

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 16899 of 2010

***M/s. Utkal Highways
Engineers & Contractors***

.....

Petitioner

Mr. A. Patnaik, Advocate

Vs.

***C.G.M., Lingaraj Area &
Ors.***

.....

Opposite parties

*Mr. N.C. Sahoo, Advocate
(O.Ps. 1 & 3)*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. PANIGRAHI

ORDER

05.01.2022

Order No.

9

This matter is taken up through hybrid mode.

2. Heard Ms. Subhra Mohapatra, learned counsel appearing on behalf of Mr. A. Patnaik, learned counsel for the petitioner and Mr. N.C. Sahoo, learned counsel appearing for opposite parties no.1 & 3.

3. The petitioner firm has filed this writ petition seeking to quash the imposition of penalty on it by the opposite parties. It further seeks direction to hold that the petitioner firm is entitled to get the balance diesel escalation amount of Rs.7,99,102.03 from the opposite parties.

4. Ms. Subhra Mohapatra, learned counsel for the petitioner contended that pursuant to tender call notice issued, the petitioner firm participated in the process of

tender and on being selected, it executed an agreement with the opposite parties indicating the work. As such, the petitioner firm has executed the work “*Extraction and transfer of coal/coal measure strata by deploying Surface Miner on hiring basis at Lingaraj OCP, against need by diverting work from Kalinga OCP against NIT-285.*” It is further contended that though the petitioner firm has discharged its duty, the reasons best known to the authority to impose penalty on the petitioner. Therefore, the petitioner firm has approached this Court by filing this writ petition.

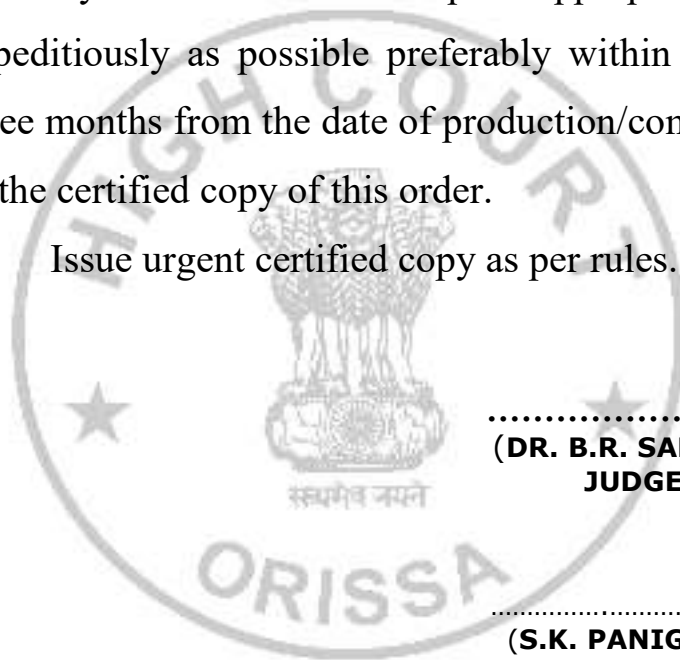
5. Mr. N.C. Sahoo, learned counsel appearing for opposite parties no.1 & 3 contended that the petitioner firm has not impleaded the proper party in the writ petition itself, namely, MCL, with whom it has executed agreement. He also raised objection that if any penalty has been imposed on the petitioner, the petitioner can make application for waiver of such penalty as per Clause-30.3 of the agreement instead of approaching this Court directly invoking jurisdiction of this Court under Article 226 of the Constitution of India.

6. Having heard learned counsel for the parties and after going through the records, since the petitioner has approached this Court against imposition of penalty in terms of Clause-30.2 of the agreement and if the petitioner is otherwise not likely to pay the same, in that case the petitioner should have made an application for

waiver of such penalty. Instead of approaching the authority for waiver of penalty, the petitioner has approached this Court by filing this writ petition in 2010. More so, the tender is of the year 2003 and the petitioner claims waiver of penalty by filing the writ petition in 2010. Therefore, this Court disposes of the writ petition permitting the petitioner firm to pursue its remedy before the authority for disposal of Annexures-27, 28 & 29 for waiver of penalty and release of outstanding dues against the work undertaken. Needless to say, the opposite party authority shall consider and pass appropriate order as expeditiously as possible preferably within a period of three months from the date of production/communication of the certified copy of this order.

Issue urgent certified copy as per rules.

Alok



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(DR. B.R. SARANGI)
JUDGE

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(S.K. PANIGRAHI)
JUDGE