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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 540 of 2016

M/s Laxmi Civil Engineering Service Pvt. Ltd. Registered Office At B 3, Vardana Co. Opp. Housing Society, Panchsheel Square Ramdaspath, Nagpur 10 Maharastra Through Its Power Of Attorney Holder Mohd. Javed Raza, S/o Zahir Hussain, Aged About 38 Years, R/o Near S.B.I. Bank, Mandi, Road, Ward No.9, Belha, District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Public Works Department, Mahandi Bhawan, Naya Raipur, Raipur Chhattisgarh
2. The Engineer In Chief, Public Works Department, Sirpur Bhawan, Raipur Chhattisgarh
3. Superintendent Engineer, Public Works Department Bilaspur Circle Bilaspur Chhattisgarh
4. Chief Engineer, Public Works Department Bilaspur Chhattisgarh
5. Executive Engineer, Public Works Department Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Shri Mateen Siddiqui, Advocate
For Respondents/State	:	Shri Ramakant Mishra, Dy.A.G.

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

01/03/2016

Heard.

1. The petitioner has approached this Court aggrieved by order dated 29.7.2015 (Annexure P-1) and rejection of appeal vide order dated 19.10.2015

(Annexure P-2).

2. Learned counsel for the petitioner submits that though the period of works contract has been extended, an order has been passed by the Superintendent Engineer for recovery of damages without there being any material to show that the petitioner was responsible for non-completion of work within the stipulated time. It is argued that on the contrary, all the recommendations show that reason for non-completion of the work within stipulated time is not attributable to the petitioner. The petitioner preferred appeal before the Chief Engineer which has been rejected vide order dated 19.10.2015 on the ground that the order of Superintendent Engineer is final, whereas the Chief Engineer is the appellate authority.
3. On the other hand, learned counsel for the respondents submits that present is a contractual matter and involves several factual dispute. The petitioner has further remedy of taking recourse to arbitration proceedings before the Arbitration Tribunal. Without taking recourse to alternative remedy, the petitioner has rushed to file this petition before the Court.
4. Ordinarily, in the matter of contractual dispute where there is an arbitration clause in the agreement, this Court is not inclined to interfere and leave the parties to work out their remedy as per the arbitration clause. However, in the present case, it is found that petitioner's appeal has been rejected by the Chief Engineer by stating that the order of Superintendent Engineer is final. As per Clause-28 of the Arbitration Clause of the agreement, it has been clearly provided that where the party is aggrieved by the order of Superintending Engineer, he may prefer an appeal to the Chief Engineer, who shall afford an opportunity to the parties of being heard and to offer evidence in support of the appeal and the Chief Engineer shall give his decision. This clearly shows that the Chief Engineer has to act as an appellate authority to examine the grounds of appeal and to give verdict as an appellate authority.
5. In the present case, the appellate authority/Chief Engineer has completely abdicated its function as appellate authority. Curiously enough, it has been stated that the order of the Superintending Engineer has become final. This is clearly perverse. There is no consideration of appeal at all. In view of the

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above, I am inclined to set aside order dated 19.10.2015 of the Chief Engineer. The Chief Engineer is directed to consider petitioner's appeal as per the provisions contained in Clause -28 of the agreement and take a decision thereon.

6. The petition is accordingly partly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen