

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Civil) No. 1944 of 2015**

M/s National Construction Co., A partnership firm registered under the Indian Partnerships Act, 1932, having its registered office at Harsh Plaza First Floor Opp Mandavi Octroi College Road Bhuj Kutchh-370001, (Gujrat)

---- Petitioner**Versus**

1. South Eastern Coalfields Ltd. A company registered under the Companies Act 1956 having its registered office at SECL Bhawan, Seepat Road, Bilaspur District Bilaspur (CG) Through its Chariman-cum-Managing Director.
2. General Manager (Contract Management Cell) SECL Bilaspur SECL Bhawan Seepat Road, Bilaspur District Bilaspur (CG)
3. Area General Manager, office of the General Manager, Kusmunda Area, Korba, District Korba (CG)
4. General Manager (Operations) office of the General Manager Kusmunda Area, Korba District Korba (CG)

---- Respondents

For Petitioner	:	Shri Prafull N. Bharat and Shri Bhaskar Payashi, Advocates.
For Respondents	:	Shri Vaibhav Shukla, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****03/11/2015**

1. Heard Learned Counsel for the Petitioner and the Respondents.
2. The Petitioner, a registered partnership firm submitted bids in response to Notice Inviting Tender No.594 dated 09.12.2013 for execution of certain works. Its offer having been found to be best suited was accepted and works awarded.
3. Learned Counsel for the Petitioner submits that it commenced works on 22.08.2014 but was severely hampered in expeditious progress of the works

because of reasons attributable to the Respondents, who despite requests did not take measurements or prepare monthly running account bills affecting the financial condition of the Petitioner which in turn reflected in its inability to speeden up the works as would have been otherwise possible. Ultimately, the works had to be stopped. Notices were issued to it, the Petitioner re-commenced works with all its handicaps but still measurements were not taken in time leading to non-preparation of running account bills affecting performance. Earlier, when a show cause notice was issued on 21.04.2015 for non-performance, this Court in Writ Petition (C) No.773 of 2015 opined that the writ application was premature until a final decision is taken and all possibilities remain open till then. The authorities have not passed any final order but issued a new Notice Inviting Tender on 30.09.2015 impliedly terminating the Petitioner's contract. The entire fault was of the Respondents for not taking measurements in time contrary to the terms of the contract as contained in Clauses-5 and 8 of the terms of the agreement. It is evident from their own letter dated 24.04.2015 that measurements were taken belatedly only after the Petitioner raised protest and approached this Court seeking relief. The Respondents are now seeking to illegally deny payments with regard to works done invoking penalty clause when works were delayed essentially due to the fault of the Respondents.

4. Learned Counsel for the Respondents opposing the writ application submitted that it raises disputed questions of fact with regard to who may have been at fault for non-measurements in time and preparation of running account bills was delayed due to whose conduct. There is no challenge to the fresh Notice Inviting Tender. The writ petition is not maintainable in a contractual relationship when disputed questions of fact requiring evidence arise for consideration. The Respondents on 18.5.2015 have already informed the Petitioner that due to delay in works, it was liable for penalty considering which excess payments have been made. The communication further states that

despite the intimation, Petitioner did not depute its authorised representative for measurements to facilitate payments.

5. We have considered the submissions on behalf of the parties and are satisfied that the writ petition is not maintainable.

6. The relationship between the parties is contractual. Clause-12 of the agreement contains a procedure for settlement of disputes. The Petitioner therefore had an effective remedy under the contract itself which has not been availed by it. It is a disputed question of fact based on the pleadings in the writ petition itself read along with the documents of the Respondents filed on behalf of the Petitioner as to who may have been at fault in measurements and preparation of running account bills and for what reasons the works were delayed. This will also require taking of evidence and recording of statements etc. All of which cannot be done in the writ jurisdiction. It is settled law that if disputed questions of facts are involved arising out of contractual relationship, jurisdiction under Article 226 cannot be invoked and the remedy lies appropriately under the dispute resolution clause or a civil suit as the case may be or any other remedy that may be available.

7. The writ petition is essentially seeking to now raise a money claim in absence of any challenge to the fresh Notice Inviting Tender published by the Respondents on 30.09.2015. A disputed money claim cannot be entertained in a writ petition.

8. We therefore find no merit in the writ petition insofar as jurisdiction under Article 226 is concerned arising out of a contractual relationship. This order cannot be construed or observed as any opinion or observation on merits or demerits with regard to the claims of the Petitioner which all remain open for it to pursue appropriately before an appropriate forum as it may be advised.

9. At this stage, Learned Counsel for the Petitioner submits that it shall be moving under clause-12 of the agreement. Considering that it is a commercial matter with financial stakes involved for both the sides, it is expected that any such application shall be processed expeditiously in accordance with law and disposed at the earliest, provided the Petitioner itself cooperates.

10. The writ petition is dismissed with the aforesaid observations.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE