

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.3015 of 2017

(Arising out of order dated 4-10-2017 passed by the Chhattisgarh Arbitration Tribunal, Raipur in Reference Case No.16/2015)

M/s Jain Engineering Works, Indore, Through its Partner Sunil Surana, S/o Shri Vimal Chand Surana, aged about 57 years, 235, Shastri Market, M.G. Road, Indore (M.P.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Government of Chhattisgarh, Water Resources Department, Mahanadi Bhawan, Mantralaya, Naya Raipur (C.G.)
2. Executive Engineer, Water Resources Department (WRD), Kota Division, Kota, P.S. & Tahsil Kota, District Bilaspur (C.G.)
3. M/s Vineet Singh Construction Company Private Limited, Through its Director/Proprietor, Vineet Singh, S/o Shri Sudhish Singh, Registered Office at Maharana Pratap Nagar, Tifra, Tahsil & District Bilaspur (C.G.), R/o Maharana Pratap Colony, Yadunandan Nagar, Tifra, Tahsil & District Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. Sourabh Sharma, Advocate.

For Respondents No.1 and 2 / State: -

Mr. Dhiraj Kumar Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/12/2017

1. The State of Chhattisgarh awarded contract under diversion irrigation scheme to M/s. Vineet Singh Construction Company Private Limited, the private respondent No.3 herein, in 2010-2011 and the private respondent could not complete the work and eventually, the contract was terminated on 17-6-2013. On reference being made, the Superintending Engineer dismissed the appeal. Parties litigated before this Court and before the Arbitrator

and ultimately, departmental Arbitrator passed order of recovery against the State Government in favour of the private respondent against which execution proceeding is pending before the competent civil court and in between, fresh tender has been floated for balance work and present work has been awarded to the petitioner herein and agreement has been executed on 3-3-2014 and the petitioner herein had completed the work also. Meanwhile, reference under Section 7-A of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 has been filed by the State of Chhattisgarh against the private respondent in which prayer has been made to quash the order of recovery of ₹ 79,73,240/- and also the execution proceedings. In the said pending reference since 19-9-2015, on 16-5-2017, the State of Chhattisgarh filed an application that the petitioner herein be also impleaded as a party respondent in that case, as the petitioner herein had executed the balance work which could not be completed by the private respondent herein. The learned Arbitration Tribunal by its impugned order allowed the application and directed impleadment of the present petitioner as party respondent / non-applicant in the reference petition pending before the Arbitration Tribunal against which this writ petition has been preferred.

2. Learned counsel for the petitioner submits that the impugned order is unsustainable and bad in law, the petitioner is neither necessary party nor property party, as it is not party to the agreement dated 28-12-2010 entered between the State/respondents No.1 & 2 and respondent No.3 herein. Therefore, the petitioner is neither proper

party nor necessary party.

3. Learned State counsel would oppose the writ petition and would support the impugned order.
4. I have heard learned counsel for the parties and perused the impugned order and also gone through the record with utmost circumspection.
5. Undisputedly, the petitioner herein was not party to the agreement dated 28-12-2010 and also to the contract / work which was awarded by the State/respondents No.1 and 2 herein to respondent No.3 herein on 28-12-2010. In a dispute raised by the private respondent herein, award has been passed against the State amounting to recovery of an amount to the tune of ₹ 79,73,240/- which has been challenged in Reference Case No.16/2015 and which is pending consideration before Chhattisgarh Arbitration Tribunal. There is no tripartite agreement between the petitioner herein, the official respondents and the private respondent. Therefore, presence of the present petitioner is neither necessary nor proper and reference can be adjudicated effectively in absence of the present petitioner. By no stretch of imagination, the present petitioner can be said to be proper and necessary party.
6. For the foregoing reasons, the impugned order is set aside and the writ petition is allowed leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge