

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 836 of 2002**

1. M/S Vimal Constructions, a Partnership firm duly registered under the relevant provisions of the Partnership Act, 1932, and carries on the business of Engineers and Contractors at Ravi Bhawan, Jai Stambh Chowk, Raipur 492001.
2. Kamal Chand Jain, Son of Late Maniklal Jain, aged 40 years, Partner M/S Vimal Constructions, resident of 21, South Avenue, Choubey Colony, Raipur (CG)

---- Petitioner**Versus**

1. The Municipal Corporation Raipur, a body corporate having common seal and perpetual succession having being constituted under section 7 of the Municipal Corporation Act, 1956, and having its principal office at Malviya Path, Raipur (CG) through the Commissioner, Raipur Municipal Corporation, Raipur (CG)
2. THE COMMISSIONER, MUNICIPAL CORPORATION, RAIPUR
3. THE STATE OF CHHATTISGARH Through the Principal Secretary to the Govt. of Chhattisgarh, Department of Public Works, Mantralaya (D.K. Bhawan), G.E. Road, Raipur (CG)
4. SECRETARY TO THE GOVERNMENT OF CHHATTISGARH, Department of Town Administration and Development (Nagariya Prashasan Evam Vikas), Mantralaya, Raipur (CG)
5. THE DIVISIONAL COMMISSIONER, Raipur Division, Raipur (CG)

---- Respondents

For Petitioners : Shri BP Sharma, Advocate.

For Respondents 1 & 2 : Shri HB Agrawal, Sr. Advocate with Smt. Meera Jaiswal, Advocate.

For Respondents 3 to 5 : Shri Adhiraj Surana, Deputy Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed On : 01.05.2015

1. Challenge in this petition under Article 226/227 of the Constitution of India is to the order passed by the Secretary, Government of Chhattisgarh, Department of Urban Administration and Development whereby the order passed by the Commissioner, Municipal Corporation, Raipur on 4.5.2001 has been set aside. By the said order dated 4th May, 2001, the Commissioner, Municipal Corporation, Raipur dismissed the application preferred by the Municipal Corporation seeking imposition of penalty of Rs.2 lakhs per month on the petitioner.
2. Facts of the case, briefly stated, are that the Municipal Corporation invited the tenders for construction of multi storeyed commercial complex at GE Road, Raipur. The contract was awarded to the petitioner wherein the petitioner, promoter/builder, was entitled to enter into an agreement with the private parties, Government/Semi Government Organizations to dispose of the constructed area on lease for a period of 30 years, which shall had to be entered into by each party with the Municipal Corporation. A separate agreement was executed between the petitioner and the Municipal Corporation on 12.1.1993 (Annexure-P/5).
3. Under the terms of tender and agreement, the petitioner was required to complete the project within 3 years from 12.1.1993, failing which under Clause-6 of the Notice Inviting Tender (NIT), the petitioner was liable

to pay a sum of Rs.2 lakhs per month to the Corporation. The petitioner failed to complete the project within time, therefore, the Corporation invoked clause-6 of the NIT and moved an application before the Commissioner, Raipur Division seeking decision on the dispute and a direction to the petitioner for payment of compensation. This application was moved on 13.8.1997 (Annexure-P/7). The petitioner submitted his reply vide Annexure-P/8 and denied the claim raised by the Corporation.

4. The Commissioner, Municipal Corporation, by its order dated 4th May, 2001 (Annexure-P/3) dismissed the application of the Corporation. The Corporation thereafter preferred an appeal/revision before the State Government which has been allowed by the impugned order and as a consequence, the order passed by the Commissioner has been set aside.
5. It has been argued on behalf of the petitioner that the order passed by the Commissioner was in fact an award in terms of clause-17 of the agreement, therefore, appropriate remedy for getting the award set aside is by moving before the Civil Court of original jurisdiction i.e. the District Judge, as provided under Section 34 of the Arbitration and Conciliation Act, 1996. He would submit that even if Arbitration and Conciliation Act, 1940 applies, the remedy under that Act was also to move an application under Section 33 of the Act and the appeal before the State Government was not maintainable.
6. Per contra, learned counsel for the respondents would submit that

clause-17 of the agreement is an internal remedy wherein the State Government has been conferred with the power to hear the appeal against the order passed by the Commissioner, therefore, the impugned order cannot be treated as without jurisdiction. If the petitioner is aggrieved by the impugned order, the remedy for him lies in drawing proceeding under the Madhyastham Abhikaran Adhiniyam, 1983 (henceforth 'the Adhiniyam, 1983') and the writ petition is not maintainable.

7. The bone of contention between the parties is with respect to question of maintainability of the appeal before the State Government. .
8. Clause-17 of the agreement has been invoked before the Commissioner, therefore, the said provision needs reference and the same is reproduced hereunder:-

“17. The Municipal Corporation shall not be a party to any dispute, legal or otherwise, if it arises between the Promoters/Builders and purchasers or any other party at any time.

Any dispute, other than mentioned above between the Promoters/Builders shall be referred to the Divisional Commissioner, Raipur within 30 days of such dispute arising. The party dissatisfied with the decision of the Divisional Commissioner, shall have the right of appeal within 30 days to the Secretary, Govt. of Madhya Pradesh, Department of Local Bodies whose decision shall be final and binding on both parties.

“The Madhya Pradesh Madhyastham Adhikaran Adhiyam, 1983 shall be applicable to this contract.””

9. The above clause of the agreement clearly mentions that any dispute between the parties shall be referred to the Commissioner and the party

dissatisfied with his decision shall have right of appeal before the Secretary to the State Government within 30 days of the decision and the said decision in appeal shall be final and binding on the parties. It further says that the provision of the Adhiniyam, 1983 shall be applicable to the contract. Thus, clause-17 provides internal mechanism for redressal of grievances including the right of the aggrieved party to prefer an appeal against the order of Commissioner. As there being an internal mechanism under the agreement, it cannot be said that the State Government had no power or jurisdiction to entertain the appeal. As a matter of fact, an application preferred under the Adhiniyam, 1983 without first exhausting the remedy provided under Clause-17 of the agreement would not be maintainable.

10. In Standard Corrosion Controls Pvt. Ltd. Vs. Sarku Engineering Services SDN BHD¹ it has been held that when the arbitration agreement provides procedure for appointment of arbitrator, application under Section 11 of the Arbitration and Conciliation Act, 1996 without exhausting internal mechanism is not maintainable.

11. In Mahipatlal Patel Vs. Chief Engineer & Anr.² it has been held that when the arbitration agreement provides for reference of dispute to the Tribunal constituted under the State Act, the application under Section 11 of the Arbitration and Conciliation Act, 1996 would be maintainable only when the Tribunal under the State Act does not exist.

¹ AIR 2009 SUPREME COURT 1138

² AIR 2008 SC (Supp) 330

12. In view of the above, the appeal preferred by the Municipal Corporation being in consonance with the internal remedy provided in terms of the agreement, which is binding on the parties, was maintainable and the petitioners should have initiated proceeding under the Adhinyam, 1983 rather than approaching this Court in the writ jurisdiction.

13. In the result, the writ petition is dismissed.

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