

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.1840 of 2019

M/s Shankara Enterprises, Through Partner Harihar Upadhyay, S/o Shri Parmanand Upadhyay, aged about 29 years, R/o Main Road, Sarafa Line, Kawardha, P.S. Kawardha, District Kawardha (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Public Works Department, Mahanadi Bhawan, New Mantralaya, Raipur (C.G.)
2. The Engineer-in-Chief, Public Works Department, District Raipur (C.G.)
3. Chief Engineer (Yojna), In Office of Engineer-in-Chief, Public Works Department, Raipur (C.G.)
4. The Chief Engineer, Public Works Department, Division Raipur, District Raipur (C.G.)
5. The Superintending Engineer, Public Works Department, Division Durg Circle, District Durg (C.G.)
6. The Executive Engineer, Public Works Department, Kawardha, Division Kawardha, District Kawardha (C.G.)

---- Respondents

For Petitioner: Mr. Sunil Tripathi, Advocate.

For Respondents / State: -

Mr. Siddharth Dubey, Government Advocate.

Hon'ble Shri P.R. Ramachandra Menon, CJ and
Hon'ble Shri Sanjay K. Agrawal, J.

Order On Board

P.R. Ramachandra Menon, CJ.

25/06/2019

1. Correctness and sustainability of the order passed by respondent No.6 vide Annexure P-1 dated 27-4-2019 terminating the contract awarded to the petitioner is under challenge in this petition.
2. Heard learned counsel for the petitioner as well as learned counsel representing the State.

3. Factual matrix of the case briefly stated is that a notification was issued by the respondents way back in 2016-17 inviting tenders in connection with construction of an Auditorium Hall in the Government P.G. College, Kawardha. The petitioner by virtue of its credentials took part in the tender and came out successful; pursuant to which work order was awarded to the petitioner. Accordingly, an agreement was executed between the petitioner and the respondents and the petitioner started work accordingly. It is the case of the petitioner that, despite the specific terms of the tender and the agreement, the 'structural design' was not given completely so as to enable the petitioner to have the work completed. The petitioner had brought the various hindrances with regard to the progress of the petitioner's work to the notice of the respondents, but no positive action was taken by them at any point of time, which made the petitioner to make a representation before the authorities to put an end to the contract in terms of 'clause 14' of the agreement which does not involve any penal consequences. The petitioner, however, was served with a show-cause notice and the work was sought to be terminated with reference to 'clauses 3 and 38' of the agreement inviting penal consequences. It is stated that the petitioner had submitted timely reply, but the same did not turn to be fruitful, as no proper application of mind was given by the respondents to the grievances projected by the petitioner. The petitioner was accordingly served with Annexure P-1 – order dated 27-4-2019 putting an end to the contract under 'clauses 3 and 38' of the agreement with penal consequences which made the petitioner to approach the Court with a prayer to set aside the said order.

4. Learned counsel appearing for the State / respondents submits that

the petitioner has not given the correct picture before the Court, insofar as the petitioner was supplied the structural designs and there was no lapse on the part of the respondents in the manner. The lapse was, in fact, on the part of the petitioner; who submitted representation before the respondents to put an end to the contract. This by itself is a pointer to the fact that the petitioner was not in a position to have the work completed; for which the petitioner cannot put blame on the respondents. It was only because of the lapses on the part of the petitioner, that the respondents were constrained to invoke 'clauses 3 and 38' of the agreement and to have the work terminated. It is also pointed that if the petitioner is having any grievance, it is always open for the petitioner to avail the remedy available by way of 'Arbitration' as provided in 'clause 28' of the agreement at Annexure P-4.

5. After hearing both the sides, this Court finds that the main dispute is with regard to the lapses on the part of the party concerned. Whether it is on the part of the petitioner or on the part of the respondents, is the question to be answered. This is a disputed question of fact which cannot be considered in this petition under Article 226 of the Constitution of India. In such circumstances, interference is declined and the writ petition is dismissed, without prejudice to the right of the petitioner to pursue other appropriate remedy in accordance with law.
6. We make it clear that we have not expressed any opinion on the merits of the case.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge