

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2685 of 2020

- M/s Shri Sai Kripa Builders Through Its Partner Ashutosh Mishra , Aged About 38 Years, S/o Shri J.P. Mishra , Mangal Bhawan, Bazar Chowk, Chhurikala, District Korba Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Public Works, Mantralaya, Atal Nagar , Naya Raipur Chhattisgarh.
2. The Collector (Mining Cell) Korba, District Korba Chhattisgarh.
3. The Chief Engineer Public Works Department , Bilaspur Region , Office At Opposite Civil Court, Bilaspur, District Bilaspur Chhattisgarh
4. The Executive Engineer Public Works Department, Korba Division , District Korba, Chhattisgarh.
5. The Deputy Director (Mining) Office At Collectorate Korba, District Korba Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Ravindra Agrawal, Advocate
For State	:	Shri Amrtio Das, Addl A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

20.11.2020

Heard

1. Learned counsel for the petitioner would submit that the petitioner completed the construction of boundary wall along with electrification pursuant to agreement dated 11.05.2015. The completion certificate was submitted on 02.02.2017 and according to Clause 35 of the agreement, the petitioner was entitled to get back the royalty charges in respect of the material used. He further submits that he received the final bill payment, however, the royalty certificate was not issued despite the letter/ correspondence made on 07.07.2017 and in the year 2019, the royalty

certificate was issued; but till date the payment has not been released. Consequently, the respondents may be directed to release the royalty charges which is used for the materials for execution of the contract.

2. Per contra, State counsel opposes the argument and would submit that the issue raised before this Court involves disputed question of law and is barred by time, as much as, contract was completed in the year 2016 and final payment was released; therefore, this Court may not exercise its jurisdiction under Article 226 of the constitution .
3. Perused the documents. Clause 35 of the agreement on which the petitioner placed reliance reads as under:-

Clause 35:- The contractor shall pay all quarry, Royalty charges etc. If the contractor fails to produce the royalty clearance certificate from concerned department then the Executive Engineer shall deduct the royalty charges from his bills and keep in deposit head, which shall be refunded to the contractor on production of royalty clearance certificate from the concerned department. If he fails to produce the royalty clearance certificate within 30 days of submission of final bill, then royalty charges which was keep under deposit head by the Executive Engineer shall be deposited to the concerned department and his final bill payment shall be released.

Any change in the royalty rates of minor minerals notified by the State government after the date of submission of financial offer by the bidder/contractor, then this increase/decrease in the rates shall be reimbursed/deducted on actual basis.

4. Reading of the aforesaid clause would show that if the contractor fails to produce the royalty clearance certificate from the concerned department then the royalty kept under the deposit head shall be deposited to the concerned department and his final bill payment shall be released. The final bill payment in this case has been released, the only issue is about the reimbursement of the royalty charges and since the contract was completed

in the year 2016 and payment has been released, the question of release of amount are to be ascertained with a qualified condition of limitation. Though the letter was addressed by CEO dated 07.07.2017 and subsequent letter has been issued 07.12.2019 under what circumstances the same were issued and consequence thereof are necessarily to be looked and appreciated after evidence is produced. If the contract was concluded and final payment was made as per clause 35 then this Court in exercise of its power under Article 226 cannot revive a concluded contract which has lived it's life. The petitioner if is aggrieved with the non payment of his dues, he may approach to the competent Civil Court for final adjudication and release of amount as necessarily disputed facts are involved qua limitation. Therefore, I am not inclined to exercise the power under article 226 of the constitution to adjudicate a civil claim for which competent Civil Court are functional. Accordingly, the petition deserves to be and is hereby dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti