

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No. 81 of 2016**

M/s Harsh Construction Company (A registered partnership firm) having its Registered Office near Sanjay Park, Ambikapur, District Surguja, Chhattisgarh through its Managing Partner Santosh Kumar Singh, S/o Late Shri Mahatam Singh, aged about 45 years, R/o in front of Sanjay Park, Ambikapur, Civil & Revenue District Surguja (Chhattisgarh) PIN 497001

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

1. State of Chhattisgarh through Secretary Public Works Department, Govt. of Chhattisgarh, Mantralaya Mahanadi Gate, Naya Raipur Capital Complex, Head Post Office Raipur, Tahsil Raipur, Civil & Revenue District Raipur (Chhattisgarh) Pin 492001
2. Engineer-In-Chief, Public Works Department, Govt. of Chhattisgarh, Sirpur Bhawan, Head Post Office Raipur, Tahsil Raipur, Civil & Revenue District Raipur (Chhattisgarh), Pin 492001
3. Chief Engineer, Public Works Department, Ambikapur Zone, Tahsil Ambikapur, Civil & Revenue District Surguja at Ambikapur, Chhattisgarh, Pin 497001
4. Superintending Engineer, Public Works Department, Ambikapur, Civil & Revenue District Surguja at Ambikapur, Chhattisgarh, Pin 497001.
5. Executive Engineer, Public Works Department B & R Division Jashpur, Jashpur, Civil & Revenue District, Jashpur, Chhattisgarh, Pin 496331

---- **Respondents****Review Petition No. 83 of 2016**

M/s Harsh Construction Company (A Partnership Firm) through its partner Santosh Kumar Singh, S/o Late Shri Mahatam Singh, aged about 45 years, R/o in front of Sanjay Park, Ambikapur, Police Station and Post Ambikapur, Civil & Revenue District Surguja (Chhattisgarh)

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

1. State of Chhattisgarh through Secretary Public Works Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh)
2. Chief Engineer, Public Works Department, Zone Ambikapur, District Surguja (Chhattisgarh)
3. Superintending Engineer, Public Works Department Ambikapur Circle, Ambikapur, District Surguja (Chhattisgarh)
4. Executive Engineer, Public Works Department, (B & R) Jashpur Division, Jashpur, District Jashpur (Chhattisgarh)
5. Engineer in Chief, Public Works Department, Sirpur Bhawan, Raipur, District Raipur (Chhattisgarh)

---- **Respondents**

For Petitioner	:	Shri Raj Kamal Singh, Advocate
For Respondents/State	:	Shri B. Gopa Kumar, Dy. Advocate General

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy
Order on Board

Per Deepak Gupta, Chief Justice

27/07/2016

Both these petitions are being disposed of by a common order since the petitioner is same and the factual matrix is also identical.

2. It is not disputed that the petitioner was awarded contract for widening of new B.T Jashpur-Sanna Road from 32 to 53 Kilometers. This contract was terminated vide order dated 15.05.2015. The petitioner challenged the termination of this contract on various grounds. This Court in W.P.(C) No.1076/2015 held that judicial review in contract matters cannot be invoked when disputed facts are involved in the case and therefore, disposed of the petition holding that the petitioner may seek other relief available to him under the law.

3. Thereafter, the State floated fresh tender for the balance of work in question which had not being performed by the petitioner. The petitioner filed W.P.(C) 592 of 2016 challenging the issuance of fresh N.I.T. and this was rejected mainly on the ground that the second petition was not maintainable in view of the fact that the earlier petition with regard to termination had been rejected, and hence, the petitioner had no right to claim that the fresh tender should not be floated.

4. Now, the petitioner has filed the review petitions and in both the petitions, the main ground is that as per the Rules if a contract has to be

cancelled or rescinded, the approval of the sanctioning authority is required. In this case the State is the sanctioning authority and since the approval has not been taken from the State, the termination order is per se illegal. However, this ground was not taken in the first writ petition.

5. According to the counsel for the petitioner, this ground was not available to the petitioner on the earlier occasion as he was not aware whether the termination of the contract had been passed by the sanctioning authority or not. It is further stated that this ground had been taken in W.P.(C) No. 592/16. However, in the judgment passed in W.P.(C) No. 592/16 we find no reference to that submission. Be that as it may, it is admitted that in the first petition i.e. W.P(C) No. 1076 of 2015 this ground was not taken.

6. We had asked the learned counsel for the petitioner to support his contention with reference to case law. He cited the case of Shivdeo Singh and others v. State of Punjab reported in AIR 1963 SC 1909 which only lays down that the power of review is to be exercised in writ jurisdiction. There can be no quarrel with this legal proposition. Reliance is also placed on (1979) 4 SCC 389 in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma and Others specially the following observations:

“The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made.”

7. It is admitted fact that the petitioner is a A-Class contractor. He is engaged in a large number of contract works. We presume that he was aware of the Rules that approval of the higher authorities is required before termination of a contract. He did not raise this point in the first petition. The only explanation is that he presumed that the action would be taken in

accordance with law. We find that there is total lack of due diligence. Now, the petitioner through RTI has got the information but there is nothing which prevented him from applying for the said information before filing of the earlier petition. He could have taken this ground in the earlier petition by stating that he was not sure that the permission is granted or not. Thus, we cannot reopen and decide the case on the basis of new evidence adduced which could have collected easily before the earlier petition was disposed of. We therefore, find no merit in the review petitions. Accordingly, both the review petitions stand dismissed.

8. It is made clear that this Court at no stage has gone into the merits of the validity of the order terminating the contract and the writ petitions were rejected only on the ground that the disputed question of facts were involved. Therefore, it is made clear that the petitioner shall be at liberty to claim that the order of termination is invalid in any other appropriate proceedings.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE