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HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (C) No.21 of 2015**

KMC Constructions Limited, A Company Duly Incorporated under the relevant Provisions of the Companies Act, 1956, having its registered Office at Survey Nos. 37 and 40. Shilpa Homes, Near NASR School Hightech City, Hyderabad-32 (Andhra Pradesh) Through its Duly Authorized Representative Shri Venna Yugandha Reddy. Aged 40 Years. S/O Shri V.A.Ramireddy, R/O M-4, Greenland Vishal Nagar, Raipur (Chhattisgarh)

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through Secretary, Public Works Department Mahanadi Bhawan, New Raipur, Distt Raipur, C.G.
2. Project Director PIU. ADB Project, Office of the Engineer-In-Chief Public Works Department, Sirpur Bhawan, Civil Lines, Raipur.
3. Executive Engineer, Public Works Department, Division-3, Raipur.

---- **Respondents**

For Petitioner	:	Mr.Sourabh Dangi, Advocate
For Respondents/State	:	Mr.B.Gopakumar, Deputy Advocate General

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

Order On Board**Per Navin Sinha, Chief Justice****29/06/2015**

1. We have heard Learned Counsel for the Petitioner and the Respondents.
2. In this writ application filed on 7.1.2015, the Petitioner assails orders dated 25.2.2012, 29.5.2012 and 13.7.2012, directing recovery of Rs. 18,02,69,497/- from it as penalty under the contract executed between the

parties with regard to the Chhattisgarh State Roads Section Development Project.

3. Learned Counsel for the Petitioner submits the contract was awarded to it on 17.12.2007. The works were completed by it on 17.1.2011 and handed over to the Consultant on 31.1.2011. The recovery as penalty was sought to be made illegally more than a year later. The Petitioner approached the District Judge, Raipur, under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the 1996 Act,') for interim relief pending resolution of the dispute by Arbitration as provided in the contract agreement. The District Judge on 29.4.2013 after hearing the parties passed a consent order for resolution of the dispute by Arbitration and further restrained recovery of bank guarantee for Rs.3,93,05,743/- till such time requiring the Petitioner to keep the Bank guarantee alive till then. It being a consent order the Respondents could not have and did not challenge the order dated 29.4.2013 which therefore attained finality inter parties. The Respondents illegally took the stand suo-moto subsequently that the order was erroneous as the 1996 Act would not apply and the correct law applicable would be the Chhattisgarh Madhysham Adhikaran Adhiniyam, 1983 (hereinafter referred to as 'the 1983 Act'). Repeated renewal of the Bank guarantee has become onerous because of revised financial requirements now.
4. In the present proceedings also the Respondents have filed a false counter affidavit with intent to mislead the Court by submitting that the recovery was effected after show cause notice. After the Court asked them to place evidence in support of the same, an apology has been sought for the false statement. Relying on W.P. (C) No. 1285 of 2014 it was submitted that recovery without adjudication of the liability was unsustainable and the petitioner was entitled to be returned his money

without prejudice to the rights of the parties to pursue the matter with regard to Arbitration under order dated 29.4.2013.

5. Learned Deputy Advocate General for the State opposing the writ petition submitted that before the order dated 29.4.2013 was passed, recovery had already been made. The Petitioner did not question the recovery before the District Judge and confined his relief only to the bank guarantee which alone was restrained to be recovered. The Respondents do not deny Arbitration but only contend that it was required to be considered by the Arbitration Tribunal under the 1983 Act and not under the 1996 Act. The Petitioner ought to have moved the State Tribunal or alternatively filed appropriate application under Section 11 of the 1996 Act. The writ petition is fit to be dismissed.
6. We have considered the submissions made on behalf of the parties.
7. If recovery of penalty had already been made before the consent order was passed by the District Judge on 29.4.2013, and it was not an issue before him, it is not permissible for the Petitioner to indirectly agitate the same in this writ petition filed nearly three years later. It can safely be concluded that the Petitioner may have been sanguine that he could raise the issue in the ensuing Arbitration agreed between the parties. The Petitioner has also acted upon the order of the District Judge by renewing the Bank guarantee periodically. If the consent order was not being complied the Petitioner ought to have pursued his remedies appropriately but cannot re-open the recovery in collateral proceedings.
8. At the same time we are constrained to observe that the conduct of the Respondents as a government body has been far from fair. The government, even in a commercial matter has the right to protect its commercial interests, nonetheless it has to act within the bounds of Article

14 of the Constitution. The government cannot behave whimsically like a private litigant in adversarial litigation. The duty of the Respondent is to assist the Court in dispensation of justice. A private litigant also cannot urge that an order passed by a Court not to its liking would not be complied with because it was of another opinion, even if it was a consent order. The position is far worse for the Respondents who have the sacred duty under the Constitution to assist the Court, declining to abide by the order of the District Judge. If it were to be countenanced the entire Constitutional fabric would be run asunder. If that were not enough, the Respondents by filing a false counter affidavit that the recovery was made after a show cause notice have committed criminal contempt and were liable to be proceeded with. The apology is lip service and not sincere. We were inclined to proceed against the Respondents by initiating criminal contempt proceedings but refrain from doing so in the pious hope that they shall realize their folly and will be careful in future. The question whether 1996 Act would apply or 1983 Act would apply may be debatable issue but it is not open for a litigant to refuse to comply an order passed by a competent Court merely because it may be of a different opinion with regard to the correctness of the same. We do not approve the conduct of the respondents and are constrained to deprecate the same.

9. In conclusion, we are not inclined to entertain any objection with regard to the recoveries already made in 2012 as being in violation of principles of natural justice. W.P.(C) No.1285/2014 sought to be relied upon has no application to the facts of the case. The Respondents are bound to comply with the order dated 29.4.2013 unless it is interfered with, modified, varied or set aside by a competent Court. Mandamus is issued for compliance with the same within one month. The condition incorporated in the order dated 29.4.2013 continues to bind the Petitioner likewise and if the Petitioner breaches the same, the Respondents would

be under no obligation to act under the same.

10. The writ petition stands disposed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

B/-