

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 766 of 2015**

Meinhardt Singapore Pte. Ltd. (India Branch) Having its Corporate Office At A-8, Sector-16, Noida 201301, Uattar Pradesh, Represented Through Rajesh Shrivastava- Country Director

---- Petitioner**Versus**

1. Bilaspur Municipal Corporation Through Commissioner, Vikas Bhawan, Near Nehru Chowk, Bilaspur, Civil and Revenue District Bilaspur, Chhattisgarh-49501
2. Chief Executive Officer, State Urban Development Authority, Third Floor, RDA Building, Raipur (Chhattisgarh)
3. Department of Urban Administration and Development Through Secretary, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh- 492001
4. Mayor-In Council Through Mayor, Bilaspur Municipal Corporation, Vikas Bhawan, Nehru Chowk, Bilaspur, Civil & Revenue District Bilaspur, (Chhattisgarh)-495001

---- Respondents

For Petitioner	:	Shri Mukesh Sharma, Advocate.
For Respondent No.1&4.	:	Shri J.A. Lohani, Advocate

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

Order On Board

Per Navin Sinha, Chief Justice.

18/08/2015

1. The Petitioner seeks mandamus for payment of fees towards consultancy provided by it under agreement dated 09.11.2006 and quashing of the penalty imposed as being arbitrary and illegal.
2. Learned counsel for the Petitioner submits that even if the contract contained a penalty clause, it could not have been invoked without compliance of due procedure and opportunity of defence, withholding payment of works already done. In the circumstances, the Petitioner has also invoked clause-17 of the agreement which provided for dispute resolution and arbitration, by a communication dated 21.04.2014 addressed to the Commissioner, Bilaspur Municipal Corporation, which has not been responded to. The conduct of the Respondents is therefore arbitrary both on account of imposition of penalty and failure to refer the matter to arbitration.
3. Learned Counsel for the Corporation contended that imposition of penalty, in the facts of the case, was justified as the schedule for completion of works was not adhered to.
4. The present is a matter arising out of a contract. The relief sought in the writ application is primarily for payment of money dues on basis of what are disputed facts. No mandamus can be issued under Article 226 in respect of a disputed money claim. Who was at fault, whether the penalty was justified or unjustified, are all questions of facts which require inquiry and evidence. The contract contains a penalty clause.

The remedy therefore does not lie under Article 226. Having said so, if the Respondent, a public body has entered into commercial contract, while it has to be given flexibility to act in a commercial manner for protection of its interests, yet because it is a public body, falling within the definition of State under “Article 12 of the Constitution”, there will be restraints on it and it cannot behave like a private litigant.

5. The counter affidavit of the Respondent is completely silent with regard to invoking of the arbitration clause by the Petitioner on 21.04.2014. The agreement binds the Petitioner and it also binds the Municipal Corporation. If a public body fails to act in accordance with its obligations under the contract entered into by it, without sufficient and reasonable cause, questions can also arise with regard to its ability and to function in accordance with law. The Corporation being a public body is duty bound to act fairly, reasonably and responsibly even in commercial matters, upholding the rule of law. The approach of the Corporation appears to be that unless the Petitioner does not go to a court of law and obtain orders, the Corporation has no obligation to act under clause-17 of the agreement. Commercial matters have an inherent urgency for both the parties to the contract. There can be no justification for prolonging matters in the manner sought to be done by the Municipal Corporation, generating completely avoidable litigation by refusing to take decisions.
6. The Municipal Commissioner is directed to act in accordance with law forthwith on the communication of the Petitioner dated 21.04.2014 failing which the Petitioner shall be at liberty to approach the Secretary,

Urban Development Department who, it is expected, shall take all necessary appropriate steps in accordance with law for enforcement of clause-17 as the Petitioner appears to have represented before him also on 05.12.2014 inter-alia with regard to its request dated 21.04.2014.

7. The order to be complied with within a maximum period of two months.
8. The writ application is disposed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P.Sam Koshy)
JUDGE