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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 214 of 2020**

{Arising out of Order dated 10.02.2020 passed in Writ Petition (C) No. 572 of 2020 by the learned Single Judge}

M/s. AVA Buildcon, a registered firm, through its Partner, Rohit Vishwakarma
S/o Shri R.S.Vishwakarma, aged about 36 years, R/o House No. F-1, Anupam
Nagar, Nr. T.V. Tower, Raipur, Tehsil and District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Chhattisgarh Police Housing Corporation Limited, through Chairman-cum-Managing Director, Old Police Headquarter, SIB Building, Civil Lines, Raipur, District Raipur, Chhattisgarh.
2. Executive Engineer, Chhattisgarh Police Housing Corporation Limited, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant : Shri Surfaraj Khan, Advocate.
For Respondents/State : Shri Sudeep Agrawal, Deputy Advocate General

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

Judgment on Board**Per P.R. Ramachandra Menon, Chief Justice****18/01/2021**

1. Annexure P/1 order dated 25.01.2020 issued by the 1st Respondent whereby the tender awarded to the Appellant/Writ Petitioner was cancelled forfeiting the security deposit of Rs.2,49,664/- including earnest money deposit (EMD) of Rs.5,00,000/- simultaneously directing recovery of more than Rs. 1 Crore was put to challenge in the writ petition. Interference was declined by the learned Single Judge relegating the Writ Petitioner to pursue remedy available under clause 28 (Arbitration Clause) of the agreement. Dismissal of the writ petition is the subject matter of challenge in this appeal.

2. The Respondents have filed a return, paragraph 6 and 7 of which are to the following effect:

"6. That, it is also categorically submitted that as per the terms and conditions of the agreement dated 07.06.2017, clause 3 clearly stipulates that the Project Engineer/Executive Engineer may terminate the contract if the contract causes a fundamental breach of the contract. That further Clause 28 speaks about Arbitration Clause and any dispute has to be referred to the Chief Project Engineer for his decision, within a period of 30 days of such an occurrence. Since the post of Chief Project Engineer is lying vacant in the establishment of the answering respondents therefore the order passed by the Project Engineer/Executive Engineer has to be referred to Managing Director, who shall afford an opportunity to the parties of being heard and to offer evidence in support of his appeal and thereafter the Managing Director will give his decision within 30 days, or such, mutually agreed period. That the appellant herein has stated that the termination of contract as well as passing of impugned order dated 25.01.2020 by the Managing Director is being without any authority of law as the termination of contract has to be done as per Clause 3 of the agreement by the Project Engineer/Executive Engineer only whereas termination has been effected by the Managing Director who himself is an Appellate Authority.

7. That, it is most humbly submitted by the answering respondents that since specific request/representation dated 01.02.2020 and 03.02.2020 was preferred by the writ petitioner seeking for hearing under Clause 28 of the agreement, therefore since the appellant was not afforded any opportunity of hearing before the Managing Director so letter dated 03.03.2020 was issued by the answering respondents informing that hearing under clause 28 of the agreement would be done on 06.03.2020. Thus, the appellant has been afforded with an opportunity of hearing under clause 28 and he had also participated in the proceedings dated 06.03.2020. The copy of the letter dated 03.03.2020 is being marked and annexed as Annexure R-2."

3. Shri Surfaraj Khan, the learned counsel appearing for the Appellant submits that the Appellant will be satisfied if a direction is given to the Respondents to have the matter finalised as stated in paragraph 6 and 7 of the reply filed by the Respondents within a time frame.
4. Shri Sudeep Agrawal, the learned Deputy Advocate General representing the Respondents/State submits that the matter will be finalised within a period of 30 days.

5. In the said circumstances, the submission made by the learned counsel for the parties is recorded and the writ appeal is disposed off directing the competent authority to have the matter finalised in terms of the grievance projected by the Appellant, particularly in view of the stand revealed from paragraphs 6 and 7 of the return filed by the Respondents. The matter shall be finalised as above, as expeditiously as possible, at any rate, within a period of 30 days from the date of receipt of a copy of this judgment.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE