

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2136 of 2019

- M/s Vikas Agrawal, a Class 'B' Contractor, Through Its Partner Vikas Agrawal, S/o Late Omprakash Agrawal, Aged About 36 Years, R/o Near Advocate Rahman House, Danipara Raigarh, District Raigarh Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through the Secretary, Urban Administration, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Commissioner Municipal Corporation, Raigarh Chhattisgarh
3. Executive Engineer Municipal Corporation, Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
4. Sub Engineer Municipal Corporation, Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

-----Respondents

For Petitioner : Ms Diksha Gouraha, Advocate
For Respondent/State : Shri Sidharth Dubey, Dy GA
For Respondents- 2 to 4/Municipal Corporation : Shri Pankaj Agrawal, Advocate
Corporation

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

Per Parth Prateem Sahu, J

11.07.2019

1. The petitioner has filed this Writ Petition challenging the orders, Annexure-P1 and P2 and sought for following relief:

“10.1 The Hon'ble Court may kindly be pleased to set aside the impugned award dated 16/04/2019 and to abolish the provision of blacklisting of petitioner's firm for 2 years and further direct to grant extension of 3 months time for completion of remaining work.

10.2 The Hon'ble Court may kindly be pleased to quash new advertisement Dated 29/05/2019, tender number 51332 for the improvement/construction of the same road.

10.3 The Hon'ble Court may kindly be pleased to grant any other relief to the petitioner which this Hon'ble Court deems fit & proper in the facts & circumstances of the case, in the interest of justice.”

2. In pursuance to the advertisement issued by the respondent for inviting tender for construction of B.T.Road of (Raja Biscuit to Purana Bus Depot to Honda Show Room) at Ward No.04 Road SOR 01-01-2015 via tender No.36495, the petitioner participated and he being the lowest bidder, has been awarded contract of aforementioned work vide agreement dated 04.10.2018 and work order was issued on 05.10.2018.
3. During the period of contract, as the petitioner did not show any progress in the work, his contract was cancelled vide notice dated 16.04.2019, Annexure– P2.
4. In the aforementioned document, there was intimation/notice with respect to cancellation of the contract agreement and for debarring the petitioner to participate in the contract, which is the subject matter of petition, for a period of two years.
5. Learned counsel for the petitioner submits that petitioner has not been provided any opportunity of hearing, no notice prior to cancellation of contract was issued to him and action of debarring the petitioner for two years will lead to blacklisting of petitioner/contractor without notice.

6. Per contra, learned counsel appearing for respondents- 2 to 4/ Municipal Corporation, Raigarh submits that looking to the exigencies of the work and non-performance of petitioner/contractor of work, the Municipal Corporation has taken a decision of cancellation of the contract and it is not the case that the petitioner/contractor is blacklisted or debarred from participating with respect to all nature of the contract works of the Municipal Corporation for a period of two years, but it is specifically limited to the subject work only. He also submits that there is Arbitration Clause at Clause No.10 in the contract agreement and the petitioner can very well approach the Arbitrator for redressal of his grievance, if any, against cancellation of contract agreement. Lastly he submitted that after cancellation of contract, fresh tender was published and after completion of the tender proceedings, work order has also been issued to successful bidder.

7. We have heard learned counsel for the parties and perused records.

8. Perusal of Annexure P/2 would clearly show that the two years' bar imposed by respondents 2 to 4/Municipal Corporation is with respect to the tender work, which is subject matter of the dispute. Further, in the reply which has been filed by the Municipal Corporation also it is very categorically pleaded that the petitioner has not been blacklisted but he has been restrained from participating in the subject matter work for a period of two years.

9. Relevant para of the pleadings of the Municipal Corporation in its reply is reproduced here below:

“4. That, it is submitted that the petitioner contended that the impugned action has been taken without following the basic principles of natural justice. The said contention is absolutely incorrect because on number of occasions notices were issued to the petitioner to do the road construction work as per the terms and conditions of the work order, but the same does not yield any fruitful result and hence after following the due process of law the security deposit has been forfeited and petitioner has been prohibited for a period of two years to participate in the tender process of the subject construction only and in fact the petitioner has not been blacklisted. Even the petitioner can participate in the other tender process except the tender process initiated for the subject road construction work. ”

10. We are convinced from the pleadings and argument raised by learned counsel for the Municipal Corporation that the petitioner is not blacklisted for all the works, but he has been restrained from participation of subject matter of work or tender in the present petition for a period of two years only.

11. So far as the other ground raised by learned counsel for the petitioner that no notice was issued prior to cancellation of contract agreement is concerned, the period of completion of work as per agreement is of 3 months. Perusal of Annexure-P2 mentions that no work was started. In reply, the respondent-corporation submitted that after following all the due process of law, Annexure-P-2 was issued. From rival submissions of the respective parties, it is apparent that the procedure of cancellation of contract is a disputed fact, and cannot be gone in writ proceeding. Third party interest is also created by issuing work order in favour of successful bidder in fresh tender for same work.

12. In view of the aforementioned facts and circumstances of the case, we decline to entertain this writ petition.

13. In the result, petition is dismissed. However, the petitioner will be at liberty to take recourse to other remedy available to him under the contract agreement or civil law.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma