

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 228 of 2017

Sajan Kumar Agrawal S/o Late Sitaram Agrawal, Aged About 59 Years R/o Main Road, Netaji Chowk, Janjgir, District Janjgir Champa Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through the Secretary, Department of Public Works, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. The Engineer In Chief Public Works Department, Sirpur Bhawan, Raipur, District Raipur Chhattisgarh.
3. Superintending Engineer Public Works Department Bilaspur Circle, Bilaspur District Bilaspur Chhattisgarh.
4. Chief Engineer, Public Works Department Bilaspur District Bilaspur Chhattisgarh.
5. Executive Engineer, Public Works Department, Champa Division, Champa, District Janjgir Champa Chhattisgarh.

---Respondents

For Petitioner	:	Shri Manoj Paranjpe, Advocate.
For Respondent-State	:	Shri Sudeep Verma, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18.09.2020

1. The challenge in the present writ petition is to the order Annexure P/2 dated 23.11.2016 and also Annexure P/1 dated 27.12.2016.
2. Brief facts relevant for disposal of the writ petition is that, the petitioner being a Contractor was awarded a work order by the respondents. The work could not be completed within the stipulated period as was given in the work order thereby the petitioner had moved an application for extension of time vide Annexure P/6 dated 03.09.2015. Pending the application for extension of time, the petitioner had completed the entire work and a completion certificate was also received by the petitioner on 29.02.2016. Subsequently, the impugned order Annexure P/2 dated 23.11.2016 was passed by the Superintending Engineer (SE) whereby on

one hand the SE had allowed the application seeking extension of time and at the same time had imposed certain penalty/damages against the petitioner.

3. This order of the SE was subjected to challenge as per the agreement before the appellate authority i.e. the Chief Engineer (CE) on 13.12.2016. The appellate authority i.e. CE vide impugned order Annexure P/1 dated 27.12.2016 had rejected the appeal by a one line order as would be evident from a plain reading of Annexure P/1. There does not seem to be any discussion on the contents of the appeal or the grounds of appeal that the petitioner has raised in the Appeal.
4. At this juncture the counsel for the petitioner submits that in an identical set of facts in respect of a different Contractor a similar order was passed by the appellate authority ie. C.E. which was subjected to challenge before this court in WPC No.540 of 2016 and this court allowed the writ petition making following observations:
 - “3. On the other hand, learned counsel for the respondents submits that present is a contractual matter and involves several factual dispute. The petitioner has further remedy of taking recourse to arbitration proceedings before the Arbitration Tribunal. Without taking recourse to alternative remedy, the petitioner has rushed to file this petition before the Court.
 4. Ordinarily, in the matter of contractual dispute where there is an arbitration clause in the agreement, this Court is not inclined to interfere and leave the parties to work out their remedy as per the arbitration clause. However, in the present case, it is found that petitioner's appeal has been rejected by the Chief Engineer by stating that the order of Superintendent Engineer is final. As per Clause-28 of the Arbitration Clause of the agreement, it has been clearly provided that where the party is aggrieved by the

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order of Superintending Engineer, he may 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 the appeal and the Chief Engineer shall give his decision. This clearly shows that the Chief Engineer has to act as an appellate authority to examine the grounds of appeal and to give verdict as an appellate authority.

5. In the present case, the appellate authority/Chief Engineer has completely abdicated its function as appellate authority. Curiously enough, it has been stated that the order of the Superintending Engineer has become final. This is clearly perverse. There is no consideration of appeal at all. In view of the above, I am inclined to set aside order dated 19.10.2015 of the Chief Engineer. The Chief Engineer is directed to consider petitioner's appeal as per the provisions contained in Clause -28 of the agreement and take a decision thereon.

6. The petition is accordingly partly allowed.”

5. Relying upon the said order of the Co-ordinate Bench of this Court the counsel for the petitioner submits that the present writ petition also is squarely covered by the said order as in the instant case also the appellate authority has not applied his mind, nor has there been any consideration of grounds raised in the appeal while passing the impugned order Annexure P/1.

6. Having heard the counsel appearing on either side and on perusal of impugned orders Annexures P/1 & P/2, it clearly reflects the appellate authority has simply rejected the appeal by a one line order holding that the order passed by the SE is in accordance with law. There clearly reflects a failure on the part of the CE in not discussing the grounds of appeal that the petitioner has raised, and also the relevant provisions of the contract/agreement between the parties.

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- 7.** In view of the same, this court is inclined to fully endorse the view taken by the Co-ordinate Bench of this Court in WPC No.540 of 2016 (Ms. Laxmi Civil Engineering Service Pvt. Ltd. Vs. State of Chhattisgarh & Ors.) and on similar term the impugned order Annexure P/1 dated 27.12.2016 passed in this case deserves to be and is accordingly set aside/quashed.
- 8.** As a consequence, the appeal stands remitted back to the Chief Engineer for fresh consideration on the grounds raised in the memo of appeal afresh and the appellate authority is directed to pass an order on merits. While deciding the appeal, the Chief Engineer is also expected to bear in mind the provisions of Clause-28 of the agreement entered into between the parties.
- 9.** Needless to say that considering the fact that the appeal was of the year, 2016, the Chief Engineer shall decide the appeal within a period of 90 days from the date of receipt of copy of this order.
- 10.** The writ petition accordingly stands partly allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder