

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 2790 of 2020

M/s. Biraja Construction

.....

Petitioner

Mr. P.C. Nayak, Advocate.

Vs.

State of Odisha & Ors.

.....

Opposite Parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

01.08.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. P.C. Nayak, learned Counsel for the Petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate for the State.

3. The Petitioner has filed this Writ Petition seeking to quash the order dated 11.05.2017 under Annexure-7, by which the Petitioner has been communicated that Penalty amounting to Rs.3,45,000.00 (three lakhs forty-five thousand) has been imposed by the Chief Engineer, Drainage.

4. Mr. P.C. Nayak, learned Counsel for the Petitioner, contended that imposition of penalty has been done without assigning any reason and the codal provision under which such penalty has been imposed, has also not been communicated to the Petitioner. Therefore, the order impugned is liable to be quashed.

5. Mr. P.P. Mohanty, learned Additional Government Advocate

contended that since there is deviation of the work, therefore, penalty has been imposed on the Petitioner and such penalty has been imposed in consonance with the DTCN/Agreement as applicable to the Petitioner. Therefore, the impugned order does not require any interference.

6. Having heard learned Counsel for the parties and after going through the record, it appears that the Petitioner was awarded with the work "*Improvement to Alaka Drainage System (phase-I) under NABARD Assistance (RIDF-XVI)*" vide Agreement No. 512F2/2011-12 and pursuant to the agreement, the Petitioner executed the work. Ultimately, vide impugned order, he has been imposed with penalty amounting to Rs.3,45,000.00 (three lakhs forty-five thousand) as the Final Deviation amounting to Rs.2,56,02,544.00 was 6.3% less than agreement amount of Rs.2,73,26,360/-. The said order does indicate any reason for imposition of penalty and under what codal provision such penalty has been imposed. In absence of any reason, the order impugned cannot sustain in the eye of law.

7. Reasons being a necessary concomitant to passing an order, the Appellate Authority can thus discharge its duty in a meaningful manner either by furnishing the same expressly or by necessary reference to those given by the original Authority.

8. In ***Union of India v. Mohan Lal Capoor***, AIR 1974 SC 87, it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached.

The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.

9. Similar view has also been taken by the apex Court in *Uma Charan v. State of Madhya Pradesh*, AIR 1981 SC 1915 and also by this Court in the cases of *Patitapaban Pala v. Orissa Forest Development Corporation Ltd. & another*, 2017 (I) OLR 5 and in *Banambar Parida v. Orissa Forest Development Corporation Limited*, 2017 (I) OLR 625.

10. By applying the above ratio to the present case, this Court finds that no reason has been assigned in the impugned order to impose such penalty on the Petitioner and that such order has been passed without giving opportunity of hearing to the Petitioner.

11. In view of such position, the order dated 11.05.2017 passed by the Opposite Party No.2 under Annexure-7 is set aside and the matter is remitted back to Opposite Party No.2 to re-consider the same in accordance with law by giving opportunity of hearing to the Petitioner and by passing a reasoned order thereof.

12. With the above observation/direction, the Writ Petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Arun/Banita