



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 27TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD

AND

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

WRIT APPEAL NO. 100036 OF 2024 (GM-TEN)

BETWEEN:

M/S. NAYAK - ASHWINI - (JV),
ENGINEERS AND CONTRACTORS,
NAYAK CHAMBERS, 51, RAJNAGAR,
HUBBALLI – 580 032,
NOW AT NAYAK HOUSE NO.110,
3RD FLOOR, DOLLARS COLONY,
GOKUL ROAD, HUBBALLI – 580 030,
REPRESENTED BY ITS PARTNER,
SRI. DINESH R. NAYAK,
AGED ABOUT 56 YEARS.

... APPELLANT

(BY SRI. DEVADATTA KAMAT, SENIOR COUNSEL FOR
SRI. ADITYA BHAT &
SRI. HARSH PANDEY, ADV.)

AND:

1. THE STATE OF KARNATAKA,
PUBLIC WORKS DEPARTMENT,
VIKASA SOUDHA, BENGALURU – 560 001,
REPRESENTED BY ITS
PRINCIPLE SECRETARY.
2. KARNATAKA ROAD DEVELOPMENT
CORPORATION LIMITED
NO.16/J, 1ST FLOOR,
MILLER TANK BED AREA,
BENGALURU – 560 052,
REPRESENTED BY ITS MANAGING DIRECTOR.
PRESENTLY HAVING ITS OFFICE AT
SAMPARKA SOUDHA,
SY NO. 8, B.E.P PREMISES OPPOSITE TO

Digitally signed
by VISHAL
NINGAPPA
PATTIL
Location: High
Court of
Karnataka,
Dharwad
Bench



ORION MALL, DR. RAJKUMAR ROAD,
1ST BLOCK, RAJAJI NAGAR,
BENGALURU – 560 010.

...RESPONDENTS

(BY SRI. ASHOK KATTIMANI, AGA FOR R1;
SRI. VIJAYKUMAR V. BAJANTRI, ADV. FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO KINDLY CALL FOR THE RECORDS IN WRIT PETITION NO.67919 OF 2011 (GM-TEN), TO KINDLY SET ASIDE THE ORDER DATED 27.11.2023 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION NO.67919/2011 (GM-TEN) AND ALLOW THE WRIT PETITION FILED BY THE APPELLANT IN W.P.NO.67919/2011 (GM-TEN). GRANT SUCH OTHER ORDER OR ORDERS AS DEEMS FIT UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT APPEAL, COMING ON FOR PRELIMINARY HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD
AND
THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE B.M. SHYAM PRASAD)

The appellant is unsuccessful in its writ petition in W.P.No.67919 of 2011. The appellant has filed this writ petition calling in question the second respondent's Communication dated 19.02.2010 informing the appellant that its claim for price escalation for the period between 23.05.2007 and 30.04.2009 cannot be considered because of the agreement [in clause 2.33 of the Agreement dated 06.05.2005] that the price offered shall be the *Firm Price* and no price adjustment shall be entertained except for Bitumen procurement in terms of the formula indicated therein. The second respondent has also referred to the extensions granted to the appellant, and the second respondent has cited even this as a reason to refuse the price adjustment.

2. The appellant, while challenging the second respondent's communication, has also sought for direction to the second respondent to pay *Price Variations* for the period between 23.05.2007 and 30.04.2009 in terms of its



representations. The writ Court has dismissed the writ petition by an order which in its entirety reads as under.

*“The dispute pertains to a contractual matter between the petitioner and respondent No.2. It involves disputed question of fact which cannot be adjudicated upon by this Court by exercising Article 226 of the Constitution of India. For the said reason, the writ petition is hereby, **dismissed**.”*

3. The appellant is issued with the contract work for widening and strengthening Mysore-Bantwal State Highway between 1.64 km to 88.30 km [*from Mysore to Kushalnagar as Package-I*]. The contract value is higher than Rs.1 crore and the contractual period is 24 months [*2 years*]. The appellant has executed the work but with a delay, and the appellant is admitted to extensions. The second respondent in the case of the appellant's sister concern has substituted Clause 2.33, which was very similar to the present clause in the light of the Government Order dated 26.11.2004. The controversy is with the appellant relying upon this Government Order and the Authorities refusing any reliance on this Order.



4. The contract includes *Price Adjustment* Clause [the Clause 2.33], which apart from detailing on how there could be *Price Adjustment* for bitumen per capita¹, reads as under.

“2.33 Price Adjustments

2.33.1 The price quoted by the Contractor shall be firm price for the entire contract period. No price adjustment shall be entertained by the Employer. However for Bitumen procurement the following price adjustment will be allowed.”

The Government has issued the Government Order on 26.11.2004 based on recommendations for Reforms in Public Procurement, and one of the recommendations by the concerned is for mandating *Price Adjustment* in all Government Contracts. The Government has stipulated that there shall be a Price Adjustment clause in all the contracts. The relevant term reads as under.

¹ *The detailed procedure for computing the price escalation for bitumen is not extracted as it is not germane to the present controversy.*



“1. In super-session of all standing rules and instructions in respect of price adjustment clause in tender documents, the following instructions are issued for compliance.

(a) A price adjustment clause shall be included in all works contracts whose estimated cost put to tender in Rs.100 lakhs or more and the period of completion is 12 months or more. The price adjustment clause formulae for adjustment shall be as per Annexure-1.

(b) xxx

(c) xxx

2. The above instructions will only be applicable prospectively and shall not be applicable to contracts concluded in the past or being concluded presently or for tenders already invited.

3. The above instructions shall apply to all procurement entities as defined in section 2(d) chapter 1 of the Karnataka Transparency in Public Procurement Act 1999.”

5. The State Government, as regards the applicability of the terms of this Order, has stipulated thus.

“(a) The price Adjustment shall apply for the work done from the date of commencement up to the end of original period of completion or extensions granted by the Employer and shall not apply to work carried out beyond the stipulated period of



completion for reasons attributable to the Contractor.”

The appellant has submitted its representation for price escalation on 20.11.2009, and the second respondent has rejected this request by the impugned Communication dated 19.02.2010.

6. Sri Devadatta Kamat, the learned senior counsel for the appellant, submits that the appellant in filing its representation dated 20.11.2009 has not specifically mentioned the terms of the Government Order dated 26.11.2004 but that cannot be a reason to exclude the applicability of the *Price Escalation Clause*, and that the second respondent is not justified in citing extensions as reasons to refuse price escalation. In elaboration on the first aspect, the learned senior counsel relies upon the following three decisions.

[A] The writ Court's order dated 21.07.2011 in W.P.No.5525 of 2010 and W.P.No.11616 of 2008.



[B] A Co-ordinate Bench's decision in Writ Appeal No.15503 of 2011, which is decided on 16.07.2012.

[C] The Orders of the Apex Court on 11.09.2017 in SLP (C) No.36178 of 2013.

7. Sri Devadatta Kamat submits that these decisions affirm that:

[a] the terms of the *Price Escalation Clause* in Government Order dated 26.11.2004 must be made applicable to all Government Contracts, when they are executed after the date of this order and the concerned contractor cannot be *estopped* from seeking incorporation of this *Price Escalation Clause* in the contract;

[b] the Government Order is made prospectively applicable when the contract is for a value which is more than Rs.1 crore and for a period over 24 months; and



[c] if there is any delay or laches in incorporating the price adjustment clause in the Government Order dated 26.11.2004 by the State/its instrumentalities, the contractor's accrued right cannot be disputed.

The learned Senior counsel submits that these propositions must be applied in the present case because the salient factor, such as that the value of the contract assigned to the appellant is inarguably more than Rs.1 crore for a period of 24 months.

8. Sri Vijaykumar V. Bajantri, the learned counsel for the second respondent, contends that even if the clause on price escalation in the Government Order dated 26.11.2004 is made applicable to the appellant, the appellant cannot be given the benefit because the appellant has not completed the contract within the stipulated period and the second respondent has granted four extensions with penalty. The learned counsel proposes to rely upon the specifics of the case to assert that the appellant cannot be



extended the benefit of the *Price Escalation Clause* in Government Order dated 26.11.2004, asserting that the *Price Escalation Clause* in 2.33 in the contract was included on definite discussions and negotiations. In fact, the learned counsel proposes to rely upon clause (a) of Annexure-1 appended to the Government Order dated 26.11.2004² to contend that the *Price Escalation Clause* would apply only to work completed within the original period of contract.

9. In rejoinder, Sri Devadatta Kamat submits that the second respondent cannot dispute that two out of the four extensions were granted without penalty, and that the appellant has not accepted the penalty that is imposed while granting the next two extensions. The learned Senior Counsel argues that therefore the second respondent cannot rely upon clause (a) of Annexure-1 appended to the Government Order dated 26.11.2004. Further, the learned

² Clause (a) *The price Adjustment shall apply for the work done from the date of commencement up to the end of original period of completion or extensions granted by the Employer and shall not apply to work carried out beyond the stipulated period of completion for reasons attributable to the Contractor.*



senior counsel submits that this Court may consider that in similar circumstances, this Court in a series of writ proceedings has called upon the concerned employer to reconsider the exclusion of the *Price Escalation Clause* in the light of the orders in Writ Petition No.5525 of 2010 and the subsequent proceedings. In this regard, he places reliance upon the orders of the writ Court in Writ Petition No.17931 of 2021, which is decided on 30.11.2022, and Writ Petition No.25359 of 2023, which is decided on 02.04.2024.

10. In the circumstances of the case, considering the manner in which the writ petition is disposed of and the rival submissions, the following questions are considered for disposal of this appeal.

[A] *Whether this Court must enable a closure of the dispute in the writ proceedings on the ground that multiple factual aspects are involved when the second respondent has not assigned reasons as to why the Price Escalation Clause as contained in the Government Order dated 26.11.2004 should not apply to the appellant's contract.*



[B] *If the answer to the afore is in the negative, the terms upon which the writ appeal must be disposed of.*

11. The Co-ordinate Bench's decision in Writ Appeal No.15503 of 2011, affirming the writ Court's order in Writ Petition No.5525 of 2001³, is a confirmation of the declaration that the Government Order dated 26.11.2004 is prospective which must be included in every contract by the Government / its instrumentalities and that the non-inclusion of the *Price Escalation Clause* in the contracts executed post the Government Order dated 26.11.2004 cannot estop the concerned contractor from asking for the incorporation of such clause in the contract. In the present case, the Agreement between the appellant and the second respondent is dated 06.05.2005⁴. The proposition enunciated must apply.

³ *This writ petition is decided on 21.07.2011*

⁴ *The Agreement is produced as Annexure – D to the writ petition.*



12. It is undisputed that the *Price Escalation Clause* in the Government Order applies to every contract where the contract value is more than Rs.1 [one] crore and the contract period is for 24 [twenty four] months and above, and it is also not in dispute that in the present case that the contract executed in favour of the appellant satisfies these two conditions. The second respondent's reasons, which are presented for the first time for consideration in the present proceedings, is that the *Price Adjustment Clause* in the Government Order would apply only if the work is done between the date of commencement and the end of the original period contemplated for completion.

13. However, it is obvious from the clause (a) of Annexure-1 appended to the Government Order that the *Price Adjustment Clause* will apply even when extensions are admitted by the employer, but will not apply if the extension or the failure to complete the contract is for reasons attributable to the contractor. The second respondent proposes to contend that all the four extensions are because of the appellant, while the appellant asserts that all the four



extensions are because of the delay by the second respondent and therefore no penalty is imposed while granting two extensions and that it contests the penalty imposed while granting next two extensions.

14. The dispute about the applicability of the *Price Escalation Clause* in the Government Order to the appellant's contract is not premised in the factual disputes over the terms of the contract but only on the reasons for granting extension. There must be considered decision on the exclusion of the *Price Adjustment Clause* as contemplated under the Government Order. The second respondent should reason why the appellant's claim cannot be accepted in the context of the clause (a) of Annexure-1 appended to the Government Order before the Court of law are called upon to decide. The writ Court should have examined these circumstances in detail before proceeding to dispose of the writ petition on the ground that disputed questions or facts are involved which cannot be adjudicated in exercise of jurisdiction under Article 226 of the Constitution.



15. The appellant must have an opportunity to explain that the extension cannot be attributed to it and the second respondent must, in the backdrop of the appellant's explanation, vindicate its stand that the reasons for extension are attributable only to the appellant. The second respondent must consider every aspect in this regard, which are left open by this Court for due consideration. The dispute has prevailed over one and a half decades and that this will have its own implication on the consequence that could be when there is reconsideration. In the light of these circumstances and this Court's categorical view that the propositions underscored by a Co-ordinate Bench of this Court in Writ Appeal No.15503 of 2011 should prevail, the writ appeal stands ***disposed of*** on the following terms.

[a] The writ Court's impugned order dated 27.11.2023 in Writ Petition No.67919 of 2011 is set aside quashing the second respondent's communication dated 19.02.2010 restoring the consideration of the appellant's request for *Price Adjustment*



in terms of the Government Order dated 26.11.2004.

[b] The appellant is reserved with liberty to file a detailed representation in continuation of its earlier representation along with a certified copy of this order.

[c] The appellant will be at liberty to file these additional submissions within a period of eight [8] weeks from the date of receipt of a certified copy of this order.

[d] The second respondent is called upon to consider such submissions in the light of this Court's observation in the present proceedings by a reasoned order and the second respondent, even if it is of the opinion that the appellant should not be entitled to price escalation, shall for completeness in decision reason on the interest that the appellant claims.



[e] The second respondent shall, within three [3] months from the date of receipt of a certified copy and the additional submissions as now permitted, decide and communicate its decision to the appellant.

**Sd/-
(B.M.SHYAM PRASAD)
JUDGE**

**Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE**