

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.2541 of 2017**

M/s P. S. Construction, through its Proprietor Manoj Kumar Sinha, S/o late Shri G. S. Sahay, aged about 49 years, R/o L-12, Sector-II, Agrasen Nagar, Ring Road No.1, Raipur, District Raipur (CG).

---- Petitioner**Versus**

The Police Housing Corporation Chhattisgarh Through The Managing Director, SIB Building, Old PHQ Civil Lines Raipur Chhattisgarh.

--- Respondent

For Petitioner :Mr. Satish Chandra Verma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

13/09/2017

(1) Heard on admission.

(2) By way of this writ petition under Article 226 of the Constitution of India, the petitioner is challenging the orders dated 19.07.2017 and 23.08.2017. By order dated 19.07.2017 (Annexure P/1A), the petitioner's agreement for construction of Multi Storey Barrack, Mana, Raipur has been terminated and by order dated 23.08.2017 (Annexure P/1) the petitioner's representation has been rejected.

(3) Learned counsel appearing for the petitioner would submit that the impugned orders are unsustainable and bad-in-law and therefore, the impugned orders are liable to be set-aside.

(4) I have heard learned counsel for the petitioner and perused

the impugned orders.

(5) A copy of the said agreement has been filed along with the present writ petition. Clause-28 of the said Agreement as Arbitration Clause states as under:-

“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 Chief Project Engineer for his decision, within a period of 30 (thirty) days of such an occurrence (s). There upon the Chief Project Engineer shall give his written instructions and/or decisions, after hearing the contractor and Project Engineer/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 decisions, of Chief Project Engineer the parties shall promptly proceed without delay to comply such instructions or decisions. If the Chief Project 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 Chief Project Engineer, the aggrieved party may within 30 days prefer an appeal to the Managing Director, who shall afford an opportunity to the parties of being heard and to offer evidence in

support of his appeal. The, Managing Director, will give his decision within 30 (thirty) days, or such, mutually agreed period.

If any party is not satisfied with the decision of the Managing Director 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 Project Engineer/Executive Engineer in accordance with clause 8 above.

(6) Thus, the dispute is contractual dispute with regard to termination of the agreement to execute the work, for which the petitioner has a remedy of invoking the Arbitration clause as per Clause 28 of the Contract Agreement entered into between the petitioner and the respondent. Thus, the dispute being contractual in nature and for redressal of which an arbitration clause is available to the petitioner to be invoked, I am therefore not inclined to entertain the instant writ petition. It is accordingly dismissed. However, it will be open for petitioner to take recourse to the law available to it.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-