

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 4 OF 2016

M/s Sun Infrastructures, a partnership firm having its registered office at Flat No. 204, Sai Sharan, near Sai Mangalam, Vyapar Vihar, Bilaspur, through its partner Saurav Agrawal, S/o Balmukund Jajodiya, aged about 27 years, R/o Flat No. 204, Sai Sharan, near Sai Managalam, Vyapar Vihar, P.S. Tarbahar, Bilaspur, District Bilaspur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Urban Administration and Development, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur (C.G.)
2. The Municipal Council, Mungeli, through its Chief Municipal Officer, Municipal Council Mungeli, District Mungeli (C.G.)
3. The Chief Municipal Officer, Municipal Council Mungeli, District Mungeli (C.G.)

... Respondents

For Petitioner	:	Mr. Ashish Surana, Advocate.
For Respondent 1	:	Mr. U.N.S. Deo, Government Advocate.
For Respondents 2 & 3	:	Mr. B.L. Sahu, Advocate, under instructions of Mr. A.S. Kachhawaha, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

06/01/2016

1. The Petitioner is aggrieved by order dated 10.9.2014 cancelling the contract awarded to it for construction of the Mungeli-Nandghat CC road.
2. Learned Counsel for the Petitioner submits that the works were completed on 28.4.2014. Work Completion Certificate was issued on 6.5.2014. After issuance of the Work Completion Certificate, the Petitioner submitted the final bill on 26.5.2014. The question of any cancellation of the contract after the works had been completed and the final bill submitted, does not arise and makes the impugned order arbitrary on the face of it. Aggrieved by the impugned order, the

Petitioner had bonafide preferred an appeal under Section 307 of the Chhattisgarh Municipalities Act. The rejection on grounds of its non-maintainability was communicated on 7.9.2015. The Petitioner had represented on 8.10.2014 and 17.6.2015. When no heed has been paid to the same also, the writ petition has been filed.

3. Referring to the representations, it is submitted that on 8.10.2014 the Petitioner had written to the Municipal Corporation invoking Arbitration Clause 28 of the contract for resolving the dispute. Likewise, in the representation dated 17.6.2015, the Petitioner had referred to the four notices issued to him as mentioned in the impugned order also. He again requested for resolution of the dispute through arbitration. There was thus no delay in filing of the writ petition.

4. We have heard the Counsel for the Respondents also.

5. In commercial matters with regard to award and cancellation of contracts especially if there is a cost liability clause, there is always an urgency. In exercise of jurisdiction for judicial review under Article 226 of the Constitution, we are not inclined to entertain this writ petition two years three months after the termination. If despite the availability of Clause 28 for arbitration under the agreement instead of invoking the same, the Petitioner opted to prefer an incompetent appeal before the Municipal Corporation, we do not consider it as sufficient explanation for the delay. The representation of the Petitioner dated 8.10.2014, soon after the issuance of the impugned order explicitly states that he was invoking the arbitration clause. If the Respondents were not paying heed, the Petitioner ought to have pursued his remedies in accordance with law with regard to the same.

6. We have also gone through the representations dated 8.10.2014 and 17.6.2015. The sheet-anchor of the writ petition is the Work

Completion Certificate stated to have issued on 6.5.2014. Surprisingly, both the representations do not make any reference to the same except for a bald statement that the works had been completed. The impugned order refers to four notices/letters issued to the Petitioner before the impugned order was passed. Except for referring to the same in his representation dated 17.6.2015, the Petitioner is completely silent in the pleadings of the writ petition as to what these notices were and how they were either correct or incorrect. The writ petition is further silent with regard to developments that may have taken place after passing of the cancellation order two years and three months back.

7. The jurisdiction of this Court under Article 226 of the Constitution in contractual matters is limited. Disputed questions of facts as to whether the works had been completed in time or extended time, as the case may be, whether the Work Completion Certificate was issued or not, if it was issued by the competent authority, cannot be examined in the writ jurisdiction as they are all questions of facts which require determination not purely by documentary evidence which is also lacking, but may also require oral evidence.

8. We find no merit in the writ petition. It is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge