

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 1086 of 2019**

M/s Doaba Industrial Supply Co. Through Proprietor Arun Sharma S/o Shri
Ashok Sharma, Aged About 36 Years, Giriraj Apartment 216, Didwaniya
Regency Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary, Urban Administration And
Development Department, Indrawati Bhawan, 4th Floor, D-Block, Atal
Nagar, Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. State Of Chhattisgarh Through Director Urban Administration And
Development Department, Indrawati Bhawan, 4th Floor, D-Block, Atal
Nagar, Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
3. Municipal Corporation Jagdalpur Through Commissioner District Bastar
Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh
4. Municipal Corporation Birgaon Through Commissioner District Raipur
Chhattisgarh, District : Raipur, Chhattisgarh
5. Nagar Panchayat Geedam Through Chief Executive Officer, District
Dantewada Chhattisgarh, District : Dantewada, Chhattisgarh

---- **Respondents**

For Petitioner	:	Mr. Devesh G. Kela, Advocate
For State/res. No.1 & 2	:	Mr. Anand Verma, Dy. GA
For Res. No.3	:	Mr. A. S. Kachhawaha, Advocate
For Res. No.4	:	Mr. Satish Gupta, Advocate
For Res. No.5	:	None

Hon'ble Shri Justice P. Sam Koshy
Order on Board

03/09/2020

1. The challenge in the present writ petition is to the Annexure P-15 dated 18.02.2019 passed by the respondent No.2 the Director, Urban Administration and Development, Raipur of the State of Chhattisgarh.
2. Vide the impugned order the Director has issued instructions to all the Commissioners of the Municipal Corporations in the State of Chhattisgarh as also to all the Chief Municipal Officers of the different Municipal Councils and Nagar Panchayats in the State of Chhattisgarh directing them to withhold all payments to be made to the petitioner establishment.
3. Plain reading of the Annexure P-15 reflects that the said order was passed on account of certain payments made by the Municipal Corporation, Jagdalpur to the tune of Rs. 15,04,000/- to the petitioners against the work order issued from the Municipal Corporation Jagdalpur dated 12.06.2018. The work order was subsequently canceled on 22.11.2018 as the petitioner failed to discharge his duty and the responsibility pursuant to the work order awarded to him. Meanwhile, the respondent Municipal Corporation Jagdalpur has released the amount of 15,04,000 to the petitioner as advance amount for meeting the contractual requirement. In the light of the cancellation of the contract the amount of 15,04,000 became recoverable from the petitioner. The petitioner in between gave two cheques to the Municipal Corporation, Jagdalpur. However, on presentation of the said cheque for clearance both the cheques got dishonoured which led to the municipal authorities intimating the respondent No.2 who in turn has passed the impugned order Annexure P-15 dated 18.02.2019 which led to the filing of the present writ petition.

4. Today when the matter is taken up for hearing the counsel for the petitioner submits that as a consequence of the impugned order the entire payment due to the petitioner against the work which has been executed by the petitioner with the different municipal Corporations, Municipal Councils and Nagar Panchayats have all been withheld. Further contention of the petitioner is that the total consolidated amount which the petitioner has to receive from the different Municipal Corporation, Municipal Councils and Nagar panchayats exceeds much more than the amount payable by the petitioner to the Municipal Corporations, Jagdalpur.
5. Counsel for the petitioner submits that subject to the respondent State releasing the entire amount payable to the petitioner immediately due to him from various local bodies and which stands withheld pursuant to Annexure P-15, the petitioner undertakes to deposit the entire amount of 15,04,000/- to the respondent Municipal Corporation, Jagdalpur within a period of seven days from the date of receipt of the entire payment from the State Government. Counsel for the petitioner submits that there was no intention of defaulting the respondents at any point of time but it is because of the peculiar circumstances that erupted in the course of executing of the work and loss suffered by the petitioner in between on account of which he could not execute the work. That even the cheques which have got dishonoured was because of the non releasing of the amount receivable by the petitioner from the other Corporations etc.
6. As regards, the contention of the State Government it has been submitted that impugned order has been passed because of the non performance of the contract by the petitioner in spite of the receiving amount of 15,04,000/- paid by the State Government to the Municipal Corporation and the amount being recoverable from the petitioner, the impugned order has been passed.

7. Counsel for the Municipal Corporation, Jagdalpur on the other hand submits that the work order issued to the petitioner was for the supply of water tanker to be used during the summer season and time was the essence of the contract. However, the petitioner failed to discharge his contractual obligations in spite of receiving the advance amount of 15,04,000 i.e. the 80% as advance amount as per the terms of the agreement. On the non performance of the contractual obligations on the part of the petitioner the Municipal Corporation canceled the work order on 22.11.2018 and asked the petitioner to refund the advance received by him to the tune of Rs. 15,04,000/-. Upon notice being issued to the petitioner they had issued two cheques. However, both the cheques on presentation got dishonoured forcing the corporation to intimate the authorities in the State Government in this regard resulting in the issuance of the impugned order Annexure P-15 which according to the counsel for the respondent Municipal Corporation, Jagdalpur is justified, legal and does not warrant any interference on account of clear default of non payment of huge amount which the petitioner has received in advance.
8. Mr. Satish Gupta, counsel appearing for the respondent No.4 submits that there are certain payments to be made to the petitioner, but the same has been withheld on account of impugned order being passed and respondent No.4 in the instant case is not the contesting respondent as no relief has been sought against the respondent No.4.
9. Given the said facts what is undisputed is the fact that petitioner was given a work order by the respondent No.3 on 12.06.2018 for supply of water tanker for a period of one month. Meanwhile, the respondent Municipal Corporation Jagdalpur has released the amount of 15,04,000 to the petitioner as advance amount for meeting the contractual requirement. The petitioner undisputedly failed to abide by the contractual obligations

resulting in the cancellation of the work order on 11.11.2018 which has not been questioned or challenged by the petitioner. Subsequently two cheques which were issued by the petitioner for clearance towards repayment of the advance amount received with the Municipal Corporation, Jagdalpur also got dishonoured for want of sufficient funds in the account. During the course of hearing what primarily reflected from the arguments and submissions made on either side was that as far as the Municipal Corporation, Jagdalpur is concerned they are more worried about the amount of Rs. 15,04,000/- given to the petitioner and they intend to recover the same.

10. That same is the stand of the State Government also, as regards the petitioner's stand is that the moment the entire amount withheld by the different corporations, councils and Nagar panchayats pursuant to the Annexure P-15 dated 18.02.2019 is released, the petitioner shall clear the dues payable to the Municipal Corporation, Jagdalpur.
11. What is culled out from the claims put forth on either side it appears that if the petitioner pays Municipal Corporation, Jagdalpur an amount of 15,04,000/- as of now their grievance would stand redressed. The petitioner also has shown keen interest in clearing the amount payable to the Municipal Corporation, Jagdalpur. The plain reading of the Annexure P-15 would reveal that the entire amount has been withheld on account of an amount of Rs. 15,04,000/- payable to the Municipal Corporation, Jagdalpur.
12. Given the said factual matrix as it stands this Court is of the opinion that in the larger interest of all the parties to the present dispute the entire dispute itself would stand redressed if the writ petition is disposed of with a direction to the respondent No.2 to firstly withhold an amount of Rs. 15,04,000/- recoverable from the petitioner from the various dues that are payable to the petitioner from different local bodies, and all the balance of amount if

any payable to the petitioner from the different local bodies in excess of Rs.15,04,000/- be immediately released to the petitioner. Subject to the release of those amounts by the different bodies after an appropriate instruction being issued by the respondent No.2 the petitioner herein shall deposit the amount of 15,04,000/- with the Municipal Corporation, within a period of 15 days from the date of receipt of balance of amount from the different local bodies. After the petitioner deposits Rs. 15,04,000/- with the Municipal Corporation, Jagdalpur he shall be at liberty to approach the respondent No.2 showing deposit of Rs. 15,04,000 with the Municipal Corporation, Jagdalpur and on producing the said receipt, respondent No.2 shall ensure releasing of the withheld amount of Rs. 15,04,000/- to the petitioner within a further period of 45 days to the petitioner.

13. It is necessary at this juncture to mention that during the course of hearing the consensus has been reached by the parties to the extent that, neither of the parties would be claiming interest on the amount payable to each other, that is to say that petitioner would be paying the Municipal Corporation the principal amount so also different Municipal Corporation and local bodies would also be paying the petitioner only the principal amount due to him.

14. It is expected that respondent No.2 shall within 30 days from the date of receipt of copy of this order issue necessary instructions to the different local bodies for necessary compliance to be done in terms of the directions given hereinabove.

15. With the aforesaid observations, the writ petition stands partly allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge