

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 18 of 2023**Order reserved on : 25/09/2023Order passed on : 21/12/2023

- M/s Mahamaya Construction Through its Partner Anand Kumar Soni, S/o Bharatlal Soni, Having it's Registered office: Chhattisgarh Gramin Bank, Danganiya, Raipur, District Raipur, Chhattisgarh.

---- Applicant**Versus**

1. State of Chhattisgarh Through Secretary, Department of Tribal Welfare, Mahandi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. The Collector Civil & Revenue District Raipur, Chhattisgarh.
3. The Assistant Commissioner Department of Tribal Welfare, District Raipur, Chhattisgarh.

---- Respondents

For Applicant	: Mr. Shobhit Mishra, Advocate
For Respondents/State	: Mr. Raghvendra Verma, G.A.

Hon'ble Smt. Justice Rajani Dubey**CAV Order**

1. The applicant has filed the instant revision under Section 19 of Chhattisgarh Madhyastham Adhikaran, 1983 being aggrieved with the impugned order dated 07.12.2022 (Annexure A/1) passed by Chhattisgarh Madhyastham Adhikaran, Raipur in Reference Case No. 03/2021 whereby the Tribunal dismissed the reference petition moved by the applicant.
2. Brief facts of the case as projected by the applicant, are that the

applicant moved an application under section 7 of Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 against the present respondents for recovery of Rs 1,27,70,859/- (One Crore Twenty Seven lakhs Seventy Thousand Eight Hundred and Fifty-nine Only) from the respondents. The applicant is a partnership firm & a registered B class contractors with various departments of the state of Chhattisgarh being represented herein through partner namely Anand Kumar Soni. The contract was awarded to the applicant through letter dated 05.06.2017 and subsequently work order was issued to the applicant for construction of 200 seat Boys Hostel at Jora, Raipur for the sum of Rs. 305.33 Lakh. After issuance of work order, the applicant started the construction on the project, after which the present respondents changed the place of construction from Jora to Dunda. Thereafter, the applicant requested respondent no.2 to revise the rates for another proposal of construction. The respondent authorities assured the applicant that the revised proposal for construction work would be finalized and the applicant was pressurized to continue & complete the work.

3. As per directions of the respondents, applicant started work in changed place as per design & guideline according to the Assistant/Sub Engineer. Respondent authorities, without any information stopped the payment to the applicant. Thereafter, the applicant sent reminder letters dated 07.11.2017, 15.12.2017, 26.12.2017, 10.01.2018, 27.02.2018, 02.04.2018, 05.04.2018, 09.04.2018, 13.06.2018, 29.06.2018 & 14.01.2019 to the respondent authorities for making the payments. Respondent authorities did not respond the reminder letters sent by the applicant. The respondent authorities did not make payment since 28.03.2018 and due to delay on the part of the respondent authorities in making the payment, the cost of work is rising day by day. The respondent authorities neither released the payments over the pending bills nor rejected any claims of the applicant due to which, the applicant is facing huge financial loss and financial

hardships.

4. As the respondent authorities did not reply the applicant's letters, the applicant was left with no option but to invoke the Clause 28 of the contract. As per the Clause 28 of the conditions of the contract, if any dispute arises the same has to be referred to the Superintendent Engineer, but since there is no post of the Superintendent Engineer in the department of Tribal welfare due to which, the applicant sent a legal notice dated 17/11/2020 to respondents No.2 & 3 for seeking clarification about the post of Superintendent Engineer. Copy of Legal Notice dated 17/11/2020 along with receipt dated 18.11.2020 are collectively annexed herewith as Annexure-A/2 (colly). The respondent authorities did not respond to the legal notice dated 17.11.2020 sent by the applicant. Thereafter, the applicant filed a reference petition before the Chhattisgarh Madhyastham Adhikaran, Raipur, wherein the respondent authorities appeared and filed the preliminary objection on 04.01.2022 for dismissal of reference petition as the petition is not maintainable because the applicant did not refer the dispute to the competent authority as per Clause 28 of the contract. Copy of the reference petition is annexed as Annexure-A/3.
5. After hearing counsel for the parties and after perusal of the records, the Chhattisgarh Madhyastham Adhikaran, Raipur, passed the impugned order dated 07.12.2022 (Annexure A/1) rejecting the reference petition of the applicant on the ground of maintainability. Hence, the instant revision has been filed by the applicant.
6. Learned counsel for the applicant submits that the impugned order dated 07.12.2022 (Annexure A/1) is contrary to law, facts and circumstances of the case. The learned Tribunal ought to have appreciated the fact that the applicant tried to invoke the Clause-28 of the contract by referring the dispute to the Superintendent Engineer, but since there is no post of the Superintendent

Engineer in the department of Tribal welfare due to which the applicant sent a legal notice dated 17/11/2020 to respondents No.02 & 03 for seeking clarification about the post of Superintendent Engineer. But since the respondent authorities did not respond to the legal notice dated 17.11.2020, the applicant was left with no option but to file the reference petition before the Chhattisgarh Madhyastham Adhikaran. The learned Tribunal ought to have perused the documents attached along with the reference petition and also ought to have appreciated the fact that the applicant approached the respondent authorities for clearance of the pending bills, but in spite of clearing the pending bills, the respondent authorities arbitrarily stopped the payments to the applicant.

7. The learned Tribunal erroneously held that, it is ample clear in the contract itself that the word "Superintending Engineer" used in Clause-28 of the contract means the Superintending Engineer of P.W.D. Circle (Civil) within whose jurisdiction the Village Dunda is situated. The learned Tribunal without appreciating the facts and circumstances of the case and the conditions of the agreement, passed impugned order which is liable to be dismissed. However, it is further submitted by learned counsel for the applicant that this is a bonafide mistake on the part of the applicant to interpret the section of contract, therefore, liberty may be granted to him to file fresh representation before the competent authority as per Clause 28 of the contract.
8. Learned counsel for the respondents/State strongly opposes the prayer of the applicant and submits that it is clear from the contents of the contract that the term "Superintending Engineer" means the Superintending Engineer of the concerned P.W.D. Circle (Civil and Electrical) as the case may be. Therefore, the reference petition filed by the applicant was on false and frivolous grounds and the learned Tribunal passed impugned order in accordance with law and as per conditions of the contract. Therefore, this revision petition being without any substance is

liable to be and is hereby dismissed.

9. Heard counsel for the parties and perused the material available on record.

10. Learned Tribunal observed in para 11 of the impugned order which reads as under:-

11. In Condition of Contract the term Superintending Engineer, Chief Engineer and Executive Engineer have been defined. Definition clause 2 provides the meaning of expressions used in the contract. As per definition clause 2 :-

2(g)- The term "Superintending Engineer" means the Superintending Engineer of the concerned P.W.D. Circle (Civil and Electrical) as the case may be.

(h)- The term "Executive Engineer"/ "Engineer-in- Charge" / "Divisional Officer" means the Executive Engineer of the concerned P.W.D. Division.

11. Learned Tribunal after observing provisions of Madhyasthan Adhikaran Adhiniyam, 1983 and the conditions of contract, passed the impugned order which is in accordance with law. This Court finds no illegality or perversity in the order impugned and, therefore, this Court is not inclined to interfere in the impugned order.

12. Looking to the facts and circumstances of the case, this revision petition being without any substance is liable to be and is hereby dismissed. However, the applicant shall be at liberty to file fresh representation within one month before the competent authority to decide the same as per the conditions of contract after hearing the parties within four months from the date of receiving the representation of the applicant.

Sd/-

(Rajani Dubey)
Judge