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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI  
&  
HON'BLE SHRI JUSTICE GAJENDRA SINGH  
ON THE 26<sup>th</sup> OF APRIL, 2024  
WRIT PETITION No. 10781 of 2024**

**BETWEEN:-**

1. M/S KAMLA CONSTRUCTION COMPANY THROUGH PARTNER AND AUTHORIZED SIGNATORY MAHENDRA MITTAL S/O SH. JK MITTAL, AGED 63 YEARS, OCCUPATION: BUSINESS, MAIN ROAD, OBAIDULLAGANJ, DISTRICT RAISEN (MADHYA PRADESH)
2. MAHENDRA MITTAL S/O SH. J.K. MITTAL, AGED 63 YEARS, OCCUPATION: PARTNER KAMLA CONSTRUCTIONS COMPANY 63, OCCUPATION BUSINESS, B-230 SHAHPURA BHOPAL (MADHYA PRADESH)

.....PETITIONERS

(SHRI PIYUSH GOYAL, COUNSEL FOR THE PETITIONERS).

**AND**

1. THE STATE OF MADHYA PRADESH, SECRETARY DEPARTMENT OF PANCHAYAT AND RURAL DEVELOPMENT SECRETARIAT VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. MP RURAL ROAD DEVELOPMENT AUTHORITY, THROUGH CHIEF GENERAL MANAGER RRNMU BUILDING, WILMS PARISAR, NEAR KALIYASOT DAM, BHOPAL (MADHYA PRADESH)
3. GENERAL MANAGER, MP RURAL ROAD DEVELOPMENT AUTHORITY, PROJECT IMPLEMENTATION UNIT NO. 2, UJJAIN OFFICE OF THE CGM, RRNMU BUILDING, BEHIND KANCHAN HOTEL, INFRONT MEGHDOOT HOTEL, UJJAIN (MADHYA PRADESH)

**(SHRI BHUWAN GAUTAM, GOVERNMENT ADVOCATE FOR THE RESPONDENTS/STATE).**

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*This petition coming on for admission this day, Justice Sushrut Arvind Dharmadhikari passed the following:*

**ORDER**

Heard on the question of admission and interim relief.

In this petition under Article 226 of the Constitution of India, the petitioners have assailed the letter dated 29.02.2024 (Annexure P/16) issued by respondent No.3 whereby the petitioners have been directed to deposit the alleged demand of Rs. 38,19,951/- on account of submission of private bills of bitumen not issued by the government refineries.

2. The brief facts of the case are that the petitioners herein after being successful in their bid, were allotted the tender and were issued a letter of acceptance dated 15.05.2020 for construction of road/CD Works/Upgradation of Rural Road under the Pradhan Mantri Gram Sadak Yojna from Mehidpur to Nageshwar Road (Panthwari) of 34.75 kms. including maintenance of 5 years. During the road construction, an audit objection query was posed to the petitioners by the respondents vide letters dated 13.07.2022 and 14.07.2022 alleging fake bills of bitumen having been submitted as well as consumption of bitumen from refineries other than government refineries. In respect of the queries, the petitioners got all their bills duly verified. After submission of all the details, documents, reports, etc. no further communication in this regard were received by the petitioners. The construction was completed by the petitioners on 30.11.2022 within the extended timelines provided by the respondent authorities. Later, after completion of the work, when the petitioners made application dated 11.12.2023 for payment of their legally

accrued dues of Rs. 9,28,31,436/-, to the utter shock of the petitioners, respondents reopened the settled issue of alleged fake and private bills of bitumen and issued show-cause notice dated 29.12.2023 (Annexure P/14). Despite the short time of seven days given for submission of reply, the petitioners submitted their reply on 02.01.2024 reiterating that all the bills remain verified by the respondent/MPRRDA. However, without considering the reply and the documents filed by the petitioners, respondent No.3 passed the impugned communication dated 29.02.2024 raising a demand of Rs. 38,19,951/- against the petitioners in gross violation of the principles of natural justice. Hence, this petition.

3. Learned counsel for the petitioner submits that the petitioners have already approached the respondents raising their grievances and also sent a communication dated 06.03.2024 requesting to put a stop to such false demand. Despite the representations and several requests, respondents are sitting with tight hands on the matter. It is further contended that neither any opportunity of hearing has been granted nor the documents submitted by the petitioners have been considered by the respondents. As such, there is gross violation of the well settled principle of justice of '*audi altrem partem*' mandating hearing of the parties before passing of any order by any functionary of the State. No other efficacious remedy is available to the petitioners at this stage other than to approach this Court against the impugned action of the respondents. In support of his contentions, learned counsel for the petitioners has relied on the judgment of the Supreme Court in case of **M/s Kranti Associates Pvt. Ltd. & Anr. vs. Masood Ahmed Khan, (2010) 9 SCC 496**, wherein it has been held that an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of the parties must be a

speaking order. It has been further observed that reasons must reveal a rational nexus between materials considered and conclusions reached, and held that a pretence or rubber stamp reasons is not to be equated with a valid decision making. He has also placed reliance on the case of **Harbanslal Sahnia and Anr. vs. Indian Oil Corpn. Ltd. and Ors., (2003) 2 SCC 107** to contend that the availability of an alternate remedy is a rule of discretion and not one of compulsion. In an appropriate case, inspite of availability of alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies :

- (i) where the writ petition seeks enforcement of any of the fundamental rights;
- (ii) where there is failure of principles of natural justice; or
- (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

4. Hence, on these grounds, the writ petition deserves to be entertained.

5. Per contra, learned Government Advocate appearing for the respondent/State opposed the prayer and submitted that the petitioners have an alternate and efficacious remedy available under Clauses 24 and 25 of the tender document/Condition of Contract. Hence, this petition is liable to be dismissed being not maintainable.

6. Heard learned counsel for the parties. Perused the record.

7. The Clause 24 and 25 'General Conditions of Contract' of the tender document/Contract reads as under:

***"24. Dispute Redressal System***

*24.1 If any dispute or difference of any kind what-so-ever shall arise in connection with or arising out of this Contract or the execution of Works or maintenance of the Works there under; whether before its commencement or during the progress of Works*

*or after the termination, abandonment or breach of Contract, it shall, in the first instance, be referred for settlement to the competent authority with 45 days or arising of the dispute or difference, described along with their powers in the Contract date, above the rank of the Engineer. The competent authority shall, within a period of sixty days after being requested in writing by the Contractor to do so, convey his decision to the Contractor. Such decision in respect of every matter so referred shall, subject to review as hereinafter provided, be final and binding upon the Contractor. In case the Works is already in progress, the Contractor shall proceed with the execution of the Works, including maintenance thereof, pending receipt of the decision of the competent authority as aforesaid, with all due diligence."*

## **25. Arbitration**

*25.1 Either party will have the right to appeal, against the decision of the competent authority, nominated under Clause 24, to the Madhya Pradesh Arbitration Tribunal constituted under the Madhya Pradesh Madhyastham Adhinyam, 1983 provided the amount of claim is more than Rs. 50,000/-."*

8 . As per the aforesaid Clause, there is a proper dispute redressal system constituted by the State for resolution of any dispute between the parties. It is apparent from the record that the petitioners, without approaching the competent authority have filed this writ petition.

9. The Apex Court in the case of **Hindustan Coca Cola Beverage Private Ltd vs. Union of India and others reported in (2014) 15 SCC 44**, in which it is held that:- "when the statute provides for statutory appeal, the said remedy is to be availed by the litigating parties". In **Hameed Kunju vs. Nizam (2017) 8 SCC 611**, the Apex Court held that any petition under Article 227 of Constitution of India should be dismissed in *limine* where there is statutory provision of appeal. In another case **Ansal Housing and Construction Limited vs. State of Uttar Pradesh and others (2016) 13 SCC 305**, it is held that when there statutory appeal is provided, then the said remedy has to

be availed.

10. Taking into consideration the aforesaid pronouncement of law, this petition is not maintainable in view of the fact that Clause 24 and 25 of the Contract stipulates for a dispute redressal system, therefore, if it all there is any dispute between the parties, the petitioners are very well entitled to avail remedy under the said dispute redressal system.

11. Accordingly, the petition stands **dismissed**. However, petitioners would be at liberty to avail remedy in accordance with law, if so advised.

(S. A. DHARMADHIKARI)  
JUDGE

*vidya*

(GAJENDRA SINGH)  
JUDGE

