

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No. 112 of 2019**

- N. Arjunan, S/o Shri K. Narayanan, aged about 70 years, R/o Ushas Dutta Colony, Near Banaras Chauk, Ambikapur, PS Gandhi Nagar, District Surguja (C.G.)

---- Applicant**Versus**

1. State of Chhattisgarh, through the Secretary, Panchayat and Rural Development Department, Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
2. The Chief Engineer, Panchayat and Rural Development Department, Chhattisgarh Rural Road Development Agency, Civil Lines, Raipur, Chhattisgarh.
3. The Superintending Engineer, Rural Engineering Services, Office of Development Commissioner, Chhattisgarh, Raipur, Chhattisgarh.
4. The Executive Engineer cum Member Secretary, PMGSY Project Executing Unit No. 11, Ambikapur, District Surguja (C.G.)

---- Respondents

For Applicant	:	Shri Vivek Chopda, Advocate.
For Respondents/State	:	Shri Gagan Tiwari, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Order on Board****Per P. R. Ramachandra Menon, Chief Justice****22.08.2019**

1. The review is sought for in respect of judgment dated 01.11.2018 passed by this Court whereby interference was declined and the writ petition was dismissed holding that the contract work was terminated way back on 30.03.2012; whereas the Petitioner had approached this Court by filing writ petition only in the year 2018 i.e. by virtue of after 6 years. The Bench however made it clear

that the dismissal of the writ petition would not come in the way of the Petitioner in pursuing the remedy in accordance with law, as per the terms of the agreement, before the appropriate forum.

2. The grievance of the review Petitioner is that the issue projected by the writ Petitioner was not with regard to any challenge in respect of the termination of contract, but was only to get back the amount tendered by him by way of EMD and the payment to be released in respect of the works already executed. It is pointed out that the Petitioner had come up successful in the tender notified by the Respondents, pursuant to which the work of construction of the road was awarded to him. After issuance of the work order on 15.12.2008, the Petitioner was proceeding with further steps and some work was completed as well, but then, the Forest Department intervened and revoked the 'permission' granted earlier, for construction of the road; by virtue of which the Petitioner was required to stop the work as per the proceedings dated 30.12.2009. The work already done by the Petitioner was acknowledged by the Respondent on 24.12.2010 and a meeting was convened on 26.11.2010. Finally, since it was revealed that it was not possible to proceed with the work by virtue of the interference made by the Forest authorities, termination order was issued to the Petitioner on 30.03.2012. However, the payment to be made in respect of the works completed by the Petitioner was not released and so also the EMD. On finding that the various representation / request made by the Petitioner did not turn to be fruitful, the writ petition was filed with the following with the prayers:

“10.1 That, this Hon'ble Court may kindly be pleased to call the records of case.

10.2 That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to forthwith release the amount towards tender works executed by the petitioner, amount of bank guarantee and earnest money, with

interest @ 12% per annum from the date of entitlement to its realization.

10.3 Any other relief, which this Hon'ble Court may deem fit in favour of petitioner, may also be granted.”

3. When the matter came up for consideration before this Court on 18.07.2019, referring to the nature of challenge involved, the following order was passed:

“The learned counsel appearing for the review Petitioner points out that there is an error apparent on the face of record insofar as interference was declined and the writ petition was dismissed as per order dated 01.11.2018 as if the Petitioner were challenging the termination of contract, which in fact, was not so and was only seeking for a direction to return the amount due to the Petitioner including the EMD and also to cancel the Bank guarantee in view of the termination of the contract, which was only for the convenience of the awarder and never because any fault on the part of the Petitioner. Specific reference is made to Annexure P/4 dated 30.03.2012, which is a copy of the termination order. By virtue of the turn of events, the course of action to be pursued is discernible from paragraph 53.2 of the “General Conditions” forming part of Annexure P/1.

The learned counsel representing the State seeks for a short time to get instructions and make appropriate submissions in this regard.

List the matter for further consideration on 22.08.2019.”

4. A return has been filed on the part of the State. Shri Gagan Tiwari, learned counsel representing the State submits with reference to the contents of the reply that the Respondents are ready to release the Bank Guarantee to the Petitioner with interest @ 12% per annum. It is also stated that the payment in respect of the work completed was not released because there was a dispute

on the part of the Petitioner with regard to the 'measurement' already taken and hence it has been mentioned in paragraph 4 of the return that the Petitioner has to pursue the remedy in terms of the Clause 24 of the agreement. The final 'measurement' was recorded in the M-Book which has been produced alongwith return in the writ petition; submits the learned counsel.

5. The learned counsel for the Petitioner submits that though a dispute was raised with regard to the measurement of work completed by the Petitioner earlier, the Petitioner is ready to accept the measurements recorded by the Department and he will be satisfied if payments due to him as per the terms of the agreement in respect of the said extent of work, is released to him. The learned counsel submits that the Petitioner does not intend to claim any interest for the said amount in view of the particular facts and circumstances.
6. The learned counsel representing the State submits that in view of the turn of events and the submissions made across the Bar, he has been instructed to submit before this Court that the Respondents are ready to effect the payment to the Petitioner in respect of the work already executed by him as measured out by the authorities of the Department (with regard to which the dispute is stated as withdrawn) and that the payment due as aforesaid (besides the EMD with interest) would be released to him within one month from today. The said submission is recorded. The review petition stands disposed off.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge