

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2290 of 2017**

- M. K. Duhlani Through The Proprietor M. K. Duhlani S/o Shri Shankar Lal Duhlani Aged About 45 Years, R/o Main Road Katghora, P. S. Katghora, Tehsil And District Korba Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Chief Executive Officer, C. G. Rural Road Development Agency, Civil Lines Raipur Chhattisgarh
2. The Chief Executive Officer, Chhattisgarh Rural Road Development Agency, Vikash Bhawan, Civil Lines Raipur Chhattisgarh
3. The Executive Engineer-Cum- Member Secretary, Project Implementation Unit, Chhattisgarh Rural Road Development Agency, Korba, Chhattisgarh

---- Respondents

For Petitioner : Shri Shishir Dixit, Advocate

For Respondents/State : Shri Anmol Sharma, PL

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****24/04/2019**

1. Heard.
2. The instant petition is filed for determination of the question whether security amount which was deposited for one contract can be withheld for another contract for the reason that some arbitration proceedings are pending for another contract.
3. Learned counsel for the petitioner would submit that the contract bearing No.CG10-33 was executed in the year 2012 and the completion certificate was

issued after three years. Subsequently, the security deposited which was paid for the purpose of the contract CG10-33 was directed to be returned vide Annexure P-6 dated 06.06.2016, however, at the same time the petitioner was awarded another contract which was bearing No.CG 02-53 in which with respect to payment some dispute arose and the matter went to the Arbitration Tribunal, Raipur (for short 'the Tribunal'). It is stated that after earlier amount of security when was claimed was not paid and eventually after a litigation a writ petition bearing W.P. (C) No.1462/2017 was preferred. In such writ petition the co-ordinate Bench has passed an order directing the petitioner to prefer a representation before the competent authority, pursuant to the said order the representation was made by the petitioner and on such representation the impugned order Annexure P-1 has been passed. It is stated that the impugned order is completely illegal as security amount of one contract cannot be withheld because of pendency of lis for decision before the Arbitration Tribunal. He therefore, submits that the respondents may be directed to comply with their direction dated 06.06.2016 (Annexure P-6).

4. Per contra, learned State counsel opposes the same and submits that the impugned order is well merited which do not call for any interference.
5. I have heard learned counsel for the parties and perused the documents. Learned counsel for the petitioner has referred to an order dated 12.09.2018 passed in WPC No.1837/2015. Perused the order dated 12.09.2018, wherein the ratio has been relied in the case of **Macadum Makers v State of Chhattisgarh & Ors.**¹ wherein the following has been held in para 20 :

“20. It is, therefore, apparently clear that though respondents claimed

¹ 2012 SCC Online Chh 363 : AIR 2012 Chh 123

certain amount to be recoverable from the petitioner, alleging that the work of the petitioner was unsatisfactory and he failed to repair the road within the time stipulated as per letter dated 06.11.2008, the petitioner took recourse to the provision contained under the arbitration Clause 29 by raising a dispute before the Superintending Engineer. However, without adjudication of the petitioner's liability towards payment, alleged sum is sought to be recovered against the petitioner, and respondent-Executive Engineer has proceed to issue impugned letter dated 03.12.2010. This act on the part of the respondent-State authority can only be termed as arbitrary and unreasonable violative of Article 14 of the Constitution of India. Moreover, respondents could not bring to the notice of this Court any law operating in the field, authorising the respondent authority to recover the amount by stretching their hands to the due payment and deposits of the petitioner with other offices in connection with other works. Even in the agreement, no such terms have been stipulated. Present is not a case where even after adjudication, petitioner failed to deposit the amount and, therefore, the respondents have proceeded to recover the amount as arrears of land revenue.”

6. Similarly, in **M/s Shree Construction v State of Chhattisgarh & Ors**², the

Division Bench of this Court has again held thus in para 19 :

“19.It is apparently clear that though the respondents have claimed certain amount to be recoverable from the petitioner under Agreement No.02/DL of 2008-09, the petitioner has seriously disputed his liability and has already taken recourse to the provision contained under arbitration Clause-29 by approaching appellate authority, namely Chief Engineer. However, without adjudication of petitioner's liability towards payment, alleged sum is sought to be recovered against the petitioner, that too, by way of withholding the undisputed amount payable to the petitioner under another Agreement No.40/DL of 2005-06. Learned counsel for the respondents could not bring to the notice of this Court any law operating in the field, authorizing the respondents authority to withhold undisputed and admitted amount due and payable to the petitioner under another agreement, because of the dispute leading to recovery against the petitioner under a distinct and separate agreement. The respondents also could not bring to the notice of this Court, any term under the agreement No.40/DL of 2005-06 so as to provide that the amount due and payable under the agreement shall be withheld in case there is some amount found due and payable in connection with any other works contract. Present is not a case where even after adjudication, the petitioner has failed to deposit the amount and, therefore, the respondents have proceeded to recover the amount as arrears of land revenue. Therefore, the act on the part of respondents-authority in withholding undisputed and admitted amount payable to the petitioner under Agreement No. 40/DL of 2005-06 can only be termed as arbitrary and unreasonable, violative of Article 14 of

² WPC No.5717 of 2011 (decided on 10-4-2012)

the Constitution of India.”

7. In the instant case, the reply of the State would show that in respect of another contract for which a case is pending before the Arbitration Tribunal bearing No.16/13 was for the recovery of amount out of contract bearing No.CG -02-53. The security amount of the contract bearing No.CG 10-33 was initially ordered to be returned by letter dated 06.06.2016 by the State. Reading the contents of letter dated 06.06.2016 qua Annexure P-1, wherein the amount of security is directed to be withheld for the reason that another case bearing No.16/13 is pending before the Chhattisgarh Arbitration Tribunal cannot be appreciated at all. It would be arbitrary and unreasonable and would be violative of the Article 14 of the Constitution of India. The ratio as has been laid down above by this Court supra governs that due in one contract cannot be illegally withheld only on the discretionary power of the State authorities for another contract without any nexus. Therefore, the Annexure P-1 dated 28.07.2017 is quashed and it is directed that the State shall be obliged to follow its directive dated 06.06.2016 (Annexure P-6), wherein after compliance of certain obligations the security amount has been directed to be returned.
8. With the aforesaid observation the petition is disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu