

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1962 of 2020**

- M/s Ambika Projects, Through: Partner – Pankaj Singh, S/o Shri Mahendra Singh, aged about 40 years, Resident of Behind Shagun Gargen Bauripara Ambikapur, P.S. Kotwali, District – Sarguja (Chhattisgarh)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: Secretary, Mahanadi Bhawan, New Mantralaya, Atal Nagar, District – Raipur (C.G.)
2. Engineer in Chief, Public Works Department, District – Raipur (C.G.)
3. The Chief Engineer, PWD (Bridge Division), District Raipur (C.G.)
4. The Superintending Engineer, PWD (Bridge Division) Circle – Raigarh, District – Raigarh (C.G.)
5. The Executive Engineer, PWD (Bridge Division) Division – Raigarh, District Raigarh (C.G.)

---- Respondents

For Petitioner	:	Shri Apoorva Tripathi, Advocate.
For Respondents/State	:	Shri Vikram Sharma, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Order on Board**Per P. R. Ramachandra Menon, Chief Justice****31.08.2020**

1. Termination of the work contract awarded to the Petitioner as per Annexure P/1 order dated 26.05.2020 passed by the 5th Respondent, is

put to challenge in this writ petition. The request for arbitration turned down by the 4th Respondent/ Superintending Engineer as per Annexure P/19 dated 27.07.2020, is also under challenge at the instance of Petitioner.

2. The sequence of events described the writ petition shows that the Petitioner which is a partnership firm, was awarded a work contract for the Construction of (Balance Work of) High Level Bridge i/c Approach road across Mand River at Bangarsuta-Maharajganj Road, as per agreement No. 10 DL/2017-2018. It is the case of the Petitioner that the Petitioner has been pursuing the said work and that there was no lapse on their side, but for the adverse consequences which resulted in the course of the proceedings necessitating to have the tenure of the contract extended further. It is stated that the work however, could not be completed on time and that the delay was resulted for the reasons given in the writ petition, thus, seeking for extension of time till 30.06.2020. It is stated that it was virtually accepted by the 5th Respondent/Executive Engineer and he had made a recommendation for extension of time to be granted to the Petitioner till 15.06.2020; which however, came to be corrected manually to 15.03.2020. It was on the basis of the assurance given by the Executive Engineer, that the Petitioner was continuing the work, though there was no specific order granting the extension. It was all of a sudden that Annexure P/1 order came as a bolt from the blue on 26.05.2020 (served on 03.06.2020) stating that the work order has been cancelled for the following reasons:

“(a) You have stopped work for four weeks, when no stoppage of work is shown on the current programme or stoppage has not been authorized by the Executive Engineer.

(b) You have delayed this competition of work by the number of weeks [12 (Twelve) Weeks] for which the maximum amount of compensation of 6% of contract sum is exhausted.

(c) If the contractor has not completed at least thirty percent of the value of construction work required to be completed in half of the completion period (Including validly extended period if any).

(d) If the contractor fails to appoint the technical staff and if appointed do not function properly for 4 weeks even after due written notice by the Executive Engineer.”

3. Though the Petitioner took up the matter before the 4th Respondent/Superintending Engineer by filing necessary proceedings, the request for re-allocation was turned down as per Annexure P/19 dated 27.07.2020, which made the Petitioner to approach this Court by filing the writ petition with the following prayers:

“A. May, the Hon'ble Court be pleased to set-aside the impugned order of termination of contract of the petitioner dated 26.05.2020 (Annexure P-1) and forfeiture of earnest money, security deposits of the petitioner.

B. May, the Hon'ble Court be pleased to direct the respondents to conduct the physical verification, take measurements and make payments of the due and admitted amounts of the petitioner, of the work executed by the petitioner after Feb 2019 under the promise of Extension of Time, which as per the petitioner amounts to Rs. 82 lacs (approx) along with the escalation.

C. May, the Hon'ble Court be pleased to direct the Respondents to conduct the requisite tests of the work done, especially of the Pile foundations by the previous contracted agency, as any compromise with the same would only and ultimately cause loss to the Public Exchequer and possibly to human life.

D. May, the Hon'ble Court be pleased to direct the Respondents to conduct cross checks and verification of the drawing and designs, especially in light of the fact that an independent agency has come to the conclusion that, said drawing and design were NOT OK and were not passing various requirements of IRC 112-2011 i.e. Indian Roads Congress: Code for Practice for Concrete Road Bridges as again, any compromise with the same

would only and ultimately cause loss to the Public Exchequer.

E. May, this Hon'ble Court direct the Respondents to end the work agreement of the petitioner under Clause 14 of the agreement, in the event they do want to proceed with the petitioner as their working agency.

F. May, this Hon'ble Court be pleased to direct the respondents to treat the agreement of the Petitioner as frustrated and end the same, in a manner for which none of the parties to an agreement shall be deemed as responsible.

G. May, this Hon'ble Court be pleased to quash the order dated 27.07.2020 (Annexure P-19) issued by the Superintending Engineer as competent authority under clause 28.

H. May, this Hon'ble Court be pleased to direct the respondent authorities to not float or issue any NIT or issue any work with respect to the instant contract.

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

J. Cost of the petition may also be awarded.

4. The learned counsel for the Petitioner submits that the proceedings pursued and finalized by the Respondents are *per se* wrong and illegal in all respects. It is without proper application of mind with reference to the relevant facts and figures, that the impugned orders have been passed by the Respondents concerned, which are required to be interdicted by this Court so as to meet the ends of justice.
5. Shri Vikram Sharma, the learned Deputy Government Advocate representing the Respondents/State submits that the circumstance under which the work order came to be terminated is squarely discernible from the proceedings. It is also pointed out that the disputed of question of facts cannot be adjudicated in a writ petition, more so, when the Petitioner is having an effective alternative remedy by virtue of 'Clause 28' of Annexure P/4.

6. Clause 28 of the Annexure P/4 reads as follows:

“Clause 28. Except as otherwise provided in this contract all question and dispute relating to the meaning of the specification, designs, drawings and instruction herein before mentioned as to thing whatsoever in any way arising out of relating to the contract designs, drawings, specification, estimate, concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or a after the abandonment there of shall be referred to the Superintending Engineer for his decision, within a period of 30 (thirty) days of such and occurrence (s). There upon the Superintending Engineer shall give his written instructions and/or decisions, after hearing the contractor and Executive Engineer within a period of 15 (fifteen) days of such request. This period can be extended by mutual consent of parties.

Upon receipt of written instructions or decisions, of Superintending Engineer the parties shall promptly proceed without delay to comply such instructions or decisions. If the Superintending Engineer fails to give his instruction or decisions in writing within a period of 15 (fifteen) days or mutually agreed time after being requested and/or, if the party (es) is/are aggrieved against the decision of the Superintending Engineer, the aggrieved party may within 30 days prefer an appeal to the Chief Engineer, who shall afford an opportunity to the parties of being heard and to offer evidence in support of his appeal. The, Chief Engineer will give his decision within 30 (thirty) days, or such, mutually agreed period.

If any party is not satisfied with the decision of the Chief Engineer he can file the petition for resolving the dispute through arbitration in the arbitration tribunal.”

From the above, it is clear that if at all anybody is aggrieved of the orders passed by the 4th Respondent/Superintending Engineer, it is open for the aggrieved party to move the 3rd Respondent/Chief Engineer within 30 days, by way of an appeal, which could be finalized only after affording an opportunity of hearing to the parties concerned. If any party is still not satisfied, the decision of the Chief Engineer can be challenged by filing a petition for resolving the dispute through Arbitration, in the Arbitration Tribunal.

7. In the above circumstances, we are of the view that the Petitioner has not exhausted the effective alternative remedy available. Further, considering the nature of the dispute raised, adjudication of the disputed questions of fact cannot be done in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India. Hence the Petitioner is relegated to move the competent authority in terms of 'Clause 28' of Annexure P/4. Since the time stipulated therein is apparently over, we grant a further period of 15 days' time to the Petitioner, from the date of receipt of a copy of the judgment to pursue such proceedings before the 3rd Respondent/Chief Engineer. If such proceedings are filed within time as above, it shall be treated as a valid one, which shall be considered and disposed off on merit, after affording an opportunity of hearing to the parties concerned, in terms of the relevant provisions of law.
8. With the above observations, interference is declined and the writ petition is dismissed. We make it clear that we have not expressed anything with regard to the merits of the case and it is for the competent authority to have the same considered and dealt with in accordance with law.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge