

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 745 of 2018**

{Arising out of order dated 05.09.2018 passed by learned Single Judge in Writ Petition (C) No. 2449 of 2018}

- M/s Gordhandas Gobindran, a partnership firm, registered under the Partnership Act, through its partner & Power of Attorney Holder Jairaj Jadwani, S/o Shri Goverdhandas Jadwani, aged about 61 years, R/o Ahmedji Colony, Raipur (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Public Works, Mahanadi Bhawan, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)
2. Engineer-in-Chief, Public Works Department, Nirman Bhawan, Sector 19, Naya Raipur (C.G.) 492002

---- Respondents

For Appellant : Shri Saurabh Jain, Advocate.

For Respondents/State : Shri Prasun Bhaduri, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

12.10.2018

1. Heard learned counsel appearing for the Appellant and learned Government Advocate for the State.
2. The writ appeal is against the order dated 05.09.2018 passed by the learned Single Judge dismissing the writ application and refusing to interfere with the

decision of the Respondent authorities of downgrading the certificate of registration from category 'A' to category 'B' contractor. This downgrading has been down in relation to a contract which has been annulled for non-completion of the work within the specified time and award of the same contract to yet another contractor.

3. Reasons and explanation have been offered in Writ Petition (C) No.1033 of 2017, as to why there was default in completion of the contract by the Appellant.
4. Keeping in mind that the most of the reasons or defence put up by the contractor would have necessitated fact finding coupled with the fact that the agreement carried an arbitration clause, the Division Bench relegated the present Appellant before the appropriate forum which was said to be an Arbitration Tribunal.
5. When the downgrading of the Appellant took place which is in relation to the same contract and when the order got assailed before a writ court, the learned Single Judge was of the opinion that since the two issues are interrelated and would be dependent upon the findings which may emerge with regard to the first decision of annulling the contract itself, he was of the opinion that this issue is not required to be decided independent of the first decision to terminate the contract.
6. The submission made on behalf of the counsel for the Appellant that the 2014 policy so notified where provisions for downgrading etc. have been laid down was not part and parcel of the 2010 contract, therefore, it has no applicability and that since the Chief Engineer himself had taken a decision, the mechanism provided therein in the 2014 notification is going to be illusive for him.

7. Both the submissions are negated for the reason that the parameters for downgrading, no doubt has been brought into force w.e.f 2014, but since this is an issue which covers the generality of such contracts, then merely because the contract related to the year 2010 but was still subsisting, the decision within the said notification of 2014 can be very well taken, if the ingredients are so made up.
8. Even otherwise, it is because of may be the decision of the Engineer-in-Chief that the learned Single Judge decided that this issue can also be agitated and raised because the two issues are not really separable even if they are two decisions because they arise out of a common bundle of facts.
9. The Appellant, therefore, would be free to also assail the decision as it is a consequential decision to, the first decision, before the Arbitration forum.
10. Appeal otherwise is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge