

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C) No. 761 of 2021

Geeta Builders, Through Its Proprietor And Contractor Romal Sahani,
S/o. Avatar Sahani, Aged About 32 Years, R/o. Santrabadi Durg, District
Durg Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Urban Administration And Development Department, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. Commissioner, Municipal Corporation Durg, District Durg Chhattisgarh.
3. Executive Engineer, Municipal Corporation Durg, District Durg, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. B.P.Singh, Advocate
For State/Respondent No.1.	:	Ms. Richa Shukla, Dy. Govt. Advocate
For Respondent No.2 & 3	:	Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

16.02.2021

Heard

1. The instant petition has been filed against the notice dated 11.01.2021 (Annexure P-1) wherein the contract given to the petitioner for construction of road was terminated on the ground that he is unable to execute the job and further the security amount was directed to be forfeited alongwith the notice that the petitioner was black listed.
2. Learned counsel for the petitioner would submit that the petitioner, after was awarded a contract to construct the road, prayed for the layout and the map from the Municipal Corporation by a letter dated 16.03.2020 and 16.06.2020 (Annexure P-5), despite such requisition he was not supplied with any layout and eventually he cannot carry out the work. Therefore, the petitioner cannot be held responsible for the fault committed by the respondents.

3. Per contra, learned counsel for the Municipal Corporation, on instructions, would submit that the petitioner was supplied with the layout and the map after the work order was issued on 31.10.2019, but the petitioner cannot execute the work. Under the circumstances, the performance guarantee was directed to be forfeited and the petitioner was black listed. He would further submit that for breach of terms of the contract, the work contract contains an arbitration clause as per clause 28, therefore, this petition would not be tenable.
4. Perusal of Annexure P-1 purports that for a work order which was issued on 31.10.2019 the construction of the road was not started, therefore, the security amount is directed to be forfeited and he was black listed.
5. Rival submissions have been made by both the parties about non-supply of layout and plan. The petitioner on one hand has stated that he was not given the layout and the map whereas on the contrary the Municipal Corporation contends that he was supplied the map and layout, but the work was avoided by the petitioner. Therefore, this disputed question of fact can be decided only by the arbitrator when the contract itself has been terminated and the arbitration clause 28 provides that any dispute, question relating to the meaning of the specification arising out of the contract for execution or failure to execute the work shall be referred to named arbitrator. In view of this, since allegation is that the petitioner has failed to execute the work, it would be arbitral dispute and the petitioner can very well avail the remedy available before the arbitrator.
6. With respect to black listing of petitioner, it appears when there are conflicting disputes are made about the non-performance of contract on each other as at one hand the petitioner contends that the layout and the map was not served whereas the Municipal Corporation refused the same and stated that the map and layout was submitted then on the rival claim which is yet to be decided but at the same time petitioner is black

listed and debarred to participate in future contract for one year and the security amount was forfeited. This would lead to a civil consequence and apparently it appears that before issuance of Annexure P-1, petitioner was not served with notice and was given an opportunity of hearing with extent to black listing and further to debar the petitioner to participate in further contract.

7. Under the circumstances, it is directed that the extent of the order Annexure P-1 dated 11.01.2021 that the petitioner is black listed and would be debarred to participate in any work is set aside and shall not be effective and the petitioner shall be given opportunity of hearing before such orders are passed. With respect to the other averments which are the part of Annexure P-1 dated 11.01.2021 the petitioner can resort to arbitration clause since dispute as has been raised is required to be decided as per Clause 28 of the agreement by a named arbitrator therein.
8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge

Aks