 after the transfer of work, and in that regard it has referred to substantial completion of the dam portion, procurement and fabrication of steel plates and pipes for rising mains, excavation and laying of pipeline, concrete work of pump house, and preparation or submission of design and drawings for several structures and electrical-mechanical arrangements. According to respondent no.2, this subsequent progress itself justifies the decision taken in public interest.

17. On behalf of respondent no.5 also, as reflected from the tenor of the rival pleadings, the defence is broadly aligned with that of respondent no.2, namely that the work has in fact been taken ahead at site; that the petitioner cannot insist upon exclusive control despite non-performance; and that the dispute about inter se entitlement to receive contractual money is at best a matter between joint venture constituents and cannot be converted into a writ dispute of public law character. Though the petitioner has tried to rely upon the communication dated 29.05.2025 to suggest pressure and coercion, the subsequent conduct and the case of respondent no.2 are to the effect that respondent no.5 has in fact executed the transferred work and payment is being made for work done.

18. Having given anxious consideration to the rival submissions, in our view, the petition cannot be entertained in exercise of writ jurisdiction. We say so for more than one reason. The first and foremost is that the entire dispute arises out of a highly complex contractual framework consisting of the tender conditions, the work order, the joint venture deed, later arrangements amongst the constituents, correspondence spanning more than two decades, and the conduct of parties in relation to execution, delay, design finalization, deductions, withholding of claims, transfer of work and payment routing. The petitioner asserts that respondent no.2 is bound to pay only to respondent no.3 joint venture and had no authority whatsoever to deal directly with respondent no.5. Respondent no.2, however, asserts that by reason of petitioner’s failure, clause 19(e) of tender conditions, clause 5 of the joint venture arrangement, the petitioner’s consent dated 02.04.2025, and the actual execution by respondent no.5, the Corporation was justified in transferring the work and crediting payment to respondent no.5. Whether such power existed, whether the petitioner did or did not commit defaults, whether the alleged consent dated 02.04.2025 bears the meaning attributed to it by respondent no.2, whether respondent no.5 was lawfully entitled to execute the petitioner’s portion, whether the transfer was temporary, permanent,

consensual or coercive, whether the payment was a mere operational measure or a contractual novation, and whether any mala fides or collusion are at all made out, are all questions which cannot be satisfactorily answered on the basis of affidavits alone.

19. The law in that regard is settled. In State of ***U.P. & Others v. Bridge & Roof Co. (India) Ltd.***, (1996) 6 SCC 22, the Hon'ble Supreme Court held that disputes relating to interpretation and implementation of terms of a contract cannot ordinarily be agitated in a petition under Article 226. In ***Kerala State Electricity Board v. Kurien E. Kalathil***, (2000) 6 SCC 293, the Supreme Court again held that disputes arising out of a contract in the realm of private law are not amenable to writ jurisdiction merely because one of the parties is the State or its instrumentality. In ***Joshi Technologies International Inc. v. Union of India***, (2015) 7 SCC 728, the Supreme Court exhaustively reviewed the case law and explained that although writ jurisdiction is not completely excluded in contractual matters, the Court would decline interference where the dispute is overwhelmingly contractual, requires adjudication of disputed facts, or where efficacious ordinary remedies are available.

20. The petitioner attempted to place the case within the public law domain by repeatedly using expressions such as arbitrariness, financial fraud, misappropriation of public money and mala fides. Mere use of

such expressions, however, does not alter the real character of the controversy. The payment complained of is not shown to have been made under a separate fresh tender or independent contract in some stranger's favour dehors the original contractual structure. The defence of respondent no.2 is that the payment was made within the contractual framework of the joint venture after transfer of work to the other partner side and after petitioner's consent. The petitioner disputes every limb of that defence. Once that is so, the Court cannot simply assume fraud or illegality without first adjudicating the foundational contractual facts. Such an adjudication would necessarily require a detailed examination of the original tender clauses, the joint venture deed, the later agreement of March 2025, the correspondence of April-May-June 2025, minutes of meetings, attendance records, work-progress documents, financial records, and perhaps oral and documentary evidence bearing upon consent, default and actual execution. That exercise lies outside the proper ambit of summary writ jurisdiction.

21. There is another aspect. Even on the petitioner's own showing, the matter is entangled with earlier disputes regarding reduced quantities under the revised 2018 design parameters, insistence on supplementary agreement, withholding of GST differential

reimbursement, the effect of land acquisition conditions, and delay of many years. Those controversies themselves demonstrate that the present lis is not a simple case of patent statutory violation, but part of a long-standing and multi-layered commercial dispute between contracting parties. If we were to entertain the petition and issue the directions sought, we would in effect be deciding, without trial, that respondent no.2 had no contractual authority whatsoever to recognize respondent no.5 for execution/payment purposes, that the petitioner committed no actionable default, that the alleged consent of 02.04.2025 either did not exist or was legally irrelevant, and that all moneys must necessarily flow only through respondent no.3 irrespective of actual execution. We restrain ourselves, in writ jurisdiction, from drawing such conclusions in the teeth of serious factual contest.

22. We are also unable to accept the submission that this Court should nevertheless intervene because respondent no.2 is a State instrumentality and the project concerns public funds. In matters of public contracts and infrastructure, the Court must indeed ensure fairness, but it must also be slow to interdict execution where the dispute is fact-dependent and where interference would amount to the Court stepping into the shoes of the employer in managing performance issues under a live contract. The Hon'ble Supreme Court in ***N.G.***

Projects Ltd. v. Vinod Kumar Jain, (2022) 6 SCC 127, reiterated that courts should exercise restraint in tender and contract matters and should not lightly interfere in matters involving execution of public projects. Though that case arose in the context of award of tender, the underlying principle of restraint in matters of public contracts is equally instructive here.

23. We must also note that the principal reliefs prayed are in substance for enforcement of an alleged contractual right regarding the manner of billing and disbursement, and for restitution of amounts allegedly wrongly credited to another contracting constituent. Such reliefs are more appropriately examinable in properly constituted civil proceedings or in arbitration, if the contract so provides. There the parties can seek all necessary declaratory, injunctive and monetary reliefs, and all contractual documents and evidence can be fully tested. If the petitioner is right that respondent no.2 has acted in breach of contract and in derogation of the accepted joint venture structure, appropriate relief can certainly be sought before the competent forum. But Article 226 of the Constitution of India is not the proper forum for recording final conclusions on such disputed commercial claims.

24. We make it clear that we are not recording any final finding either that the petitioner was in breach or that respondent no.2 was

justified in acting as it did. Equally, we are not pronouncing upon the legality or otherwise of the deductions claimed by the petitioner, the GST reimbursement issue, the effect of the revised parameters of 2018, or the inter se rights of the joint venture constituents. All those issues are expressly kept open. Our conclusion is only that the present writ petition, as framed and as argued, requires adjudication of disputed facts and enforcement of contractual rights, and therefore ought not to be entertained under Article 226 of the Constitution of India.

25. Even when we examine the matter from the broader perspective of a purpose-driven approach to adjudication, the case does not warrant conversion of a constitutional court into a primary fact-finding forum for a complicated commercial dispute. A purpose-driven approach demands intervention where public law illegality is clear, systemic unfairness is patent, or a jurisdictional error is manifest. Here, the public element invoked by the petitioner itself depends upon disputed contractual facts. Therefore, judicial discipline lies not in entering that area of disputes on affidavits, but in relegating the parties to the appropriate forum where the controversy can be properly tried and adjudicated. That course, in our view, best serves both constitutional restraint and institutional credibility.

26. In our considered view, in the present case, the determination of the alleged illegality is inseparably linked with the adjudication of contractual rights and disputed facts; therefore, the writ court would not be justified in undertaking such an exercise in a summary proceeding. The appropriate remedy for the petitioner would be to seek adjudication before a competent forum in accordance with law.

27. For the aforesaid reasons, the writ petition fails. The petition is accordingly dismissed. It is clarified that we have not adjudicated upon the merits of the rival contractual claims and all contentions of all parties are kept open to be agitated before the appropriate forum in accordance with law. In the facts of the case, there shall be no order as to costs.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

S P Rane