

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1076 of 2015**

M/s. Harsh Construction Company A Partnership Firm, Through : Its Partner Namely Santosh Kumar Singh, S/o. Late Shri Mahatam Singh, Aged About 45 Years, R/o. In Front Of Sanjay Park, Ambikapur, Police Station And Post Ambikapur, Civil And Revenue District Surguja (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh through : Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh)
2. Chief Engineer, Public Works Department, Zone Ambikapur, District Surguja (Chhattisgarh)
3. Superintending Engineer, Public Works Department, Ambikapur, Circle, Ambikapur, District Surguja (Chhattisgarh)
4. Executive Engineer, Public Works Department (B & R), Jashpur Division, Jashpur, District Jashpur (Chhattisgarh)
5. Engineer-In-Chief, Public Works Department, Sirpur Bhawan, Raipur, District Raipur (Chhattisgarh)

---- Respondents

Petitioner:	Shri Manoj Paranjpe, Advocate.
Respondent/State:	Shri Prafull N. Bharat, Additional Advocate General.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board**Per Navin Sinha, Chief Justice****23/09/2015**

1. Heard Learned Counsel for the Petitioner and the Additional Advocate General on behalf of the State.
2. The Petitioner is aggrieved by order dated 15.5.2015 terminating the works awarded to it for widening and new B.T of Jashpur - Sanna Road in kilometers 32 to 53 = 22 kms.
3. Learned Counsel for the Petitioner submits that even prior to the

termination, the Petitioner had invoked Clause-28 of the agreement providing for arbitration and without considering which, the order of termination was passed. Moreover, no prior opportunity or show cause notice was issued before cancellation. The delay in the works, and which is sought to be urged as justification for cancellation, was attributable to the Respondents who were not releasing payments in due time without justification, affecting performance of works by the Petitioner. The counter affidavit acknowledges the invocation of Clause-28 by the Petitioner. Arbitration would be a futile exercise if the termination order would continue to remain notwithstanding the same.

4. Learned Additional Advocate General for the State submits that after the works were awarded on 12.11.2012. An inquiry was held between 26.11.2014 and 12.12.2014. The Chief Technical Examiner (Vigilance) reported that works were not progressing in accordance with schedule including the quality of the same, and that payments had been released contrary to financial rules and regulations. The Writ Petition is raising disputed questions of facts with regard to who may or may not have been at fault. It is the contention of the Respondents that it was the Petitioner who was at fault. It was next urged that the Writ Petition wrongly urges that no show cause notice was given before termination and that it was sent at the wrong address. The fact of the matter is that a show cause notice was issued on 3.4.2015 sent at the same address as mentioned in the cause title of the Writ Petition and the termination letter, also receipt of which the Petitioner acknowledges. The show cause notice was never replied by the Petitioner. It was lastly submitted that the Petitioner has invoked Clause-28 of the agreement for resolution of the dispute and a five-member committee has been constituted for the purpose.

5. We have considered the submissions on behalf of the parties.

6. In a matter involving contract, the power of judicial review under Article

226 of the Constitution has to be confined to the decision making process only to examine if there has been patent illegality or arbitrariness in termination of the contract. If the action in terminating was dehors the contract itself, again the Writ Petition would be maintainable. Even if there are disputed questions of facts involved, but which can be deciphered without a detailed inquiry into the contentions and counter contentions, preferably supported by documentary evidence, then also, the writ jurisdiction may be invoked.

7. But, if there are complicated and disputed questions of facts involved at more than one stage which require an inquiry and taking of evidence, that inquiry is not permissible in the writ jurisdiction. Who may have been or may not have been at fault in the facts of the present case, in our opinion, has to be the subject matter of an inquiry for a fact finding. Whether it was the Petitioner who was not geared up for execution of the works, did not perform works up to the standards and specifications, did not adhere to time schedules or whether the fault lay with the Respondents in one manner or the other including any delayed release of payments as alleged, are all matters which can be well be considered in the proceedings under Clause-28 of the agreement already acknowledged by the Respondents. Needless to state that it shall always be open for the Petitioner to seek such relief under Clause -28 as may be available to it under the law and in terms of the agreement.

8. The Writ Petition stands disposed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE