

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1737 of 2015

- M/s Laxmi Construction Company Through Partner Laxmi Narayan Agrawal, S/o Shri T. C. Agrawal, Aged About 50 Years, R/o Jawahar Market, Ambikapur, District Sarguja (Chhattisgarh)

---- Petitioner

Versus

1. The State Of Chhattisgarh Through Secretary Panchayat And Rural Development Department Mahanadi Bhawan, Mantralaya, New Raipur, Raipur (Chhattisgarh)
2. The Executive Engineer Cum Member Secretary, Project Implementation Unit No. 11, Chhattisgarh Rural Road Development Agency, Kusmi, Ambikapur, District - Surguja (Chhattisgarh)
3. The Tehsildar, Lakhanpur, District - Surguja-Ambikapur (Chhattisgarh)
4. Shri U. P. Tiwari S/o Shri Rammanorath Tiwari, Aged About 56 Years Working As Executive Engineer Cum Member Secretary, Project Implementation Unit No. 9, Chhattisgarh Rural Road Development Agency, Kusmi, Ambikapur (Chhattisgarh)

---- Respondents

For Petitioner	Shri Rahul Jha, Advocate
For Respondent/State	Shri Shashank Thakur, GA

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

30/11/2015

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. The petitioner has called in question the demand notice issued by the Tahsildar, Ambikapur pursuant to the RRC issued by the State of Chhattisgarh acting through the Executive Engineer cum Member Secretary, Project Implementation Unit No.11, Chhattisgarh Rural Road Development Agency, Kusmi, Ambikapur. The petitioner was awarded

contract for construction of rural roads under the Scheme of Pradhan Mantri Gram Sadak Yojna (PMGSY) for Package No.CG16-109, for which an agreement bearing No.009/PIU-9/2008-09 was signed between the parties and work order was issued on 03.10.2008. In course of execution of the said contract, a dispute has arisen between the parties with regard to delayed execution and the contract was eventually cancelled.

3. It is argued that the matter has already been referred for arbitration by the Arbitration Tribunal, therefore, in view of the order passed by the Division Bench in WPC No.2205/2012, the recovery cannot proceed.
4. In WPC No.2205/2012, the following has been held by the Division Bench in para 5:-
 5. “In a situation like the one emerging from the record of the case, in our opinion, so long as the dispute is not finally adjudicated by means of arbitration in terms of Clause 24/25 of the contract, and then by the Tribunal, as mentioned in Clause 24/25, in accordance with law, and the liability of the parties is not finally ascertained in term of money in the form of passing an award as to who is liable and if so to what extent, no party to the contract has any right to recover any money against each other only by raising a demand.”
5. In the present case also, there is no dispute about the fact that an arbitration dispute is pending between the parties before the Arbitration Tribunal, therefore, the issuance of demand notice is not at all justified.
6. In view of the above, the writ petition is disposed of with a direction that till the arbitration dispute is not finalized, the recovery of the amount mentioned in the demand notice shall remain in abeyance.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA