IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1867 OF 2023

M/s Indu Construction, a Proprietorship Firm, through its Proprietor Shri Nitin S/o Nagorao Gabhane, aged about 57 years, having its office in front of Telephone Office, Camp, Amravati - 444602

... **PETITIONER.**

// VERSUS //

1. Nagpur Improvement Trust, through its Chairman, having its Office at Station Road, Sadar Nagpur, 440001.

2. Nagpur Metropolitan Regional Development Authority, Nagpur (NMRDA), through its Chairman.

3. Superintending Engineer, Nagpur Metropolitan Region Development Authority.

4. Chief Accounts Officer, Nagpur Metropolitan Region Development Authority.
5. Superintending Engineer, Nagpur Metropolitan Region Development Authority.

(All 2 to 5 having their Office at 2nd Floor, NIT Complex, Opposite Sudama Cinema, Gokulpeth, Nagpur-440010)

... **RESPONDENTS.**

Shri M.G.Bhangade, Senior Advocate a/b. S/Shri M.M.Agnihotri and P.L.Sagdeo, Advocates for petitioner.
Shri G.A.Kunte, Advocate for respondent Nos. 1 to 5.

CORAM : ANIL S. KILOR AND RAJ D. WAKODE, JJ.

DATED : JULY 16, 2026.

ORAL JUDGMENT : (Per : Anil S. Kilor, J)

1. Heard.

2. **RULE**. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. In the present petition, the challenge is made to the communication dated 20/12/2022 issued by the respondent-Nagpur Metropolitan Region Development Authority denying the claim made by the petitioner of Goods and Service Tax (GST) reimbursement against Tender No. 1 dated 30/07/2014.

The brief facts of the present case are as under:

4. The petitioner is a Proprietorship Firm engaged in Construction. The petitioner participated in the tender floated by respondent(s) on 02/06/2014 for construction of "Affordable housing on land bearing Khasra No. 54, Mouza Wathoda, City Survey No. 173, Shesh Nagar, Middle Ring Road, Nagpur."

5. The petitioner being successful bidder, the work order was issued in favour of the petitioner on 25/08/2014. The work was completed and the work completion certificate was issued in the name of the petitioner.

6. On 08/06/2022, the petitioner submitted a letter for GST reimbursement claim against an Agreement No. B1/186/(2014-2015) for RA Bill Nos.14 to 29. This is in view of the fact that, on the date of tender, GST was not in existence, which came into force w.e.f. 01/07/2017 and according to the petitioner, the petitioner is not liable to pay GST in view of terms of the tender and accordingly, he claims reimbursement of GST. Furthermore, the case of the

petitioner is that he is not liable to pay GST based on Government Resolution (GR) and Government Circular. The Government Circular is dated 19/09/2017 and the Government Resolution (GR) is dated 21/01/2021.

7. In addition, the basis to claim GST reimbursement was the reimbursement made in favour of the contractors like the petitioner.

8. The claim of the petitioner for GST reimbursement was verified by the respondents through the Chartered Accountant (CA) namely Rodi Dabir and Company, vide certificate dated 28/06/2022.

9. After six months of such verification, the impugned communication came to be issued denying the claim of the petitioner. Hence, this petition.

10. We have heard Shri Bhangade, the learned senior counsel assisted by Shri M.M.Agnihotri, the learned counsel for the petitioner. It is submitted that the Clauses of the tender namely Clauses 25 and 48 on which the reliance is placed for denial of claim of the petitioner, were part of the

tender floated in the year 2014, whereas the GSTs came into effect from 01/07/2017. It is submitted that the taxes which were not there at the time of execution of Agreement or issuance of the tender, the petitioner is not liable to pay such taxes unless there is a specific condition in the tender document. It is argued that, the Government vide Government Circular dated 19/09/2017 and GR dated 21/01/2021, it has been clarified. It is argued that relying upon aforementioned Circular and GR, the reimbursement of GST was made in favour of many contractors like the petitioner.

11. It is submitted that the respondents are harping upon the pre-bid meeting, wherein while recording the clarification to the query relating to all new taxes, it was observed that the Clause in Bid Document will prevail. It further states that all new taxes/charges in tax structure including sales tax, service tax etc. after award of contract shall be fully borne by the contractor and no reimbursement shall be paid by N.I.T. It is submitted that even if this

clarification is considered as a part and parcel of the tender document, it goes contrary to the tender conditions. It is submitted that clarification cannot go beyond the main orders. For this purpose, the learned senior counsel for the petitioner has placed reliance on the judgment in the case of *B. Rugmini Amma and anr. V/s. B.S.Nirmala Kumari and ors.* reported in **(2013) 11 SCC 262.**

12. On the other hand, Shri Kunte, the learned counsel for the respondents argued that the claim of the petitioner was rightly denied by the respondents for the reason that after the pre-bid meeting and after recording the clarification that the petitioner is liable to pay all new taxes and would not be entitled for reimbursement, he should not have proceeded with the execution of the contract, if such condition was not acceptable to the petitioner.

13. It is further argued that there were numerous stages when such objection could have been taken by the petitioner, however, no such objection was taken and even after

completion of work, he waited for long period. He, therefore, submits that now, the petition cannot be permitted to blow hot and cold at the same time.

14. Shri Kunte, learned counsel for the respondents further draws our attention to the certain Clauses relating to payment, which prohibits the contractor from claiming any additional payment beyond the rates quoted.

15. He submits that it was made clear to the petitioner that all the future taxes are to be paid by the petitioner and since at the bottom of pre-bid meeting document, there is a note stating that the said document is part and parcel of the tender, the petitioner cannot claim reimbursement contrary to the clarification recorded in the pre-bid meeting.

16. He further draws attention to Clause 48 on which the reliance is placed while issuing the impugned communication. The learned counsel for the respondents placed emphasis on the expression used in the said Clause, namely "No extra payment will be made to the contractor, as the rates quoted by the contractor are inclusive of all

applicable taxes, duties, levies, and service tax etc." He, therefore, submits that the petition needs to be dismissed.

17. Having heard the rival contentions and having gone through the petition, it is evident that the work order was issued to the petitioner on 25/08/2014. At the time of the agreement of issuance of work order, tax namely GST was not in existence. It was made applicable w.e.f. 01/07/2017, when the work in question was ongoing.

18. Many contractors who were facing similar situation, approached to the Government and raised the issue in respect of applicability of GST to ongoing contract.

19. The Government thereupon issued a Circular dated 19/09/2017, which is clarificatory in nature in respect of effect of Goods and Services Tax Act, 2017, clarifying that extra burden of GST, if any, shall be compensated by the Public Works Department upon production of authenticated records of net extra burden on account of GST (after deducting VAT and/or exercise as in earlier contract). It further states that the claims to this effect shall be submitted

by the contractors to the concerned Executive Engineer, who will scrutinize and reimburse the claims within 30 days of receipt of such claims.

20. Thereafter, the GR dated 21/01/2021 was issued, which stipulates execution of supplementary agreement for the ongoing work on 01/07/2017. Clause 2.3 of the GR dated 21/01/2021 reads thus,

> *"2.3. The total tax burden thus calculated should be deducted from the contract price remaining as on 01/07/2017 and a supplementary agreement should be made for the remaining net contract price (Net Contract Price). The applicable Goods and Services Tax (GST) should be paid on the said net contract price."*

21. It is imperative to note that after this clarification, reimbursement was made to many contractors like the petitioner and even in the case of the petitioner when such claim for GST reimbursement was made, the claim of the petitioner was got verified from the CA.

22. The act of the respondents referring the claim of the petitioner to the CA for verification itself shows that the

respondent speaks volume.

23. Thus, once the respondent proceeded in the matter to evaluate the claim of the petitioner and refer the calculations made by the petitioner for verification to CA, subsequently, after six months of such verification, denial of the claim is arbitrary.

24. The Clauses which are relied upon by the respondent are Clause 25 and 48, which read thus,

> *"25. The offer shall be inclusive of all taxes, octroi/LBT, cess, royalty, service tax etc. to be paid by the tenderer for the work and claims for payment on any such shall not be entitled."*
>
> *48. The rates to be quoted by the contractor must be inclusive of all applicable taxes, duties, levies and service tax etc. During contract period. No extra payment on this account will be made to the contractor."*

25. If we see the language of Clauses 25 and 48, it is evident that the contractor was to quote the rates inclusive of all applicable taxes. This itself is sufficient to say that both the Clauses do not speak about the taxes which would be made applicable in future.

26. The taxes which are not recoverable by the

Government from the contractors, on the date of tender, cannot be the basis for quoting the rates while submitting the bid.

27. Thus, we are of the considered view that if Clauses 25 and 48 are taken into consideration, the impugned order is illegal and the respondents cannot deny the claim of the petitioner for GST reimbursement on the basis of above referred two Clauses.

28. Now, the question remains, whether in view of the pre-bid meeting and the clarification recorded in that meeting in respect of future taxes, the petitioner is liable to pay GST.

29. For this purpose, the judgment in the case of *B. Rugmini Amma and anr.* (*supra*) is helpful which says that effect of a clarification would not surpass the main order and cannot, by any means, supersede or override the terms of the main order.

30. Thus, it is evident that since the clarification as recorded in the pre-bid meeting in the present case is contrary

to the provisions of the tender, such clarification will not supersede the conditions of tender.

31. Article 14 of the Constitution of India forbids the Government and its authorities to act unfairly, arbitrary and unreasonably. If it is the case of the respondents that except the petitioner, all other contractors are entitled to claim GST reimbursement and the petitioner cannot claim reimbursement because of aforementioned clarification recorded in the pre-bid meeting, it would be in violation of Article 14 of the Constitution of India, as it will amount to treating equals unequally.

32. Having held so, we pass the following order:-

ORDER

i) The Writ Petition is **allowed**.

ii) The impugned communication dated 20/12/2022 is hereby quashed and set aside and consequently, we hold the petitioner is entitled to claim GST reimbursement as per the amount verified by the Chartered Accountant of respondents, Rodi Dabir and Company by issuing certificate dated 28/06/2022.

iii) The amount shall be paid within a period of eight weeks from today.

The Rule is made absolute accordingly. No order as to costs.

(RAJ D. WAKODE, J.) **(ANIL S. KILOR, J.)**

Khapekar