

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 77 of 2017**

- M/s D. K. Construction (A Partnership Firm) Through: Its Authorised Partner: Dinesh Kumar Rao, S/o Shri Late Chandrika Rao, Aged About 44 Years, R/o Om Residency, Ring Road No.2, Bilaspur, Tahsil & District Bilaspur, (Chhattisgarh)

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

1. State of Chhattisgarh Through Its Principal Secretary, Public Works Department, Mantralaya, Naya Raipur, Capital Complex, Head Post Office Raipur, Tahsil & District Raipur, (Chhattisgarh)
2. Engineer In Chief, Public Works Department, Govt. Of Chhattisgarh, Sirpur Bhawan, Raipur, Tahsil & District Raipur, (Chhattisgarh)
3. Chief Engineer, Public Works Department, Bridge Construction Zone Raipur, Tahsil & District Raipur (Chhattisgarh)
4. Superintending Engineer, Public Works Department, Bridge Construction Circle Raigarh, Tahsil & District Raigarh (Chhattisgarh)
5. Executive Engineer, Public Works Department, Bridge Construction Division Raigarh, Tahsil & District Raigarh, (Chhattisgarh)

---- **Respondents**

For Petitioner	:	Shri Rajkamal Singh, Advocate
For Respondents-State	:	Shri Shashank Thakur, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Anil Kumar Shukla****Order On Board By****Prashant Kumar Mishra, J****23/01/2017**

1. Petitioner was awarded contract of HL Bridge i.e. approach road across Kinkari Nala on Sariya Sankara Road vide agreement No.2/DLof 2015-16 and the work order was issued on 29.05.2015. Alleging failure on the part of the petitioner to execute the work in accordance with the terms of the

contract, subject contract was canceled on 12.08.2016 and thereafter the department has proceeded to initiate fresh tender process on 23rd-September-2016.

2. In this petition, the petitioner is challenging the order dated 12.08.2016 by which the contract has been terminated with further prayer to allow the petitioner to complete subject work under the work order dated 25.09.2015.
3. Undeniably, the subject contract contains an arbitration clause which provides that before initiation of arbitration an aggrieved party to the contract may move before the Superintending Engineer for resolving the dispute, amongst others, concerning execution or failure to execute the work. The Superintending Engineer is enjoint to hear the parties and decide the dispute within 15 days, which is extendable by mutual consent of parties. Any party aggrieved with the decision of Superintending Engineer may appeal before the Chief-Engineer within a period of 30 days and the said Chief-Engineer shall give his decision within 30 days of filing of such appeal. If the party is still aggrieved with the decision of the Chief-Engineer, he can file the petition for resolving the dispute through arbitration in the arbitration tribunal.
4. The petitioner appears to have moved representation before the Chief-Engineer on 25.06.2016 with copy to the Superintending Engineer, however, he has not referred the matter to the Superintending Engineer after termination of the contract. Petitioner has thus not exhausted the internal remedy provided under Clause 28 of the agreement.
5. Without entering into the merits of the case, the writ petition is disposed of with direction that in the event, the petitioner refers the matter for decision making to the Superintending Engineer within a period of 15 days from

today, the concerned Superintending Engineer shall decide the matter in accordance with Clause 28 of the contract within a period of four weeks from the date of presentation. Depending upon the nature of decision rendered by the Superintending Engineer, the petitioner may invoke further remedy provided under Clause 28. While deciding the matter the Superintending Engineer may also provide personal hearing to the petitioner, if the petitioner so desires.

6. Till the matter is decided by the Superintending Engineer, the fresh tender may not be finalized, if not already finalized.

Sd/-

Judge
Prashant Kumar Mishra

Ashu

Sd/-

Judge
Anil Kumar Shukla