

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2834 of 2018**

M/s N. Arjunan Through Proprietor N. Arjunan, S/o Late K. Narayan, Aged About 52 Years, R/o Dutta Colony, Near Banaras Chowk, Ambikapur, District Surguja Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Public Works Department, Mahanadi Bhawan, New Mantralay, Raipur Chhattisgarh.
2. The Engineer In Chief Public Works Department, Raipur Chhattisgarh.
3. The Chief Engineer Public Works Department, C.G. Bridge Construction Zone Raipur, District Raipur Chhattisgarh.
4. The Superintending Engineer C.G. Bridge Construction Circle, Ambikapur, District Surguja Chhattisgarh.
5. Executive Engineer Public Works Department, C.G. Bridge Construction, Zone Ambikapur, District Surguja Chhattisgarh.
6. Executive Engineer Public Works Department, C.G. Bridge Construction Zone Raigarh, District Raigarh Chhattisgarh.

---- Respondents

For Petitioners : Shri Apoorva Tripathi, Advocate
 For Respondents/State : Shri R.S.Baghel, Deputy Advocate General.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**Per Ajay Kumar Tripathi, Chief Justice****05/02/2019**

1. Communication dated 31.03.2018 addressed to the Petitioner under the signature of the Executive Engineer, Public Works Department, Bridge Construction Division, Ambikapur has been assailed in the present writ application. By virtue of this communication (Annexure P/1), Petitioner has been informed that a sum of Rs. 77,46,903.00 is recoverable from him in relation to the non-completion of contract for construction of a bridge and approach road on what is known as Karadarri-Harradipa-Manora Road on river Lawa.
2. The communication indicates that a sum of Rs. 26,26,600.00 has already been recovered and adjusted from the said contract and a sum of

Rs.30,28,474.00 is being recovered from yet another contract for construction of a bridge on Raghunathpur-Namna-Umeshwarpur road and an additional demand for balance of Rs.20,91,829.00 was made by the Respondents.

3. The Petitioner does not dispute that he failed to complete the contract in terms of the agreement in relation to the construction of a bridge and approach road on Karadarri-Harradipa-Manora road which culminated into termination of the contract under clause 1.14. However, he has serious reservation and objection to any kind of unilateral exercise of adjustment/recoveries being made from him in relation to other contract where there are no disputes in matter of their performance.
4. Contention of the learned counsel for the Petitioner is that as per law laid down by different Division Benches of the High Court of Chhattisgarh, the same can only be done provided the liability is accepted by the contractor or such amount has been adjudicated either by the Court or by an Arbitrator as amount due, which is recoverable from the contractor. Any unilateral decision to effect recovery and that too with regard to the other contract would be violating the principles of natural justice in the sense that no person can be a judge in his own cause. In the present case, here the judge is referable to the Respondent authorities who decided to effect recoveries without any opportunity or without any adjudication on the liability so worked out by them.
5. Such view has been expressed by the Division Bench in the case of **A.K. Construction Company v. The State of Madhya Pradesh**, reported in 2005 (4) MPHT 15 (CG) as well as a similar view taken in the case of M/s. **Shree Construction v. State of Chhattisgarh & Others**, reported in AIR 2012 Chh 139.

6. In view of the settled position in law, the stand taken by the State that the termination of contract is not being disputed or contested by the Petitioner and that he has not raised any dispute before any forum for adjudication as to the liability, may not stand in face of the legal proposition which emerges from the two cases namely ***A.K. Constructions*** (supra) and ***M/s. Shree Constructions*** (supra).
7. In view of the above, the impugned communication dated 31.03.2018 stands quashed. However, quashing of the said letter in no manner creates any embargo or prevents the State from enforcing the law in terms of clause 2.26 of the agreement.
8. The writ application is allowed.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE