

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 300 of 2015**

M/s Ashok Kumar Mittal A-5 Class Contractor, Korba, A Proprietorship Firm, Through: Its Proprietor Namely Ashok Kumar Mittal, S/o Late P.L. Mittal, Aged About 49 Years, R/o Main Road, Korba, Police Station And Post Korba, Civil And Revenue District Korba, C.G.

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

1. State Of Chhattisgarh through Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur, C.G.
2. Chief Engineer, Minimata (Hasdeo), Bango Project, Bilaspur, District Bilaspur, C.G.
3. Superintending Engineer Kelo Project, Dam Circle, Kharsia, District Raigarh, Cg
4. Executive Engineer, Minimata Bango Canal Division-6, Sakti, District Janjgir Champa, Cg
5. Engineer-In-Chief Water Resources Department, Civil Lines, Raipur, District Raipur, Cg

---- **Respondents****And****Writ Petition (C) No. 305 Of 2015**

M/s Ashok Kumar Mittal A - 5 Class Constractor Korba A Proprietorship Firm Throug Its Proprietor Namely Ashok Kumar Mittal S/o Late P.L. Mittal Age 49 Years, R/o Main Road, Korba Police Station And Post Korba Civil & Revenue District Korba (C.G.)

---- **Petitioner****Vs**

1. State Of Chhattisgarh & Ors S/o Through Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (C.G.)
2. Chief Engineer, Minimata (Hasdeo), Bango Project, Bilaspur District Bilaspur (C.G.)
3. Superintending Engineer Kelo Project, Dam Circle, Kharsia, District Raigarh (C.G.)

4. Executive Engineer, Minimata Bango, Canal Division -6, Sakti, District Janjgir Champa (C.G.)
5. Engineer In Chief Water Resources Department Civil Lines Raipur District Raipur (C.G.)

---- Respondents

For Petitioner:-

Shri Manoj Paranjpe, Advocate.

For Respondents/State:-

Shri UNS Deo, Govt. Advocate.

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

Order On Board

Per Navin Sinha, Chief Justice

19/08/2015

1. The facts being primarily identical, and the questions involved for consideration being common, both the Writ Petitions have been heard together and are being disposed by a common order. The facts will primarily be taken from Writ Petition (C) No.300 of 2015.

2. The Petitioner assails orders dated 10.9.2014, 12.9.2014 and 14.10.2014. By the impugned orders, the earlier direction dated 3.5.2011 for recovery of Rs.83,077/- from the Appellant has been reiterated opining that the contract was terminated under the debitable clause.

3. The Petitioner was awarded certain construction works under Notice Inviting Tender dated 9.8.2007. At this stage, we are not concerned with any recommendations that may have been made for foreclosure of the contract on any grounds mentioned by the concerned.

4. Suffice it to notice that against the order dated 3.5.2011, disputing the contention of the Respondents relying upon the recommendations for foreclosure, the Petitioner invoked Clause 4.47.1 of the contract by writing to the Superintending Engineer on 24.6.2011. The Superintending Engineer

was required to give an opportunity of being heard and then pass a written order. The remedy for the aggrieved lay by asking for arbitration within a specified time failing which, the order of the Superintending Engineer was to attain finality. In the event of arbitration, the order of Chief Engineer was held to be conclusive and binding.

5. When the Respondents did not pay heed to his request, the Petitioner approached the District and Sessions Judge, Janjgir in Miscellaneous Case No.13/11 under Section 9 of the Arbitration and Conciliation Act, 1996. The District and Sessions Judge after hearing the parties, by order dated 26.7.2011, restrained the Respondents from effecting any recovery pursuant to the order dated 3.5.2011 till the dispute was not resolved in terms of the dispute resolution clause in the contract, simultaneously granting liberty to the Respondents to move for clarification/modification of the order, if required.

6. The counter affidavit of the Respondents does not dispute that the order of District and Sessions Judge has attained finality and has not been questioned by them. The specific assertion of the Petitioner in this regard in sub para 5 of Paragraph-8 of the Writ Petition has not been dealt with at all by the Respondents in their counter affidavit at Paragraph-20.

7. If the impugned orders are a sequel to the order dated 3.5.2011, and the operation of the latter has been stayed by the District and Sessions Judge, it is apparent that the impugned orders automatically go in abeyance and are not enforceable at this stage unless and until the order of the District and Sessions Judge dated 26.7.2011 is appropriately, varied, modified or recalled on an application by the Respondents.

8. The Writ Petition is therefore disposed in the aforesaid terms but without prejudice to the rights of the Respondents to either have the matter resolved through arbitration under Clause 4.47.1 or by seeking modification of

order dated 26.7.2011 or availing such other appropriate remedies as may be available to them under law.

9. The Writ Petitions are allowed.

Sd/-
(Navin Shiha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Priya