

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 16802 of 2010

Siba Prasad Mishra

.....

Petitioner

*Mr. S.P. Mishra, Sr. Adv. along with
Mr. B. Mohanty, Adv.*

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

07.12.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. Heard Mr. S.P. Mishra, learned Senior Counsel appearing along with Mr. B. Mohanty, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 29.03.2010 terminating the contract and order dated 19.06.2010 imposing penalty by the authority vide Annexure-7 and Annexure-10 respectively.

4. Mr. S.P. Mishra, learned Senior Counsel appearing along with Mr. B. Mohanty, learned counsel for the petitioner vehemently contended that for the fault of the opposite parties the petitioner having not been allowed to discharge his duty as per the contract within a period of six months, the penalty imposed for such fault, cannot be sustained in the eye of law.

5. Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties contended that since the petitioner has not performed his part of contract, the authority terminated his contract by imposing penalty, which the petitioner is liable to pay. As such, in the meantime, the period of contract

has already been over.

5. Having heard learned counsel for the parties and after going through the records, this Court finds that the period of contract was for six months and, as such, the same was lapsed since long. More so, the petitioner has not performed his part of contract within a period of six months. But the reasons for which the petitioner was not allowed to perform the contract can only be considered by the tendering authority, but not by this Court. As such, whether the petitioner is liable to pay the penalty or not, the same is also to be adjudicated by the tendering authority and without adjudicating the same, penalty cannot not be imposed on the petitioner. Therefore, this Court is of the considered view that order imposing penalty vide Annexure-10 dated 19.06.2010 cannot sustain in the eye of law and is liable to be quashed and is hereby quashed. The matter is remitted back to the tendering authority to consider the case of the petitioner and pass appropriate order whether he is liable to pay penalty or not, as he was not allegedly allowed to perform his part of the contract, by affording opportunity of hearing to him within a period of three months from the date of production of certified copy of this order.

6. The writ petition is accordingly disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(B.P. SATAPATHY)
JUDGE

Ashok