

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1907 of 2013

Malaya Kumar Mund

Petitioner
....
Mr. D.K. Rath, Advocate

-versus-

State of Odisha and others

Opposite Parties
....

Mr. A.K. Mishra, AGA

CORAM:

**DR. JUSTICE B.R. SARANGI
MR. JUSTICE S.K. PANIGRAHI**

ORDER

04.01.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. Mr. D.K. Rath, learned counsel appearing for the petitioner contended that the brief has been transferred from his office, for which he has no instructions.
3. Mr. A.K. Mishra, learned Addl. Government Advocate contended that the relief sought in the writ petition cannot be granted as it is purely money claim and the same is disputed one. To substantiate his contention, he has relied upon paragraph-5 of the counter affidavit, which reads as follows:-

“5. That in reply to the averments made in paragraph-2 of the writ petition, it is respectfully submitted that the work “Slop protection/lining work at vulnerable reaches of R.M.C. including construction of service road on left bank of RMC from RD-00 to 11 Km. (Reach-1) RD-00 to 6 Km.

entrusted to the petitioner vide Divisional Agreement No.8 F2 of 1995-96. The said work was completed by 31.3.2000. After completion of the work, the SDO, Right Canal Sub-Division No.I, Mukhiguda who was in-charge of the work, recorded the final measurement, prepared the final bill observing all formalities in presence of the petitioner and submitted before the Opp.party No.4 on dtd.27.03.2001. Soon after the final measurement was recorded the petitioner was required to accept the final measurement with settlement of all his claims as required under the rules but the final bill with connected documents were received in the office of the Opp.party No.4 without acceptance of final measurement by the petitioner. Unless the final measurement was accepted, it was not possible to initiate all required steps to get the final deviation approved for release of payment. Since 27.3.2001, the petitioner remained silent without any valid reason and actually accepted the measurement on 19.10.2009 i.e. after lapse of eight years and six months, though it was the primary duty of the petitioner to do so during the preparation of final bill. The xerox copy of the page- 34 and 35 of MB No.697/RCD-I witnessing the acceptance of measurement by the petitioner is annexed herewith vide **Annexure-A/4**

Due to the above inaction and non-co-operation on the part of the petitioner, the Opp.party No.4 could not forward the final deviation statement of the work to his higher authorities which is essentially required to be approved before release of final payment as per the condition of contract. After acceptance of final measurement by the petitioner i.e. on 19.10.2009 the final deviation statement of the work has been sent to the Opp.party No.3 and the matter is now

under active consideration for approval by competent authority observing all codal rules.

Similarly, regarding payment of price escalation, it is to submit that during process of the work, the price of materials incorporated in the work increases or decreases, as a result of increase or decrease in the average wholesale price index (all commodities) and the petitioner thereupon necessarily and properly pays in respect of that material, such increased and decreased price, then he shall be entitled to reimbursement or liable to refund quarterly as per clause 32 of F2 contract. Therefore, the petitioner is required to submit his reimbursement claim of price escalation quarterly during progress of work. In the instant case, the petitioner remained silent for a long period without any valid reason and submitted his reimbursement claim towards price-escalation on dtd.14.7.2009 i.e. after a lapse of 9 years and four months which should have been claimed during the progress of work or soon after the work is completed as per provision of contract. After receipt of claim from the petitioner, all possible steps have been taken by the Opp.party to get the price escalation approved for releasing payment to him. Under the above facts and circumstances, the petitioner's allegation on Opp.parties inactivity in releasing the final bill and price-escalation is not correct. On the other hand due to above inaction/non-co-operation on the part of the petitioner, delay has been caused in processing the final bill and escalation claim by the Opp.party No.4. As such, the petitioner will have to share the responsibility for not releasing his claim."

4. In view of the averments made in paragraph-5 of the counter affidavit, as mentioned above, this Court is of the considered view

that since the relief claimed by the petitioner is disputed one, this Court is not inclined to entertain this writ petition. However, petitioner is given liberty to pursue his remedy before the appropriate forum, if so advised.

5. With the aforesaid liberty, the writ petition is disposed of.

(Dr. B.R. Sarangi)
Judge

(S.K. Panigrahi)
Judge

pcd

