

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 3076 of 2017**

- M/s Vikas Agrawal Through Partner Vikas Agrawal S/o Late Omprakash Agrawal, Aged 32, R/o City Kotwali, Danipara Raigarh Tehsil And District Raigarh, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. The Engineer-In-Chief, Public Works Department, Sirpur Bhawan, Raipur, District Raipur, Chhattisgarh.
3. The Executive Engineer Bridge Division Public Works Department District Raigarh, Chhattisgarh.

---- Respondents

For Appellant : Shri K. Rohan, Advocate
 For State : Shri P.N. Bharat, Additional Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****Order On Board****Per Thottathil B. Radhakrishnan, Chief Justice****27.02.2018**

1. We have heard learned counsel for the petitioner and the learned Additional Advocate General. We have also seen the copy of the Notice Inviting Tender (NIT) in its complete form as provided by the learned counsel for the petitioner during the course of the argument.
2. The petitioner was awarded with a contract for construction of a high

level bridge across Lokra Nalla on Pelma Madiakachhar Road, pursuant to a tender dated 07.12.2015. That was cancelled through Annexure P/2 dated 21.08.2017 for the reasons stated in it. Annexure P/2 is not a non-speaking decision. In Annexure P/2 the Executive Engineer also fixed 06.09.2017 as a date on which the petitioner or his authorised representative ought to be present to have the final measurement recorded in the presence of the petitioner or representative. The petitioner did not utilise that opportunity. Thereafter, Annexure P/1-NIT was issued by the respondent on 10.10.2017 re-arranging the unfinished works. Through this writ petition presented before this Court on 10.11.2017, the petitioner challenges the issuance of Annexure P/1-NIT and also Annexure P/2 issued on 21.08.2017, canceling the previous contract.

3. Annexure P/2 was issued on 21.08.2017. Its receipt is not disputed. It contains the date on which the petitioner ought to have been present or represented for the purpose of taking measurements to finalise the value of work that would have been done by the petitioner, if at all. Even after that time, the petitioner did not seek any relief against Annexure P/2. He filed this writ petition only one month after Annexure P/1 was issued inviting tenders for re-arranging the work left undone by the petitioner.
4. In the aforesaid situation, we may recall Clause No. 1.17 of the NIT which provides a wholesome procedure for arbitration. It provides the modality of communication between the parties and procedure for having the reference made. It also says that the decision to be rendered by the Chief Engineer has to be issued in a time bound manner. With such a comprehensive arbitration clause, we do not find

our way to entertain this writ petition on any mixed up facts and law.

5. At one time, during the course of this writ petition, there was a plea that the department has not finalized actual alignment and the real structure which is required to be put up. We are not impressed to accept this submission for reasons more than one. Chapter-II of the NIT is the Detailed Notice Inviting Lumpsum Tenders. It provides, among other things, the length of bridge, the length of the approaches and the overall width, the probable amount of contract etc. When the Probable Amount of Contract (PAC) is arrived at in relation to a construction work of civil nature and invitation are for lumpsum tenders, it goes without saying that such PAC would not have been prepared and invitation of tenders for lumpsum contract would not have been extended unless the inviting authority had with it the details of the structure that has to be put up. This is invariably required to quantify the probable amount of contract (PAC) based on the probable quantum of work to be done, including materials, labour, etc. That apart, it is clearly stated in Chapter-II of the NIT that outline drawings are attached. Chapter-IV of the NIT which deals with the Design and Specifications open by saying in clause 4.1 that the General Arrangement Drawing, containing Departmental Designs, are enclosed. General Arrangement Drawings and Site Plan are stated to be enclosed. The design and specifications are to be applied and drawings have to be prepared as part of the contract. Petitioner cannot now turn round to accuse the department of not having provided such materials.
6. In the aforesaid view of the matter, without prejudice to the right of the petitioner to seek relief, if any, through arbitration, in relation to

Annexure P/2 and any amounts that may be due or other issues that arises as between the parties in relation to that contract, this writ petition is dismissed repelling the challenge levied against Annexure P/1-NIT.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge