

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WRIT PETITION (C) NO. 1641 OF 2015**

M/s Harjasrai Varialdas, Head Office, 14 Panchsheel Nagar, Raipur (C.G.), through its Partner Shri Prakash Jadwani, S/o Shri Harjasrai Jadwani, aged about 53 years, R/o 14 Panchsheel Nagar, Raipur (C.G.), Police Station City Kotwali, Post Office- Main Post Office, Raipur (C.G.)

**... Petitioner**

**Versus**

1. State of Chhattisgarh, through the Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)
2. The Engineer-in-Chief, Public Works Department, Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)
3. The Executive Engineer, Public Works Department, Bridge Construction Division, Ambikapur (C.G.)
4. The Superintendent Engineer, Public Works Department, Bridge Construction Division, Ambikapur (C.G.)
5. The Chief Engineer, Public Works Department, Bridge Construction Division, Raipur (C.G.)
6. The Executive Engineer, Public Works Department, Bridge Construction Division, Raipur (C.G.)
7. Chief Manager, Bank of India, Raipur Branch, Samvet Shikhar Building, Near Ekatma Parisar, Rajbandha Maidan, Raipur (C.G.)

**... Respondents**

---

|                        |   |                                              |
|------------------------|---|----------------------------------------------|
| For Petitioner         | : | Ms. Meha Kumar, Advocate.                    |
| For Respondents 1 to 6 | : | Mr. A.S. Kachhawaha, Addl. Advocate General. |
| For Respondent 7       | : | Mr. Anand Shukla, Advocate.                  |

---

**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**09/12/2016**

1. Challenge in the present writ petition is to the order of recovery dated 28.8.2015 (Annexure P-1), whereby the Respondents have proceeded to encash the bank guarantee for an amount of Rs.13,60,000/- with a further direction that the remaining amount of Rs.4,39,000/- should be deposited by a demand draft/cheque within a period of seven days.

2. Counsel for the Petitioner submits that this is the second round of litigation. Earlier, the said impugned order was challenged in Writ Petition (C) No. 1155 of 2013 and the Division Bench of this High Court on 24.11.2014 while dismissing the case held as under :

“6. Even though Clause 2.26 had not been specifically brought to the attention of the Court, nonetheless the discussion in the paragraph extracted above adequately deals with the submissions urged on behalf of the Respondents including Clause 2.26. The conclusion was arrived at after referring to *2005 (4) M.P.h.T. 15 CG (A.K. Construction Company v. The State of M.P.)* that recovery under a contract with regard to which there was no dispute. The Respondents always have the power to recover the same as arrears of land revenue if they so opine.

7. In conclusion, we are unable to sustain the action of the Respondents in recovering the sum of Rs. 17,99,358/- under Agreement No.10/DL of 2010-11 from the dues payable under Agreement No.16/DL of 2012-13. The recovery is held to be illegal and the Respondents are directed to refund the amount of the Petitioner within a maximum period of four weeks from the date of receipt and/or production of certified copy of this order.”

3. Counsel for the Petitioner submits that they had made a representation and it is still pending and even before the said representation could be decided, the respondent authorities have now issued the impugned order dated 31.8.2015 ordering for the recovery from the Petitioner an amount of Rs.17,99,358/- and of which Rs.13,60,000/- is lying with the Respondents as bank guarantee and a further notice was also issued for depositing the balance amount of Rs.4,39,000/-.

4. According to the Counsel for the Petitioner, this action on the part of the Respondent is totally arbitrary and illegal as the Petitioner has not been given an opportunity of satisfying the authorities on the said issue whether the amount is recoverable or not. Further, in the light of the Division Bench order they ought to have granted an opportunity to the Petitioner before passing the impugned orders.

5. Counsel for the Petitioner relies upon the order passed by the Coordinate Bench of this Court in Writ Petition (C) No. 1674 of 2015 (*M/s Gordhandas Gobindram v. State of Chhattisgarh & Others*) which was disposed of on 9.10.2015 wherein the similar order of recovery imposed upon the similar contractors was set aside by the learned Single Judge holding the same to be bad in law and which was disposed of with a direction that as long as the representation of the petitioner is pending consideration before the authorities they would not insist upon the recovery from the petitioner.

6. The Additional Advocate General appearing for the State at this juncture submits that in the light of the decision of the Coordinate Bench in the case of *M/s Gordhandas Gobindram v. State of Chhattisgarh & Others*, the present case can also be disposed of with a similar direction.

7. Counsel for the Respondent-Bank submits that the Bank in the instant case is a formal party and no reply as such is required from the bank.

8. Considering the total facts and circumstances of the case particularly, taking into consideration the order dated 24.11.2014 of the Division Bench of this Court in respect of the Petitioner in Writ Petition 1155 of 2013, and also taking assistance of the judgment passed in Writ Petition (C) No. 1674 of 2015, dated 9.10.2015, this Court has no hesitation in reaching to the conclusion that subsequent to the disposal of the first round of litigation i.e., Writ Petition No. 1155 of 2013, the Respondents did issue a notice to the Petitioner on 3.10.2015 and directed the petitioner-establishment to submit their reply and objection, if any, on 14.10.2015. Admittedly, on 14.10.2015 the Petitioner has submitted a representation/reply to the said notice. However the hearing fixed for

14.10.2015 was deferred and it was fixed on 20.10.2015 but thereafter the matter is still pending consideration and has not been finally adjudicated upon and meanwhile the respondent authorities have issued the two impugned orders.

**9.** In the light of the decision made by the Coordinate Bench in Writ Petition (C) No. 1674 of 2015 and also on the basis of the submissions that have been made by the Counsel for the Respondents, ends of justice would meet if the present two impugned orders, dated 28.8.2015 and 31.8.2015 (Annexures P-1 and P-2) are quashed for the moment and the matter is remitted back to the respondent authorities for taking a decision on the notice that they had issued on 3.10.2015 and to which the representation of the Petitioner is also pending consideration, and thereafter to initiate appropriate proceeding against the Petitioner if the situation so warrants.

**10.** With the aforesaid observation, the writ petition stands disposed of.

Sd/-  
**(P. Sam Koshy)**  
Judge