

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C) No. 766 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 06.01.2021 (Annexure P-1) wherein the petitioner was black listed and his FDR was directed to be confiscated for the reason that he has not executed the contract vide work order issued on 05.11.2019.
2. Learned counsel for the petitioner would submit that the petitioner was awarded a contract in the year 2019 for construction of a Community Hall in Rajeev Nagar, Durg and work order was issued on 05.11.2019. It is stated that despite issuance of work order, the petitioner was not supplied with the layout and plan and despite several reminders and requisitions, the same was not supplied and instead all of a sudden the petitioner was served with notice dated 06.01.2021 wherein the contract was terminated and his FDR was directed to be confiscated with a

direction to debar the petitioner for one year to participate in any further contract. The counsel further submits that the petitioner though had asked for layout and plan by letter dated 16.06.2020, 16.10.2020 and lastly on 02.12.2020 (Annexure P-4) but without giving any opportunity of hearing the letter was served, which is against the principles of natural justice and the respondents cannot take advantage of their own wrong.

3. Per contra, learned counsel for the Municipal Corporation, on instructions, would submit that the Corporation has issued the work order and had supplied the layout and map, however, for some reason or other by raising query, the petitioner did not execute the job; hence after giving three notices eventual termination of the contract was made. 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 dated 06.01.2021 purports that for a work order which was issued on 05.11.2019 the construction of the community hall was not started, therefore, the contract was terminated with forfeiture of security deposit and further he was debarred to take part in further work for one year.
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 and stated since irrelevant queries were made and the work was avoided. 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 debar of the petitioner for one year, 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 design and the map was not served whereas the Municipal Corporation refused the same and stated that the map and the design was submitted as such the rival claim is yet to be decided but at the same time, the petitioner has been debarred to participate in any contract for one year. This act of debar to participate in any contract would lead to a civil consequence and apparently it appears that before issuance of Annexure P-1, he was not served with notice or given an opportunity of hearing with extent 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 06.01.2021 that the petitioner would be barred 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 of debar are passed. With respect to the other averments which are the part of Annexure P-1 dated 06.01.2021 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