

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2607 of 2016

- M/s J. P. Construction Through: Proprietor Jagannath Pathak, S/o Late Shri Bahoran Pathak, Aged About 50 Years, R/o Near Old Co-Operative Bank, Rahasbeda, Post Champa, Police Station Champa, District Janjgir Champa (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Public Works Department, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)
2. The Superintending Engineer, Public Works Department, Division No. 1 District Raipur (Chhattisgarh)
3. The Executive Engineer, Public Works Department, Division No. 2, District Raipur (Chhattisgarh)
4. Sub Divisional Officer, Public Works Department, Sub Division No. 2, Medical College Campus, Raipur, District Raipur (Chhattisgarh)

---- Respondents

For Petitioner	Shri Vinay Pandey, Advocate
For Respondent-State	Shri Vinod Deshmukh, Dy. GA

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

27/10/2016

1. The petitioner was awarded contract for upgradation of Ophthalmology Department in second floor at Dr. Bhim Rao Ambedkar Memorial Hospital, Raipur. Due to alleged non completion of work within the contract period, final show cause notice under Clause 3 & 38 of the agreement has been issued to the petitioner vide Annexure-P-1, which is under challenge in this writ petition.
2. Clause 28 of the agreement reads thus:-

“Clause 28 : Except as otherwise provided in this contract all question and dispute relating to the meaning of the specification, designs, drawings and instruction herein before mentioned as to thing whatsoever in any way arising out of or relating to the contract designs, drawings, specification, estimate, concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or a after the abandonment there of shall be referred to the Superintending Engineer for his decision, within a period of 30 (thirty) days of such an occurrence (s). There upon the Superintending Engineer shall give his written instructions and/or decisions, after hearing the contractor and Executive Engineer within a period of 15 (fifteen) days of such request. This period can be extended by mutual consent of parties.

Upon receipt of written instructions or decision, of Superintending Engineer the parties shall promptly proceed without delay to comply such instructions or decisions. If the Superintending Engineer fails to give his instruction or decisions in writing within a period of 15 (fifteen) days or mutually agreed time after being requested and/or, if the party (es) is/are aggrieved against the decision of the Superintending Engineer, the aggrieved party may within 30 days 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 his appeal. The Chief Engineer will give his decision within 30 (thirty) days, or such, mutually agreed period.

If any party is not satisfied with the decision of the Chief Engineer he can file the petition for resolving the dispute through arbitration in the arbitration tribunal.

A reference to Arbitration Tribunal shall be no ground for not continuing the work on the part of the Contractor. Payment as per original terms and condition of the agreement shall be continued by the Executive Engineer in accordance with clause 8 above.”

3. Learned counsel for the petitioner would submit that the petitioner has moved a representation before the Superintending Engineer in terms of Clause 28 above, which has not yet been decided, therefore, the present petition has been preferred.
4. A reading of the entire Clause 28 would indicate that if the Superintending Engineer fails to give his instructions or decision on the reference made by any of the party, the aggrieved party may within 30 days 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 his appeal and the Chief Engineer shall decide the matter within 30 days or within such mutually agreed period.

5. Since the Superintending Engineer has not taken its decision in the matter, the petitioner may move before the Chief Engineer within 15 days from today and thereafter the Chief Engineer shall decide the matter after affording opportunity of hearing including opportunity of personal hearing to the petitioner.
6. In the event, the decision rendered by the Chief Engineer is adverse to the interest of the petitioner, it may invoke the jurisdiction before the Arbitration Tribunal in terms of Clause 28.
7. The writ petition stands disposed of.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala