

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3666 of 2019**

M/s Shankara Construction, Through Partner - Ram Kripeshwar Upadhyay, S/o Shri Parmanand Upadhyay, Aged About 36 Years, R/o Main Road Sarafa Line, Kawardha, Police Station - Kawardha, District - Kawardha Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Mahanadi Bhawan, New Mantralaya, Atal Nagar District - Raipur Chhattisgarh.
2. The Chief Engineer, Rural Engineering Service, Vikas Bhawan, Civil Line, Raipur Chhattisgarh.
3. The Superintending Engineer, Rural Engineering Service, Vikas Bhawan, Civil Line, Raipur Chhattisgarh.
4. Chief Executive Officer, Zila Panchayat Kabirdham Chhattisgarh.
5. Chief Executive Officer, Janpad Panchayat, Kawardha Chhattisgarh.
6. The Collector Cum President Zila Nirman Samittee, Rural Development Division, CGRRDA, District - Kabirdham Chhattisgarh.
7. The Executive Engineer Cum Secretary, Rural Development Division, Chhattisgarh Rural Road Development Abhikaran, Kawardha, Division - Kawardha, District - Kawardha Chhattisgarh.

---- Respondents

For Petitioner	: Shri Apoorva Tripathi, Advocate
For Respondents/State	: Shri Gagan Tiwari, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Parth Prateem Sahu, Judge****23.10.2019**

1. The petitioner has approached this Court by filing writ petition against the order passed by the District Construction Committee headed by the Collector, Kabirdham vide Annexure P/1 dated 24.09.2019.

2. The case of the Petitioner is that he has been awarded a contract vide agreement No.1383/W/DL/ZNS/2018-19 for construction of a Indoor Stadium at Government Post Graduate College, Kawardha which has been pre-maturely terminated on account of non-progress of work in accordance with the terms and conditions prescribed therein. Aggrieved by said termination of contract, the Petitioner approached to the Superintendent Engineer as provided under Clause 28 of the contract under arbitration clause. The Superintending Engineer has not considered the claim or application made by the Petitioner and thereafter, he approached to this Court by filing Writ Petition (C) No.2433 of 2019, which came up for hearing on 14.08.2019. On the said date, after hearing learned counsel for both the parties and considering the argument raised by learned counsel for the State that for redressing the grievance, there is a District Construction Committee (earlier mentioned as District Project Committee) which has been constituted which can very well consider the grievance of the Petitioner, if the Petitioner approaches the authorities and place his claims before the said Committee.
3. Considering the submissions made by learned counsel for the State, we granted liberty to the Petitioner herein to file appropriate application/claim before the District Construction Committee, which reads as under :-

“7. The learned State counsel submits that, if the petitioner files a proper proceeding in terms of the above provision before the District Projects Committee, headed by the District Collector, it will be considered and appropriate orders will be passed in accordance with law and, of course, after affording opportunity of hearing to the petitioner.

8. In the above circumstance, the petitioner is set at liberty to file a proper proceeding before the 'Committee' within three weeks; upon which the same shall be considered and appropriate orders shall be passed with regard to the grievance projected by him within a further time limit of 'four weeks' thereafter, after hearing the petitioner.”

4. In compliance of the earlier order passed by the Court, he approached the District Construction Committee and have filed his claim and grievance. The District Construction Committee has dismissed his claim vide Annexure P/1, which made the Petitioner to approach this Court with the following prayers :-

“A. This Hon'ble Court may be pleased to set-aside the impugned order dated 24.09.2019 (Annexure P-1) passed by the district Construction committee (Competent authority) rejecting the reference made by the petitioner as arbitrary and unreasonable.

B. This Hon'ble Court may be pleased to set-aside the impugned order dated 16.05.2019(Annexure P-2) via which the work agreement fo the petitioner has been terminated in an arbitrary manner.

C. This Hon'ble Court may be pleased to direct the respondent to constitute a fresh committee with neutral authorities acting as the competent authority which may decide the reference of the petitioner a fresh after granting him due opportunity of hearing, due opportunity of leading evidence and via a well reasoned order.

D. This Hon'ble Court may be pleased to direct the respondent authorities to not float or issue any new NIT or issue any fresh work with respect to the instant terminated work agreement of the petitioner.

E. Any other relief which this Hon'ble Court may deem fit in the facts & circumstances of case.

F. Cost of the petition may also be awarded.”

5. Learned counsel for the Petitioner submits that the District Construction Committee forms of the members which is headed by the Collector as President, who is the authority under whose direction, order of termination has been passed by the Executive Engineer, who is the Member Secretary of the Committee, therefore, the District Construction Committee though considered the claim of the Petitioner, but they were predetermined to justify their earlier action and order, passed the order of termination rejecting the entire claim. He further submits that a person cannot be a judge of his own case and Clause 28 itself provides detailed mechanism for dealing with the grievance raised by the party. He further submits that two of the Committee members were instrumental in passing of the order of termination of contract and therefore, rejection of the proceedings filed by the Petitioner by the said Committee is *per se* illegal and not sustainable in the eyes of law. Lastly, he submits that no opportunity of hearing was granted to him as directed by this Court in earlier writ petition, which is a contemptuous act on their part.
6. Per contra, learned counsel for the State submits that apart from the agreement, condition of the contract, supplementary agreement has been entered into between the parties, which provides that the dispute, if any, arose between the parties, it should be decided by the District Construction Committee and by virtue of that agreement, earlier it has been argued before this Court the appropriate authority to decide the grievance of the Petitioner that is the District Construction Committee and the District Construction Committee after considering the claim of the

Petitioner in detail, have passed the order which do not call for interference. He further submits that once the Petitioner had entered into an agreement, in which, the District Construction Committee has been made the Forum to decide the dispute, then he cannot be permitted to raise objection on the District Construction Committee itself. However, he submits that from the impugned order, it is not clear that whether the opportunity of hearing is provided to Petitioner or not.

7. We have heard learned counsel appearing for the parties and considered the documents as well as conditions of the contract enclosed along with the writ petition.
8. It is not in dispute that the Petitioner entered in a supplemental agreement, in which, one of the clause for Forum of the settlement of the dispute with subject contract is prescribed as the District Construction Committee. No doubt, that once the Petitioner agreed and accepted for having the District Construction Committee to be the Dispute Redressal Forum then, he has to accept the decision given by the said forum. At the same time, it is to be kept in mind that the District Construction Committee which acts as an adjudicating authority should comprise of the member's who has not passed any order under challenge before it or not an instrumental in passing of the order under challenge. Secondly, the Committee so constituted not even bothered to even go through the order passed by this Court and to comply the direction issued in the order for giving an opportunity of hearing to the Petitioner at the time of adjudicating the dispute raised by the Petitioner.

9. In the case before us, it is pointed out by the learned counsel for the Petitioner that the Collector was instrumental in giving direction for passing an order of termination of contract and the Executive Engineer has passed the order, which is not opposed by the learned counsel for the State. Both the officers are part of the Committee, Collector being the President of the Committee and the Executive Engineer is a Member Secretary of the Committee.
10. If that being the formation of the Committee, who decided the application/representation of the Petitioner, it cannot be treated as an independent Committee because they are considering the correctness of their own action and order. It is a settled principle that the person cannot be a judge of his own case.
11. In view of above, we are of the firm view that the District Construction Committee which the Collector being President and Executive Engineer as Member Secretary committed illegality in considering the claim/application of the Petitioner and passing order Annexure P/1.
12. This brings the other question as to what will be the Forum for raising dispute by the Petitioner in the facts of the case.
13. Clause 28 of the terms and conditions of the contract provides the arbitration clause, in which, Superintending Engineer has been empowered to deal with the grievance with respect to the specification, designs, drawings, estimate, concerning the works, or the execution or failure to execute the same, whether arising during the progress of work, or after the abandonment thereof. Clause 28 further provides for appeal before the Chief Engineer.

14. In the above facts and circumstance of the case, we hold that the decision taken by the District Construction Committee has not passed the order as an independent Fourm, and therefore, we set aside the decision taken by the District Construction Committee dated 24.09.2019 vide Annexure P/1. We further direct the Petitioner to approach the Superintending Engineer as provided under Clause 28 of the contract to file appropriate proceeding within a period of two weeks from today. The Superintending Engineer who is a competent authority under Clause 28 of the conditions of the contract is directed to decide the claim of the Petitioner within a further period of six weeks from the date of filing of such claim by the Petitioner. The Superintending Engineer will decide the claim so raised by the Petitioner after giving opportunity of hearing to him without being influenced by the order passed by the District Construction Committee. Till any decision is arrived at by the competent authority i.e. Superintending Engineer, the Respondents may not float any fresh tender for the said work, if not yet notified.
15. In view of aforementioned directions, writ petition stands disposed off.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge