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**HIGH COURT OF CHHATTISGARH, BILASPUR****Order Reserved on 27 /9/2019****Order Delivered on 11/12/2019****WPC No. 1182 of 2016**

1. M/s Uttam Con Infrastructure Private Limited A Company Incorporated Under The Provisions Of Companies Act 1956 Through its Authorised Director Mr. Rajesh Jain, S/o Uttam Chand Jain, Aged About 45 Years, R/o Surabhi, Tahsil, Civil And Revenue District Raipur, Chhattisgarh 492007, Chhattisgarh

**---- Petitioner****Versus**

1. State Of Chhattisgarh Through Its Principal Secretary, Public Works Department, Mantralaya, Mahanadi Gate Naya Raipur, Head Post Office Raipur, Tahsil Raipur, Civil And Revenue Distt Raipur, Chhattisgarh Pin 492001, Chhattisgarh
2. Engineer In Chief, Public Works Department, Raipur, Sirpur Bhawan, Near Akashwani Tahsil Raipur, Civil And Revenue Distt. Raipur, Chhattisgarh Pin 492001, District : Raipur, Chhattisgarh
3. Chief Engineer, Public Works Department, Sirpur Bhawan, Near Akashwani Raipur, Tah Raipur, Civil And Revenue Distt Raipur, Chhattisgarh Pin 492001, District : Raipur, Chhattisgarh
4. Superintendent Engineer, Public Works Department, Bridge Constructions Circle, Raigarh, Chhattisgarh, And Civil And Revenue District Raigarh, Chhattisgarh Pin 496001.
5. Executive Engineer, Bridge Construction Division Bilaspur, Public Works Department, Bilaspur, Civil And Revenue District Bilaspur, Chhattisgarh Pin 495001, District : Bilaspur, Chhattisgarh

**---- Respondent****&****WPC No. 347 of 2019**

1. M/s Uttam Con Infrastructure Private Limited (A Company Incorporated Under The Provisions Of Companies Act, 1956), Through Its Authorised Director Mr. Rajesh Jain, S/o Uttam Chand Jain, Aged About 45 Years, R/o Surabhi, Tahsil, Civil And Revenue District Raipur, Chhattisgarh. 492007.

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through Its Principal Secretary, Public Works Department, Mantralaya, Mahanadi Gate Naya Raipur, Head Post Office Raipur, Police Station Telibandha, Raipur, Tahsil Raipur, Civil & Revenue District Raipur,. Pin 492001.
2. Engineer In Chief Public Works Department, Raipur, Sirpur Bhawan, Near Akashwani Tahsil Raipur, Civil And Revenue District Raipur, Chhattisgarh. Pin 492001.
3. Chief Engineer Public Works Department, Sirpur Bhawan, Near Akashwani Raipur, Tahsil Raipur, Civil And Revenue District Raipur, Chhattisgarh. Pin 492001.,
4. Superintendent Engineer Public Works Department, Bridge Constructions Circle Raigarh, Chhattisgarh, And Civil And Revenue District Raigarh, Chhattisgarh. Pin 496001.
5. Executive Engineer Bridge Construction Division Bilaspur, Public Works Department, Bilaspur, Civil And Revenue District Bilaspur, Chhattisgarh. Pin 495001., District : Bilaspur, Chhattisgarh

**---- Respondents**

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|-----------------------|---|---------------------------------------------------------------------------------------------------|
| For Petitioner        | : | Shri Chetan Sharma, Sr. Advocate assisted by Shri Anshu Mahajan & Shri Anand M Tiwari, Advocates. |
| For Respondents/State | : | Shri Alok Bakshi, Additional Advocate General with Shri Gagan Tiwari, Dy. Government Advocate.    |

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**Hon'ble Shri PR Ramachandra Menon, Chief Justice & Hon'ble Shri Justice Parth Prateem Sahu**

**CAV Order**

**Per Parth Prateem Sahu, J**

1. Non-issuance of 'work completion certificate' by the respondent authorities in favour of petitioner for the construction work of 'HL Bridge and Approach Road across Hasdeo River at Geruva Ghat on Korba-Geruva Ghat-Darri Road' and seeking permission for termination of contract awarded to the petitioner for the aforementioned work vide letter dated 27.8.2015 (Annexure P-40), made the petitioner to approach this Court by filing this writ

petition bearing WPC No.1182/2016. During pendency of WPC No.1182/16, another writ petition bearing WPC No.347/2019 has been filed which is outcome of termination of subject contract vide letter dated 14.1.2019.

2. Facts of the case, in nutshell, are that respondent No.2 floated e-procurement tender notice No.190/TC/08-09 dated 17.2.2009 inviting tenders, on lump-sum basis, from 'A-5' Class registered contractors with the Public Works Department, for the construction work of 'HL Bridge and Approach Road across Hasdeo River at Geruva Ghat on Korba-Geruva Ghat-Darri Road'. In pursuance of the said tender notice, the petitioner submitted his tender along with requisite documents. When the tenders were opened, offer of the petitioner was found to be the lowest at Rs.13,23,00,000/- (lumpsum price) for the subject work and the petitioner was intimated accordingly vide letter dated 24.7.2009. The work order was issued on 28.7.2009 to the petitioner to start the work and on the same day an agreement was executed between the petitioner and respondent No.2. The period of completion of work mentioned in the contract was 18 months from reckoned date excluding rainy season. After entering into agreement and on account of change in approved foundation levels, the petitioner submitted/furnished revised 'General Arrangement Drawings (GAD)' suited for construction of Bridge and as per revised GAD, which was approved, and the work of construction of Bridge was started. However, considering certain contingencies in between, the period of completion of work was extended up to 15.1.2012. The respondents issued

various letters for execution of work of approach roads within lump-sum price of the subject contract mentioning therein that construction of the approach road is limited to the extent fixed in special condition of the contract. Numbers of letters were exchanged between the petitioner and respondent authorities concerned, which form part of the record of writ petition. Considering the delay in finalization of the drawings & designs by the department, which caused delay in commencement of the contract, the Chief Engineer vide letter dated 10.1.2013 amended the date of commencement of tender work as '26.4.2010' and date of completion as '25.11.2012'. Thereafter the petitioner sent a letter informing the authorities about the completion of subject tender work in all respects on 30.1.2013 and requested for issuance of 'work completion certificate' and settlement of final bills. Respondent authority concerned refused to issue 'work completion certificate' in favour of the petitioner on the ground that the petitioner has not constructed the entire approach road connecting the Bridge from Korba side and Darri side. On such objection being raised, the petitioner replied that the petitioner has constructed approach road on each side as per LI drawings, but the same was not accepted by respondent No.5 stating that construction of approach road is not in accordance with Annexure 'M' & 'N' to the tender document. The dispute travelled upto highest officer of the department i.e. Secretary/ Engineer-in-Chief, and despite intervention of the Minister In-charge, it could not be resolved. Subsequently, vide letter dated 27.8.2015 permission was sought from the Secretary for termination of

contract. With no option left, the petitioner approached this Court by filing this writ petition.

3. Shri Chetan Sharma, learned Senior Counsel for the petitioner submits that looking to some fault found in the GAD prepared by the respondents, pre-detailed survey and sub-soil investigation, the petitioner submitted revised detailed drawings, which was accepted by the respondent Chief Engineer, who communicated his approval also to the petitioner vide letter dated 13.4.2010. He submits that in the revised GAD also there is mention about approach road and length of approach road towards Korba side is 49 mtrs and Darri side is 29 mtrs, which was constructed by the petitioner. He also submits that construction of bridge has already been completed as per revised GAD as also approach road as per GAD, but length of approach road, which is now being asked for construction i.e. 740 mtrs total towards Korba side and 140 mtrs total towards Darri side, is not the part of the revised GAD signed between the parties, therefore, the respondent authorities are not justified in saying that the tender work awarded to the petitioner has not been completed. He referred to Annexure P-6 to the petition to show that approach road and its length has been shown specifically in the drawings and according to which, length of both sides of approach road is 49 & 29 mtrs respectively. He submits that therefore the action initiated by respondent authorities by sending letters seeking permission for terminating petitioner's contract is illegal. He also referred to Clause 4.28 and submits that as per the condition, only WBM/WMM work is required to be carried out as per

specification.

He further submits that both the parties have already made submissions before the Minister concerned and thereafter before the Honorary Advisor by placing all relevant documents in support of their respective stand and it has been held by the Advisor that the contractor has constructed the agreed length of approach road and there is no question of imposition of penalty on him. It is also contended that as the authority was appointed with the consent of the parties, who dealt with the issue and decided the same, therefore, there cannot be any dispute inter-se between the parties. It is submitted that there should be transparency in the action of the State. Once the respondent authorities participated and accepted the process, then defiance from the outcome of the said process is arbitrary and illegal. Respondent No.2 to 5 in utter disregard of the orders passed by the Competent Authority had approached the Minister concerned mentioning different reasons and on 27.9.2013 the Minister concerned opined in favour of the petitioner which is sufficient to show that there is no dispute which is liable for adjudication, making action of withholding of completion certificate or seeking termination of contract under Clause 1.1.4 of the condition of Contract to be illegal and arbitrary. The noting made by the Minister concerned in the note sheet is required to be complied with being binding in nature over the respondent authorities. On the basis of aforementioned submissions, learned Senior Counsel for the petitioner submits that the petitioner is entitled for all the reliefs as claimed in the writ petition. It is also argued that

looking to the nature of dispute raised in the petition, the arbitration clause, as mentioned in the conditions of contract, will not be attracted because the dispute is not with regard to money claim but only with respect to the length of approach road.

In support of above contention, learned Senior Counsel places his reliance on the judgements delivered in the matter of Rai Sahib Ram Jawaya Kapur & ors v. State of Punjab reported in AIR 1955 SC 549; A. Sanjeevi Naidu & ors v. State of Madras & ors reported in AIR 1970 SC 1102; Tafcon Projects (I) (P) Ltd. vs. UOI reported in (2003) 4 SCC 788; Asha v. Pt. BD Sharma University of Health Sciences & ors reported in (2012) 7 SCC 389; Roopan Sahoo & anr. vs. Ananda Kumar Sharma reported in (2013) 14 SCC 184; Pimpri Chinchwad New Township Development Authority v. Vishnudev Cooperative Housing Society reported in (2018) 8 SCC 215.

4. Per contra, Shri Alok Bakshi, learned Additional Advocate General for the respondent State submits that the award of contract for construction of bridge and approach road is not in dispute. Even it is admitted by the petitioner that approach road is required to be constructed. He submits that the petitioner cannot go beyond the agreement. The GAD, as submitted by the petitioner, is only revised drawings & designs of the 'bridge' and not for the whole tender work. Scope of work is well mentioned in Clause 2.23 of the condition of contract and the lump-sum cost of the work is given in Annexure 'M' & 'N'. Annexure-M clearly mentions the length & width of the bridge as also the length of approach road i.e. total 880 mtrs (740 mtrs towards Korba side &

140 mtrs towards Darri side). Width of approach road is mentioned as 8.40 mtrs. He also submits that the same length of approach road has also been mentioned for both the sides of bridge and scope of work which is agreed by the petitioner and also conditions of the contract are inclusive of Annexure 'M' & 'N'. He submits that at this stage the petitioner cannot be permitted to say that approach road is restricted as per revised GAD only. He submits that revised GAD is with respect to drawings of bridge because while spot inspection and considering other specifications of spot where the bridge was to be constructed, the drawings & designs of the bridge was proposed to be revised by the petitioner on his furnishing proposed design of the bridge, the same was accepted. The technical flaw is with respect to the design of the bridge, mainly with regard to piers and its depth etc. only. Revised drawings & designs is not for construction of approach road but it is with respect to bridge only. Other conditions as prescribed in Annexure 'M' & 'N', which are details of length of bridge and its specifications along with length of approach road, has not been revised or changed at any point of time. He submits that the side plan referred is a view of work site which contains both bridge and approach road. He also submits that revised drawing was approved subject to Clause No.3.29 of the tender conditions which provides for extra work and rebate. He also submits that the petitioner preferred an appeal against the order of Superintending Engineer as per Clause 1.17 of the conditions of tender before the Chief Engineer. Accordingly, on 22.1.2013 the Chief Engineer decided and rejected the claim so

far as it relates to approach road. He also submits that contention of the petitioner that claim or dispute, as raised by the petitioner, does not involve any financial claim and therefore it cannot be referred for arbitration under Clause 1.17, is also not correct in view of specific words used in Clause 1.17 of the tender conditions. He submits that in view of the order passed by this Court on 4.4.2017, the Chief Secretary looked into the matter and after considering the claim of both the sides, had concluded that the action on the part of the respondent authorities in issuing notice for termination of contract on account of non-completion of subject tender work, is not erroneous. Eighty Percent of the total contract value was for construction of bridge and twenty percent was for construction of approach road. By the said bifurcation of amount of tender value itself it is clear that 20% of total value of work i.e. Rs.2,64,60,000/-, cannot be said to be value for construction of only 100 mtrs road. Clause 3.2 of the tender condition, which relates to 'drawings' mentions that drawings and specifications are to be considered as complementary to each other and anything appearing in one which is not described in other, no advantage shall be taken of such omission and therefore the petitioner cannot be permitted to take a plea that under the revised GAD the length of approach road is only about 30 mt on each side. Even otherwise revised GAD is for the bridge only and with regard to approach road for bridge other specifications are to be considered.

He further submits that since beginning the petitioner was well aware about the nature and volume of work and thereafter

only they entered into contract for construction of bridge and approach road as per terms mentioned in the tender conditions. He submits that noting made in the note sheet by the Minister concerned is not binding and conclusive unless it is communicated to the petitioner. There is no communication of the noting made by the Minister concerned to the petitioner at any point of time.

Reliance is placed on the judgements rendered in State of UP vs. Bridge & Roof (India) Ltd. reported in (1996) 6 SCC 22; State of Bihar v. Jain Plastics & Chemicals Ltd. reported in (2002) 1 SC 216; Pimpri Chinchwad Municipal Corporation v. Gayatri Construction Co. & another reported in (2008) 8 SCC 172; Bachhittar Singh v. State of Punjab reported in (1962) 3 SCR 713.

5. In reply, learned Senior Counsel for the petitioner submits that the Competent Authority has not been defined in the tender document. The Committee consisting of five members, has decided the complaint made by the petitioner and the said Committee has been defined as 'Competent Authority' under the contract. He submits that the Minister or Honorary Advisor has held the termination of contract not warranted. He submits that the word 'dispute' is defined under Section 2 (1) (d) of the Chhattisgarh Madhyastham Adhiniyam, 1993 which envisages that 'dispute' means claim of ascertained money valued at Rs.50,000/- or more, whereas the dispute raised by the petitioner is not a money claim but it is with respect to construction of approach road. It is submitted that contract is with regard to

construction of bridge only and not for approach road.

6. We have heard learned counsel for the parties.
7. Facts emerging from the arguments advanced by learned counsel for respective parties are that present lis filed before this Court by petitioner is only with respect to length of approach road on both sides of the bridge. The tender work is governed by the terms and conditions incorporated in the tender document and also agreement entered into between the parties. Clauses of the terms and conditions of tender, which appear to be relevant in the facts and circumstances of present case are Clause 2.22, 2.23, 3.24, 4.21, 4.28 and the same are reproduced below;

“2.22: The contractor shall execute the work as per detailed specifications as incorporated in the tender document and in accordance with the approved drawing and special conditions incorporated in the tender documents.

2.23: **Scope of work covered by lump-sum cost:** The scope of work covered by the lump-sum cost is given is Annexure- M and N.

3.24: **Scope of Lumpsum cost:** The lumpsum contract shall comprise of the construction, completion and maintenance of the works and provision of all labour, materials, constructional plants, transport and all works of a temporary or permanent nature required for such construction, completion and maintenance in so far as the necessary for providing the same is specified in the contract.

4.21 **Lay out of the bridge:** Before commencement of the work, the contractor shall obtain the correct site, centre line or the bridge and location of the abutments and piers from the Engineer-in-Charge of the work. The control pillars shall be fixed at each end of the bridge

about 15 meters away from the location of the abutments or end piers. The top of Reference pillars shall be at a suitable level (so that the centre line of all piers could be checked) and its size shall be adequate (width about 1/3 of the height). The centre line of the bridge and the formation level shall be inscribed on a concrete coping over the reference pillars.

**4.28: Approaches work and approach slab:** Lumpsum cost shall include the work of suitably designed filter medial as per clause 2503/309.3.3(b) of M.O.S.T. Specifications behind abutment and return in full length and height above natural ground level. Lumpsum cost shall also include the cost of construction of the approach road mentioned in the General Arrangement Drawing. The work for earth work & WBM/WMM shall also be carried out as per the specifications mentioned in annexure M. The earth work up to bottom of dirt wall shall be done before laying last span on abutment and adjoining support. RCC approach slab will be done by the contractor, the cost of which will be included in the lumpsum offer.”

8. So far as the submission made by learned Senior Counsel for the petitioner that nature and volume of work has to be considered on the basis of revised GAD only when the said GAD has been approved and signed by the Competent Authority, is concerned, looking to the nature of dispute/question raised by learned counsel for the parties 'whether the revised GAD will only prevail and have its effect for total tender work which is to be executed by the contractor or the construction work as mentioned in the tender document will be the revised GAD plus other specifications, as mentioned in Annexure 'M' & 'N' of the tender document, is a question for consideration.

9. Submission of learned Senior Counsel for the petitioner that as soon as revised GAD has been presented by him and the same was accepted by the authorities, the construction work of bridge is restricted to the revised GAD and the drawings forming part of LI drawing. The petitioner has made several correspondences with the respondent authorities concerned, which are part & parcel of the petition, and the respondent authorities concerned have also written several letters to the petitioner including the dispute of construction of approach road on both sides of the bridge i.e. Korba and Darri side. Issue raised by the petitioner has been considered by the authorities i.e. by Superintending Engineer under Clause 1.17 and by Chief Engineer in an appeal, and it also travelled up to the office of Minister In-charge on more than one occasion and the Minister had made some noting in the concerned file. One Honorary Advisor was also appointed in the matter but the opinion given by the said Advisor in favour of petitioner was not accepted by the department. In the year 2017, on the direction of this Court the Chief Secretary of the Department has considered the issue and arrived at a conclusion that the work, as mentioned in the tender, has not been completed. In view of the sequence of events taken place, as mentioned above, the dispute projected in the petition appears to be factual one which can only be decided by way of evidence.
10. We do not find force in the submission of learned Senior Counsel for the petitioner that the noting made by the Minister concerned in favour of the petitioner, being an order, is binding on the respondent authorities for the reason that the said noting is inter-

departmental noting and the same has never been communicated to the petitioner and therefore it could be looked as an internal deliberation only. In Pimpri Chinchwad New Township Development Authority (supra) the Hon'ble Supreme Court has held that mere noting in the files of the Government dealing with any matter pertaining to any person is essentially an internal matter of the Government and carries with it no legal sanctity. Para-49 & 50 of the said decision are reproduced below:-

49) Our answer to the question is "no". It is for the reasons that First, a mere noting in the official files of the Government while dealing with any matter pertaining to any person is essentially an internal matter of the Government and carries with it no legal sanctity; Second, once the decision on such issue is taken and approved by the competent authority empowered by the Government in that behalf, it is required to be communicated to the person concerned by the State Government.

50) In other words, so long as the decision based on such internal deliberation is not approved and communicated by the competent authority as per the procedure prescribed in that behalf to the person concerned, such noting does not create any right in favour of the person concerned nor it partake the nature of any legal order so as to enable the person concerned to claim any benefit of any such internal deliberation. Such noting (s) or/and deliberation (s) are always capable of being changed or/and amended or/and withdrawn by the competent authority.

In the aforesaid decision Hon'ble Supreme Court has considered its earlier decisions and held thus:-

"52.) Indeed, the aforementioned issue remains no more res integra and was decided by this Court in several decisions, such as State of Punjab vs. Sodhi Sukhdev, AIR 1961 SC 493, State of Bihar vs. Kripalu Shankar, (1987) 3 SCC 34, Rajasthan Housing Board vs. Shri Krishan, (1993) 2 SCC 84, Sethi Auto Service Station vs. DDA, (2009) 1 SCC 180 and Shanti Sports Club & Anr Vs. Union of India & ors., (2009) 15 SCC 705. In Shanti

Sports (supra) a Bench of two Judges of this Court, speaking through Singhvi, J., took note of all the previous case law on the subject noted above and held as under:-

“37.....

43.A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with [Article 77\(1\)](#) and [\(2\)](#) or [Article 166\(1\)](#) and [\(2\)](#). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in [Article 77\(2\)](#) or [Article 166\(2\)](#). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.”

11. In the matter of Bachhittar Singh's (supra) Hon'ble Supreme

Court has observed as under:-

“9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by cl. (1) of [Art. 166](#) and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

11. The business of State is a complicated one and has

necessarily to be conducted through the agency of a large number of officials and authorities. The constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Raj- pramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh,<sup>1</sup> is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the State of Punjab v. Sodhi Sukhdev Singh<sup>2</sup>.

"Mr. Gopal Singh attempted to argue that before the final order was passed the Council  
 \*Till the abolition of that office by the Amendment of the Constitution in 1956. of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided

to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent."

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.

11. We are, therefore, of the opinion that the remarks or the order of the Revenue Minister, PEPSU are of no avail to the appellant."

12. It is not disputed by learned Senior Counsel for the petitioner that the noting made in the files by the Minister of the Department was not communicated to the petitioner. In fact, learned counsel submitted that the fact of noting made in file in favour of petitioner came to petitioner's knowledge only when he received papers/ copies of file under the Right to Information Act, 2005. In view of submission made by the learned counsel for the respective parties and also in the light of the verdicts of Hon'ble Supreme Court on the issue, the noting made by the Minister cannot be said to be an order passed by the Minister in favour of any of the parties, but it is only an inter-departmental proceedings and the petitioner cannot be benefited, in any manner, from the same.

13. Other argument advanced by learned Senior Counsel for the petitioner is that issue has been considered and decided by the

Honorary Advisor to the Government in favour of the petitioner. The opinion given by the said Advisor will not have any binding effect for the reason that he is not an authority under any procedure prescribed for redressal of the dispute. Affidavit submitted by the Chief Secretary in pursuance of the direction issued by this Court on 4.4.2017, mentions in very specific term that the subject tender work has not been completed as per terms and conditions of tender document.

14. Subsequently, vide letter dated 14.1.2019 the subject contract itself was terminated by respondent No.5 and earnest money & security deposit were forfeited. The petitioner was also held liable for payment of compensation.
15. From the pleadings and documents placed on record by both the parties, it appears to this Court that the objection raised by the petitioner that total length of approach road on both sides is 49 mtrs & 29 mtrs respectively, has been referred to the authority concerned and at the first instance it was decided against the petitioner and the appeal preferred by petitioner before the Chief Engineer was also decided against him. Thereafter on more than one occasion the file was sent to the office of the In-charge Minister and thereafter the matter was referred for opinion of the Honorary Advisor of the State and lastly the Chief Secretary filed an affidavit before this Court that the work awarded to the petitioner is incomplete, clearly reveals that the dispute projected is a factual one which can be decided only on placing evidence by the respective parties. Hon'ble Supreme Court in the matter of Bridge & Roof Company (India) Ltd.'s case (supra) has held that

dispute relating to interpretation of terms of contract cannot be agitated in a writ petition. Relevant paragraphs of the said judgment are reproduced below;-

“15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy commissioner made under the proviso to [section 8-D](#) (1).

16. Firstly, the contract between the parties is a contract in the realm of private law. It is governed by the provisions of the contract Act or may be, also by certain provisions of the sale of [Goods Act](#). Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for Civil court as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High court under [Article 226](#). Indeed, the High Court has not granted the said prayer.

21. There is yet another substantial reason for not entertaining the writ petition. The contract in question

contains a clause providing inter alia for settlement of disputes by reference to arbitration [Clause 67 of the Contract]. The Arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extra-ordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy - in this case, provided in the contract itself - is a good ground for the court to decline to exercise its extra-ordinary jurisdiction under Article 226. The said Article was not meant to supplant the existing remedies at law but only to supplement them in certain well-recognised situations. As pointed out above, the prayer for issuance of a writ of mandamus wastes wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 whether for issuance of mandamus or any other writ, order or direction - was misconceived for the reasons mentioned supra."

16. Hon'ble Supreme Court in yet another matter i.e. Jain Plastics & Chemicals Ltd.'s case (supra) has held that writ is not the remedy for enforcing contractual obligations and when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Hon'ble Supreme Court further held that the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226. Hon'ble Supreme Court also held in Para-7 thus:-

"7. In our view, it is apparent that the order passed by

the High Court is on the face of it illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in an properly instituted civil suit rather than by a Court exercising prerogative of issuing writs.”

17. In the aforementioned verdicts, Hon'ble Supreme Court has held that contract between the parties are in the realm of private law. The Arbitrator or Civil Court will be the appropriate forum for deciding the dispute, if any, raised by any of the parties. Article 226 of the Constitution of India is not meant to supplement the existing remedies available under contract i.e. clause of arbitration.
18. Submission made by learned Senior Counsel for the petitioner that as the petitioner's claim is not a monetary claim, the question/dispute raised by the petitioner will not come within the purview of Clause 1.17 of the tender conditions is not sustainable because Clause 1.17 is very wide enough to cover all disputes arising out of the contract. Relevant portion of Clause 1.17 is extracted below for ready reference;-

**“1.17.Arbitration Clause:** Except as otherwise provided in this contract all question and dispute, relating to the meaning of the specifications designs, drawings and instructions herein before mentioned and as to thing whatsoever, in any way, arising out of or relating to the contract, designs, drawings, specifications, estimates, concerning the works, or the execution or failure to execute the same, whether arising during the progress of the works or after the completion abandonment thereof shall be referred to the superintending Engineer shall give his written instructions and/or decisions within a period of 60 days of such request. This period can be extended by mutual consent of the parties.

Upon receipt of written instructions of decisions, the parties shall promptly proceed without delay to comply such instructions or decision. If the superintending Engineer fails to give his instructions or decision in writing within a period of 60 days or mutually agreed time after being requested or if the parties may within 60 days refer and appeal to the Chief Engineer who shall afford an opportunity to the parties of being heard and to offer evidence in support of his appeal. The chief Engineer will give his decision within 90 days. If any party is not satisfied with the decision of the Chief Engineer, he can, refer such dispute for arbitration governed as per “The Madhya Pradesh Madhyastham Abhikaran Adhiniyam, 1983”.”

19. First part of Clause 1.17 specifically provides that dispute relating to the contract, designs, drawings, specifications, estimates concerning the works etc. The dispute which has been projected by the petitioner clearly deals with the term 'specifications, concerning the works' and therefore the petitioner is having alternative and efficacious remedy to approach the competent forum, as provided under Clause1.17 of the conditions of contract, for redressal of his grievances and further the petitioner is also claiming payment of his final bill of Rs.3,35,79,977/-. Even otherwise, as per submission of learned Senior Counsel for the petitioner, the dispute is only in respect of construction of approach road, which is directly related to money. If the work, as agreed, is not completed by the contractor, the contract will have

consequences of non-payment of the entire amount of contract and also make him liable for penalty and other consequences, if any.

20. For the foregoing reasons and in view of the above cited rulings of Hon'ble Supreme Court governing the issue with regard to dealing of contractual dispute and also the nature of dispute projected by the petitioner and denied by the respondents, we are of the view that instant case involves factual dispute which cannot be decided in a writ proceeding merely on the basis of pleadings of the respective parties but it could only be decided on the basis of evidence to be adduced by the respective parties before the competent forum. Hence, we are not inclined to entertain this writ petition and exercise discretionary jurisdiction under Article 226 of the Constitution of India.

21. The writ petitions fail. They are accordingly dismissed. However, the petitioner will be at liberty to approach appropriate forum as available to him in accordance with law, for redressal of his grievance.

22. It is made clear that we have not decided the claim of the petitioner on merits and refrained ourselves from analysing the pleadings with the same elaborations with which arguments were addressed for the reason that it may cause prejudice to either of the parties before the authority before whom they have to file or present the dispute for its decision on merits.

Sd/-

**(PR Ramachandra Menon)**  
**Chief Justice**

Sd/-

**(Parth Prateem Sahu)**  
**Judge**