

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 4151 of 2021**

M/s Gupta Construction And Company Through Its Partner Ankit Gupta S/o Late Mohan Lal Gupta A/o 28 Years R/o Jainam Planet, Block C-603, Near Aiiims Hospital Tatibandh Road Raipur Chhattisgarh Through Its Power Attorney Holder Gadde Taraka Rama Rao S/o Shri Gadde Koteshwara Rao A/o 50 Years R/o Flat No. 102, Lord Court Apartment, Andhra Bank Lane, Ashok Nagar, Vijaywada 10 A. P.

---- **Petitioner****Versus**

1. State of Chhattisgarh Through The Secretary, Department of Home (Police), Mahanadi Bhawan, Mantralaya, Atal Nagar, P. O. Rakhi, Nawa Raipur District Raipur Chhattisgarh
2. The Chairman Cum Managing Director Chhattisgarh Police Housing Corporation Limited Old Police Head Quarter, S. I. B. Building Civil Line, Raipur District Raipur Chhattisgarh
3. Regional Officer Ministry Of Road Transport And Highways, N. H. Campus Pension Bada, Raipur Chhattisgarh
4. M/s Ram Sharan Singh A-Class Contractor Shanti Nagar, Sukma, District Sukma Chhattisgarh
5. Shailendra Bahadur Singh Infra Pvt. Ltd. Plot No. B 101, Lane 4, Swarna Bhoomi, Vidhan Sabha Road, Raipur, District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh

---- **Respondents**

(Cause-title taken from Case Information System)

For Petitioner	: Mr. Anish Tiwari, Advocate
For Respondent No.1	: Mr. Vikram Sharma, Deputy Government Advocate.
For Respondent No.2	: Mr. Pranjal Agrawal, Advocate
For Respondent No.3	: Mr. Ramakant Mishra, Assistant Solicitor General

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri N. K. Chandravanshi, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

10.12.2021

Heard Mr. Anish Tiwari, learned counsel for the petitioner. Also heard Mr. Vikram Sharma, learned Deputy Government Advocate appearing for respondent No.1, Mr. Pranjal Agrawal, learned counsel appearing for respondent No.2 and Mr. Ramakant Mishra, learned Assistant Solicitor General appearing for respondent No.3.

2. The respondent No.2 floated tenders for construction of widening of road to 2 lane and improvement of road by cement concrete pavement, bridges and culverts from Dornapal-Chintalnar-Jagargunda, District Sukma, for a total length of 56 kms, split up into 17 patches. For said 17 patches, 17 contracts were granted to different contractors. The petitioner bagged 9 contracts out of said 17 contracts. The details of the contracts, work-order number, kilometers, and dates are extracted hereinbelow for easy reference :

Sr. No.	Contract No.	Work Order No.	Kms	Date
01.	326	801	10-11 (2 kms)	08.05.2017
02.	284	174	21-22 (2 kms)	16.02.2016
03.	283	170	29-30 (2kms)	16.02.2016
04.	282	172	31-32 (2kms)	16.02.2016
05.	289	246	39-41 (3 kms)	05.03.2016
06.	301	891	42-44 (3 kms)	28.07.2016
07.	290	243	45-47 (3 kms)	05.03.2016

08.	291	241	48-49 (2 kms)	05.03.2016
09.	292	248	53-54 (2 kms)	08.03.2016

3. In connection with the said contracts, separate agreements were executed. It is pleaded that the area is known as “Left Wing Extremism” (L.W.E.) area and therefore, work was to be performed under the protection of Central Reserve Police Force / Police. Number of attacks by extremists had also taken place in the area where the road is to be constructed and in such incidents, number of jawans have also been martyred.

4. On 03.08.2021, a show-cause notice was issued to the petitioner seeking explanation as to why the work was not completed within the stipulated time. The petitioner wrote a letter dated 09.08.2021, seeking two weeks’ time for permitting him to file reply by 24.08.2021, but without considering the request, respondent No.2 terminated 05 tenders of the petitioner *i.e.*, 39-41 kms, 42-44 kms, 45-47 kms, 48-49 kms and 53-54 kms on 13.08.2021.

5. It appears that subsequent to the cancellation of the aforesaid contracts, by orders dated 14.09.2021, respondent No.4 was allotted the work which were cancelled. It also appears that consequently the work order in respect of 39-41 kms in favour of respondent No.4 was also cancelled and the work had been allotted to respondent No.5 by an order dated 30.10.2021.

6. Respondents No.4 and 5 have been arrayed as parties to this writ petition on separate applications for amendment being allowed.

7. Mr. Tiwari submits that the petitioner has been treated discriminatorily while terminating his 05 contracts on the ground that the work has not been completed in the stipulated period of time. In similar circumstances, against the other contractors, no such coercive action has been taken and the petitioner

has been singled out. It is submitted by him that it is an admitted position that there is existence of left wing extremists and therefore, having regard to the fact that number of incidents had taken place, the respondents ought to have considered the aforesaid aspect of matter in the correct perspective and could not have terminated the 05 contracts of the petitioner. He submits that no opportunity was accorded to the petitioner in response to the show-cause notice dated 03.08.2021 to furnish explanation and therefore, the impugned order of cancellation is vitiated. It is submitted that the petitioner is ready and willing to complete the work and therefore, the petitioner had also prayed for extension of the contracts since the earlier period of extension had expired on 30.06.2021 and without considering such request, the order of cancellation has been passed. He has also submitted that only after cancellation of the contracts, by letter dated 20.08.2021, the petitioner was asked to be present on 06.09.2021 in respect of the application for extension filed by the petitioner. It is on the background of the above facts, he submits that the impugned action is a result of total non-application of mind.

8. Mr. Agrawal, placing reliance on the reply filed by the respondent No.2, submits that a period of 8 months for completion of 2 kms and 12 months for completion of 3 kms road were given to the petitioner, excluding rainy season, but even after more than four years having elapsed, the petitioner did not complete the work. The petitioner did not even also submit any application for extension of contract within the period of validity of the contract and only after the extension period had expired, on 19.07.2021, an application was filed by the petitioner for extension of the contract. Since the application was filed beyond time, the said application was not considered by the authorities. He submits that this very fact itself demonstrates the fact that the petitioner is not really interested in pursuing with the work. Various letters dated 01.02.2021,

10.02.2021, 13.03.2021 and 03.08.2021 were issued to the petitioner, but, there was no response from the petitioner. It is submitted that the petitioner had made a representation on 20.08.2021 to the Chairman, Police Housing Corporation. As Clause 28 of the agreement provides for arbitration, such representation was treated as a representation under Clause 28 of the contract and date of hearing was fixed on 20.09.2021. The petitioner prayed for time to appear for hearing on two occasions on 19.09.2021 and 05.10.2021 and thereafter, this petition was filed before this Court on 20.10.2021. It is submitted that since there is a mechanism for dispute redressal under Clause 28 of the agreement, this application may not be entertained in exercise of power under Article 226 of the Constitution of India.

9. Mr. Sharma and Mr. Mishra submit that in the attending facts and circumstances of the case, contesting party is the respondent No.2 and as such, they do not have much role to play in the subject matter in question.

10. The impugned orders, five in number, are more or less identical. A perusal of the said orders would go to show that extension was granted to the petitioner till 30.06.2021. As a result of stoppage of work by the petitioner, a notice was issued to the petitioner on 01.02.2021 and since no progress was shown by the petitioner and as he did not respond, further notices dated 19.03.2021 and 03.08.2021 were issued to the petitioner. In the letter dated 09.08.2021, which was issued by the petitioner in response to the letter dated 03.08.2021, wherein 7 days time was granted to file reply, it is admitted that no reply was given to the previous letters. By the said letter, further two weeks' time was prayed for to file reply, which prayer, was not acceded to. In the circumstances as presented, it cannot be said that no adequate opportunity was afforded to the petitioner before cancellation. Admittedly, the petitioner

had prayed for extension of time on 19.07.2021, which is after expiry of the period of extension granted to him till 30.06.2021. It is also not the case presented that prayer for extension was within 30 days of the cause of any hindrance, which permits grant of extension under Clause 5 of the agreement. Thus, the petitioner had waived his right to claim extension of time under Clause 5 and accordingly, the contract was cancelled.

11. The contention advanced that the petitioner was asked to be present on 06.09.2021 by letter dated 20.08.2021 *i.e.* after cancellation of the contract, for the purpose of considering the application for extension filed by the petitioner, is misplaced. The letter dated 20.08.2021 did not refer to the application filed by the petitioner on 19.07.2021 for grant of extension. A perusal of the said letter would go to show that second to fourth extension of time were granted under Clause 2 of the contract from 01.07.2017 to 30.06.2021 reserving right to damages. It is in that context, letter dated 20.08.2021 was issued requiring the petitioner to appear on 07.09.2021.

12. It is also not in dispute that Clause 28 of the agreement provides for arbitration.

13. In that view of the matter, we are not inclined to entertain this writ petition. Accordingly, the same is dismissed. The petitioner, if so advised, may seek remedy in accordance with law.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(N. K. Chandravanshi)
Judge