

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (C) No. 1316 of 2018**

- M/s Patil Construction and Infrastructure Ltd. Having Its Office At 3rd Floor, PMPML Commercial Building No. 1, Pune (Through Its Authorized Signatory, Shaliwan Chandrakant Surwase), District : Pune, Maharashtra

---- Petitioner

**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Public Works, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Union Of India, Through The Secretary, Ministry Of Road Transport And Highways, Transport Bhawan No. 1, Parliament Street, New Delhi.
3. Chief Engineer (LWE) MORT & H, Transport Bhawan No. 1, Parliament Street, New Delhi.
4. The Chief Engineer, Public Works Department, Bastar Zone, Jagdalpur Chhattisgarh.
5. The Superintending Engineer, PWD (B & R), Bastar Circle, Jagdalpur (Chhattisgarh)

---- Respondents

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For Petitioner : Shri Sunil Otwani and Shri Harshwardhan,  
Advocates

For Respondent/State : Shri JK Gilda, Advocate General

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**DB: Hon'ble Shri Justice Prashant Kumar Mishra &**

**Hon'ble Shri Justice Ram Prasanna Sharma**

**Order On Board**

**Per Prashant Kumar Mishra, J**

**14.5.2018.**

1. The petitioner was awarded contract for construction of widening and up-gradation to 2 lane road in Km 0.00 to Km 70.00 of Bijapur-Awapalli-Basaguda-Jagargunda Road (SH-28) under L.W.E. Project. The petitioner is aggrieved by document (Annexure-P/12) dated 12.01.2018 whereby the contract has been

rescinded and at the same time Earnest money and Performance Security Deposit has been forfeited.

2. According to the petitioner, the contract was earlier terminated on 12.9.2017 however, by subsequent communication dated 11.10.17 the contract was revived and thereafter without there being any change in the circumstances, present impugned order has been passed on 12.01.2018 which is ex facie arbitrary and illegal.

3. Learned Advocate General would object to the maintainability of the writ petition on submission that under Clause 24 & 25 of the terms and conditions of the tender there is internal mechanism to resolve the dispute between the parties before the departmental authorities itself, therefore, the writ petition is not maintainable.

4. Countering the submission of learned Advocate General, Shri Sunil Otwarni, learned counsel for the petitioner would submit that the moment the petitioner was served with the impugned order, he moved a representation before the Chief Engineer (LWE) MORT & H on 31.01.2018 (Annexure P/13). However, the representation remained unattended and the petitioner had no option but to move before this Court under Article 226 of the Constitution of India.

5. Be that as it may, Clause 24 & 25 of the terms and conditions of the tender provides internal mechanism for dispute resolution between the parties providing that if the contractor believes that a decision taken by the Engineer was either outside

the authority given to the Engineer by the Contract or that the decision was wrongly taken, the decision shall be referred to Dispute Review Expert within 14 days of the notification of the Engineer's decision. Thereafter the Dispute Review Expert shall give a decision in writing within 28 days of receipt of the notification of a dispute.

6. In view of the above, we are of the considered opinion that the Dispute Review Expert under the contract should have taken decision on the representation preferred by the petitioner. Let this be done expeditiously.

7. At this stage, learned counsel for the petitioner would place before this Court an order passed by the Coordinate Bench in WPC No.2205/2012 (M/s. Laxmi Construction Company vs. State of Chhattisgarh & Ors.) on 18.01.2013 wherein following has been held in para 5 and 6.

“(5) In a situation like the one emerging from the record of the case, in our opinion, so long as the dispute is not finally adjudicated by means of arbitration in in terms of Clause 24/25 of the contract, and then by the Tribunal, as mentioned in Clause 24/25, in accordance with law, and the liability of the parties is not finally ascertained in term of money in the forum of passing an award as to who is liable and if so to what extent, no party to the contract has any right to recover any money against each other only by raising a demand.

(6) In the light of foregoing discussion, in our opinion, we consider it just and proper to finally dispose of this writ petition by giving liberty

to the writ petitioner as also to the respondents to invoke the procedure prescribed under clauses by submitting their dispute to the named authority to enable him to first decide the same and then approach and take necessary measures as provided therein to get their claim determined/adjudicated by the named authorities in the said clauses. Till then parties will not insist for enforcement of any of their recovery against each other.”

8. On the strength of the above order, it is prayed that till the matter is adjudicated within the terms of the contract, the respondents should not insist for enforcement of any of their recovery against each other.

9. In view of the above order passed by the Division Bench, while relegating the petitioner to pursue the matter before the Dispute Review Expert, it is directed that till the dispute is resolved, the parties will not insist for enforcement of any of their recovery against each other, including the demand made under the impugned order, subject to the condition that if required, the petitioner shall keep renewing the bank guarantee so that the State's interest is protected.

10. With the above observation, the petition stands disposed of.

**Sd/-**

**Judge**

(Prashant Kumar Mishra)

**Sd/-**

**Judge**

(Ram Prasanna Sharma)