

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2705 of 2019

- Ramlakhan Singh Rathore S/o Late Hiranman Singh Rathore aged about 53 Years, Occupation Civil and Electrical Contractor, Ward No. 12, Chhandrasekhar Ward Dondi, District Balod Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Urban Administration and Development Department, Mantralay, Mahanadi Bhawan, New Raipur Chhattisgarh
2. Chief Municipal Officer Nagar Panchayat Dondi, District Balod Chhattisgarh

-----Respondents

For Petitioner : Shri Akhilesh Mishra, Advocate
For Respondent-1/State : Shri Sudeep Agrawal, Deputy AG
For Respondent- 2 : Shri YS Thakur, Advocate

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

Per PR Ramachandra Menon, CJ
14.10.2019

1. The petitioner has moved this Court with the following prayers :

“10.1 That, the Hon'ble Court may kindly be pleased to call for entire records pertaining to the case of petitioner for kind perusal of this Hon'ble court.

10.2 That, the Hon'ble Court may kindly be pleased to allow the petition and set aside the order dated 08.06.2019 and the cancellation notice Annexure P-1 by which the petitioner has not been permitted to take part to any tender for coming 3 years in the interest of justice.

10.3 Any other relief (s) which this Hon'ble Court may deem fit and proper may also be granted in favour of the petitioner together with the cost of the petition.”

2. Heard Shri Akhilesh Mishra, learned counsel for the petitioner, Shri Sudeep Agrawal, learned standing counsel for the 1st respondent besides Shri YS Thakur, learned counsel for the 2nd respondent.

3. Learned counsel for the petitioner submits that pursuant to participation in the tender proceedings floated by the 2nd respondent, the petitioner came to be successful in respect of various works and work order (Annexure P3) was awarded on 02.08.2018. It is pointed out that, out of the 11 works, the petitioner has satisfactorily completed 9 works and requested the authorities to conduct inspection, evaluation and to effect the payment accordingly. The request so made was not acceded to by the 2nd respondent, absolutely for no reason except the alleged ill-will of the Engineer who is supervising the work and this made the petitioner to approach this Court with the prayers as aforesaid. The averments and allegations raised by the petitioner have been sought to be rebutted by the 2nd respondent by filing a return dated 12.09.2019, also producing copies of various documents.

4. The learned standing counsel for the 2nd respondent submits that, as descendable from 'Note-4' of Annexure P3 work order dated 02.08.2018, it has been specifically made clear that payment will be released only after completing the 'concrete testing'. Admittedly, the petitioner did not complete the entire works awarded to him and even in respect of the work which is stated as completed, he had never given his 'consent' to effect the concrete testing. The learned counsel submits that, various notices were issued to the petitioner at different points of time, asking him to complete the works awarded as per Annexure P3 and also

to give his consent for conducting the concrete test, which is yet to be responded. Learned counsel further submits, to prove the *bona fides* of the 2nd respondent, that they are ready even now to give another chance to the petitioner to give consent for concrete testing and after completion of the same, the payment, to the extent the petitioner is eligible, could be caused to be disbursed in terms of the contract, without prejudice to the rights and liberties of the 2nd respondent to proceed with other appropriate steps in respect of the failure on the part of the petitioner.

5. The learned counsel for the petitioner submits that the ill motive on the part of the Engineer who is supervising the work has been brought to the notice of the authorities as per Annexure P9 and if the testing is conducted under the supervision of the said Engineer, it will only be detrimental to the rights and interest of the petitioner. This is sought to be rebutted by learned counsel for the 2nd respondent pointing out that the facts and figures have been explained in the return filed by the 2nd respondent and specific reference is made to Annexure R2/2, whereby the petitioner was let known that he would be at liberty to identify and depute his own Engineer, who is an expert while conducting the concrete testing and measurement by the Engineer deputed by the 2nd respondent.

6. After hearing both the sides, we are of the view that the matter could be disposed off with liberty to the petitioner to arrange an expert Engineer of his choice as intimated to him by the 2nd respondent vide Annexure R2/2 and to conduct the concrete test and measurement for fixing the quantum of payment to be effected to the petitioner in respect of the completed works.

7. Learned counsel for the petitioner submits that a proper person in this regard would be identified and informed to the 2nd respondent within 'ten days'. On such event, it shall be for the 2nd respondent to inform the date and time for conducting the test/inspection, measurement and evaluation of the completed works.

8. With regard to the 'blacklisting' of the petitioner for the alleged lapses on his side, the petitioner is set at liberty to pursue other appropriate proceedings in accordance with law, as evidence may be necessary in this regard, which can't be done by this Court.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge