HIGH COURT: CUTTACK

W.P(C) NO. 24589 of 2014

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Raghunath Sahu ..... Petitioner

-Versus-

State of Odisha & others ..... Opp. Parties

For Petitioner : M/s. (Mrs.) Pami Rath, J. Mohanty & J.P. Behera, Advocates

For Opp. Parties : Mr. T. Pattnaik, Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

THE HONOURABLE MR. JUSTICE S.K. PANIGRAHI

Date of Hearing: 10.01.2022:: Date of Judgment: 19.01.2022

DR. B.R. SARANGI, J. The petitioner, who is a registered contractor in 'A' class category of the State P.W.D. Department, has filed this writ petition seeking to quash the letter dated 03.12.2013 under Annexure-17 issued by the Joint Secretary to Government of Odisha, Fisheries & ARD Department in compliance of the order dated 19.02.2008 passed by this Court in W.P.(C) No.15922 of 2007, stating that no further escalation is considerable at Government level for payment against the work "Construction of Landing Quay and allied structures at Talasari Fish Landing Centre in Balasore District", because of existing situation and the conditions in the work supported with the undertaking dated 15.10.2002 after payment of legitimate claims for Rs.11,85,207/- through Bank Draft No.792415 dated 26.11.2010 by the Executive Engineer, Fishery Engineering Division, Bhubaneswar as per Fisheries and ARD Department Sanction Order No.11834/FARD dated 04.11.2010, and further to direct the opposite parties to disburse the differential escalation amount of Rs.4,20,940/- with interest @ Rs.18% per annum from the date the escalation bill was submitted, i.e., 27.08.2002.

2. The factual matrix of the case, in brief, is that the petitioner, being the lowest tenderer in respect of the work "Construction of Landing Quay and allied

structures at Talasari Fish Landing Centre in Balasore District", was selected in the tender process floated by opposite party no.4. The work was entrusted to him by execution of an agreement i.e. Divisional Agreement No.22F2 of 1999-2000. As per stipulation made in the agreement, the date of commencement and the date of completion of the work were 01.12.1999 and 30.05.2001 respectively. Although bids were opened on 06.04.1998, but there was delay on the part of the opposite parties in finalization of the tender and according approval due to pendency of some litigation. Due to delay in acceptance of the tender, the rate quoted by the petitioner became unworkable. The agreement is nothing but verbatim copy of the tender conditions and thus the original date of commencement and completion reflected in the tender papers have also been copied even though the agreement actually was executed on 25.03.2000 and the work actually commenced on 01.12.1999 and the work was completed on 31.03.2003 during extended period delay being not attributable to the petitioner.

2.1. As per contractual provision, i.e. Clause-32(a)(b)(c) is strictly for payment of price escalation during execution of the work in case of increase/decrease in average wholesale price index (all commodities) for material inputs and Consumer Price Index for industrial workers towards labour inputs of the work and price of POL (diesel oil being the representative item for price adjustment) pursuant to the prescribed formulae provided that the work is carried out within the stipulated time or extension thereof for the reasons that are not attributable to the petitioner.

2.2. In view of the above provisions of contract and in pursuance of the other conditions of the contract, the petitioner is entitled to escalation cost. In spite of difficult site condition and unavoidable situations, the petitioner executed the work and completed the same during the period extended validly by the opposite party-Department. The cause of delay in completion of the work is solely attributable to the opposite parties and after considering the hindrances caused to the work, the opposite parties have not only granted extension of time, but also paid running account bills during extended period. Opposite party no.3 effected payment through running account bill, but neglected miserably in his contractual obligation to pay the differential cost of escalation charges as per Clause-32 of the agreement in spite of escalation bill of Rs.16,06,147/- submitted on 27.08.2002.

2.3. The petitioner approached the authority time and again by submitting representations/letters addressed to the opposite parties for releasing price escalation bill amount, as mentioned above, but the same were not attended to. On account of unusual delay caused in making payment of the escalation bill amount, the petitioner was forced to approach this Court by filing W.P.(C) No.15922 of 2007 seeking direction for release of undisputed escalation amount of Rs.16,06,147/- together with interest @ 18% per annum from 27.08.2002 i.e. the date of submission of the escalation bill and cost. This Court, vide order dated 19.02.2008, disposed of the said writ petition with a direction that in case, the petitioner submits a representation to the opposite parties with regard to payment of escalation amount, the same shall be considered and disposed of by giving a reasoned order within two months from the date of production of such representation. In compliance thereof, the petitioner submitted his representation to opposite party no.3 with copies of the order to opposite parties no.1 and 2 on 18.03.2008. Subsequently, he sent reminders to the said opposite parties on 10.09.2008. Though opposite parties no.2 & 3 in their letters dated 13.08.2008 and 05.08.2008 respectively admitted the claim of the petitioner for payment of escalation amount after due check up to the bills presented by him, there was inordinate delay caused by opposite party no.1 in according approval. However, after a good deal of correspondence and clarification, opposite party no.1 communicated to the petitioner that an amount of Rs.11,85,207/- (which is less than the bill presented) towards escalation charges for payment was sanctioned in his favour vide letter dated 12.11.2010, without disclosing the reasons for not sanctioning the entire escalation bill amount of Rs.16,06,147/-. As the petitioner was undergoing much financial hardship due to substantial amount remaining blocked in the hands of the department and as situation then warranted to make payment to his creditors and to be saved from payment of unnecessary interest, the petitioner accepted the sanctioned amount of Rs.11,85,207/- on protest on 24.11.2010 vide acknowledgement on the reverse of running account bill-C prepared by opposite party no.3 for Rs.16,06,147/-, but limited it to Rs.11,85,207 in view of Government sanctioned order. As a consequence thereof, the petitioner is deprived of getting payment of balance amount of Rs.4,20,940/- towards his price escalation cost under the agreement, which is due to one sided and illegal course of action by the opposite parties dishonouring the agreemental provision made in Clause-32 (a)(b)(c). Hence this application.

3. Mrs. Pami Rath, learned counsel for the petitioner emphatically urged before this Court that the

opposite parties are liable to pay the admitted escalation dues as per Clause-32 (a)(b)(c) of the agreement and the letter dated 05.08.2008 issued by opposite party no.3, it has been clearly held that price escalation to the petitioner is payable as per the formula fixed by the Works Department. Non-payment of a part thereof amounting to Rs.4,20,940/-, the opposite parties have violated the agreemental provision of Clause-32 (a)(b)(c). It is further contended that in order to receive the balance price escalation amount, the petitioner again made representation and finally he served a notice under Section 80 CPC for taking steps towards clearance of his blockage balance payment of Rs.4,20,940 under original agreement period. It is further contended that though opposite parties no.2 and 3 found that the dues of the petitioner are genuine, pursuant to letter dated 22.08.2012 issued by opposite party no.4-Director of Fisheries, Cuttack under Annexure-18, and the letter 23.05.2012, issued by opposite party no.3-Executive Engineer, Fishery Engineering Division, Bhubaneswar and as evident from the fact, opposite party no.3 paid a part of the escalation amount, but opposite party no.1 in a most whimsical and unjustified manner illegally refused to pay the entire escalation charges by virtue of the undertaking of the petitioner dated 15.10.2002. It is further contended that vide letter dated 03.12.2013, opposite party no.1 rejected the claim of the petitioner for disbursement of the rest of the amount claimed in the bill dated 27.08.2002 assigning the reason for non-release of the left over amount that the petitioner had submitted a no claim certificate when extension of time was granted, while the departmental instruction dated 28.06.1996 states that such certificate cannot be made a ground to reject the claim for escalation cost. Thereby, the action taken by the authority is arbitrary, unreasonable and contrary to the provisions of law and as a consequence thereof, the petitioner is entitled to get Rs.4,20,940/-, which was deducted from the escalation cost along with interest @ 18% per annum. To substantiate her contentions, she has relied upon the judgment of the apex Court in ***ABL International***

Ltd. V. Export Credit Guarantee Corporation of India Ltd., (2004) 3 SCC 553.

4. Per contra, Mr. T. Pattnaik, learned Additional Standing Counsel for the State contended that the date of commencement and stipulated date of completion were 01.12.1999 and 30.05.2001 respectively, i.e. 18 months from the date of commencement. The work was not completed by the petitioner within the stipulated period of 18 months, therefore, the petitioner applied extension of time up to 31.03.2003 and submitted an undertaking that he will not claim any compensation on any account from the Department for delay in completion of the work and considering the same, opposite party no.1 granted extension of time till 31.03.2003 vide letter no.3888 dated 10.03.2005. Thereby, escalation bill raised by the petitioner amounting to Rs.16,06,147/- was submitted to opposite party no.1, i.e. Government in Fisheries and A.R.D. Department for approval and concurrence of Finance Department for due approval and payment. Opposite party no.1 after examining the claim of the

petitioner by way of short audit after due concurrence of Financial Advisor (FA)-cum-Joint Secretary of the Department and in consultation with Finance Department, accorded approval/sanction to an amount of Rs.11,85,207/- for payment to the petitioner vide letter dated 22.11.2010. Accordingly, the payment of Rs.11,85,207/- was made on 26.11.2010 vide bank draft. Thereby, the petitioner is not entitled to get the balance amount of Rs.4,20,940/-, as claimed in the writ petition. Therefore, he contended that the writ petition is liable to be dismissed as it does not warrant interference of this Court.

5. This Court heard Mrs. Pami Rath, learned counsel for the petitioner and Mr. T. Pattnaik, learned Additional Standing Counsel for the State opposite parties by video conferencing mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. At the outset, this Court made a query with regard to maintainability of the writ petition in a contractual matter, more particularly for payment of the dues as claimed in the writ petition. In this regard, learned counsel for the petitioner relied upon paragraph-27 of ***ABL International Ltd.*** (supra), wherein it is stated as follows:

> *"27.From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:*
>
> *(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*
>
> *(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.*
>
> *(c) A writ petition involving a consequential relief of monetary claim is also maintainable."*

7. In view of paragraph-27(c), as quoted above, it has been clarified that the writ petition involving a consequential relief of monetary claim is also maintainable. But, while entertaining an objection with regard to the maintainability of a writ petition under Article 226 of the Constitution of India, it should be borne in mind the fact that power to issue prerogative writs under Article 226 of the Constitution is plenary in

nature and is not limited by any other provisions of the Constitution. The High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power.

8. The plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitution mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.

9. Taking into account the above principle, now in the fact of the present case it is to find out whether the petitioner is entitled to get the relief or not as sought in the writ petition filed by him. Furthermore, there is no dispute that the opposite parties are the "State" under Article 12 of the Constitution of India. Therefore, on the factual matrix delineated above,

whether the opposite parties are liable to pay the petitioner's blockage balance amount of escalation cost of Rs.4,20,940/- as per the original agreement.

10. Escalation cost is payable, in view of Clause-32 (a)(b)(c) of the agreement, which reads as follows:

> *Clause 32-(a) "if during the progress of the work the price of any material incorporated in the work (not being materials supplied from the Engineer-in-charge's store in accordance with Clause ………. there of) increases or decreases as a result of increase or decrease in the average wholesale Price Index (all commodities), and the Contractor there upon necessarily and properly pays in respect of that material (incorporated in the work) such/increased or decreased price, then he shall be entitled to reimbursement or liable to refund, quarterly, as the case may be, such an amount, as shall be equivalent to the plus or minus difference of 70% in between the Average Wholesale price Index (all commodities) which is operative for the quarter under consideration and that operated for the quarter in which the tender was opened, as per the formula indicated below, provided that the work has been carried out within the stipulated time or extension thereof as are not attributable to him.*
>
> *Formula to calculate the increase or decrease in the price materials:-*
>
> $$Vm\text{-}\ 0.75x\ \frac{Pm}{100}\ X\ \frac{R(i\text{-}i0)}{10}$$
>
> *Vm- Increase or decrease in the cost of work during the quarter under consideration due to changes in the rates for material.*
>
> *R- The value of work done in rupees during the quarter under consideration.*

i0- The average wholesale Price Index (all commodities) for the quarter in which the tender was opened (as published in R.B.I. Bulletin).

i- The average wholesale Price Index (all commodities) for the quarter under consideration.

Pm- Percentage of material Component (Specified in Schedule of analysis) of the item.

(b) Similarly, if during the progress of work, the wage of labour increase or decrease as a result of increase or decrease in the Average Consumer's Price Index for industrial workers (wholesale Price), and the Contractor thereupon necessarily and properly pays in respect of labour engaged on execution of the work such increased or decreased wages, then he shall be entitled to reimbursement or liable to refund, quarterly as the case may be, such an amount as shall be equivalent to the plus or minus difference in between the Average Consumer's Price Industrial workers (wholesale price) which is operating for the quarter under consideration and that operated for the quarter in which the tender was opened as per the formula indicated below provided that the work has been carried out within the stipulated time or extensions thereof as are not attributable to him.

Formula to calculate the increase or decrease in the cost of labour :-

$$VI- 0.75 \times \frac{PI}{100} \times R \left(\frac{i- i0}{10}\right)$$

VI- Increase or decrease in the cost of work during the quarter under consideration due to changes in the rates of labour .

R- The value of work done in rupees during the quarter under consideration.

i0- The average Consumer's Price Index for industrial workers (wholesale price) for the quarter in which the tender was opened (as published in R.B.I Bulletin).

> *i- The average Consumer's Price Index for industrial workers (wholesale price) for the quarter under consideration.*
>
> *P1- Percentage of labour Component (Specified in schedule and analysis) of the item.*
>
> *(c) Similarly if during the progress of work, the price of Petrol, Oil and lubricants (Diesel oil being the representative item for price adjustment) increases or decreases as a result of the price fixed therefor by the Government of India and the Contractor thereupon necessarily and properly pays such increased or decreased price towards Petrol, Oil and Lubricants used on execution of the work, then he shall be entitled to re-imbursement or liable to refund quarterly, as the case may be such an amount, as shall be equivalent to the plus or minus difference in between the price of P.O.L. which is operating for the quarter under consideration and that operated for the quarter in which the tender was opened as per the formula indicated below."*

11. As has been already stated, the work was entrusted to the petitioner by execution of an agreement i.e. Divisional Agreement No.22F2 of 1999-2000 by opening bids on 06.04.1998 and as per the terms of the agreement, the date of commencement and the date of completion of work were 01.12.1999 and 30.05.2001 respectively. But, the agreement was executed on 25.03.2000 and the work was actually commenced on 01.12.1999 and it was completed on 31.03.2003 during the extended period, delay being not attributable to the petitioner. Therefore, the petitioner

submitted escalation bill of Rs.16,06,147/- on 27.08.2002 as per Clause-32 of the agreement. Opposite parties no.2 and 3, vide letters dated 13.08.2008 and 05.08.2008 respectively, admitted the claim of the petitioner for payment of escalation cost. As against claim of Rs.16,06,147/-, opposite party no.1 vide letter dated 22.11.2010, in compliance of the order dated 19.02.2008 passed by this Court in W.P.(C) No.15922 of 2007, approved an amount of Rs.11,85,207/- in order to make payment of the said amount in favour of the petitioner towards escalation charges as admissible for the work "Construction of Landing Quay and allied structures at Talasari Fish Landing Centre in Balasore District" and the petitioner received such payment on protest as has been indicated in the running account bill 'C' which reads as follows:

> *"Received the payment Rs.11,25,947/- with protest to my claim Amount Rs.16,06,147/- against my escalation bill."*

12. The petitioner made grievance on 13.01.2011 for payment of balance amount of

Rs.4,20,940/-, but the said amount was not paid on the plea of "no claim certificate" dated 15.10.2002 submitted by the petitioner. The no claim certificate, which was given by the petitioner, reads as follows:

> *"Certified that I will not claim any compensation on any account from the department for the delay incompletion of the work construction of Construction of Landing Quay and allied structure of Talsari Fish Landing Centre in Balasore Dist under Agreement No: 22F2/1999-2000."*

On perusal of the same, it appears that no claim certificate was in respect of only 'compensation', but not with regard to 'escalation cost' as embodied in the agreement itself.

13. In ***State of Gujarat v. Shantilal Mangal Das***, AIR 1969 SC 634, the apex Court held that "compensation" means anything given to make things equivalent, a thing given to or to make amends for loss, recompense, remuneration or pay. It need not therefore necessarily be in terms of money.

Similar view has also been taken by the apex Court in ***KSRTC v. Mahadeva Shetty***, (2003) 7 SCC 197 and ***Sandvik Asia Ltd. v. CIT***, (2006) 2 SCC 508.

14. In ***Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd***., (2008) 13 SCC 30, the apex Court held that a 'compensation' maybe held to be payable on a periodical basis, as part from the compensation, other terms and conditions can also be imposed.

15. In ***Jeejeebhoy v. Asst. Collector, Thana***, AIR 1965 SC 1069, the apex Court held that the expression 'compensation' means 'just equivalent of what the owner has been deprived of'.

16. In ***Kiranbala Dandapat v. Secy. Grid Corporation of Orissa Ltd***., AIR 1998 Ori. 159, this Court has also considered 'compensation' as follows:

> *"Compensation means anything given to make things equivalent, a thing given or to make amends for loss, recompense, remuneration or pay; it need not, therefore, necessarily be in terms of money, because law may specify principles on which and manner in which compensation is to be determined as given. Compensation is an act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damified may receive equal value for his loss or be made whole in respect of his injury; something given or obtained as equivalent given for property taken or for an injury done to another, a recompense in value; a recompense given for a thing received recompense for whole injury suffered, remuneration or satisfaction for injury or*

> *damage or every description. The expression 'compensation' is not ordinarily used as an equivalent to 'damage' although compensation may often have to be measured by the same rule as damages in an action for a breach."*

17. Therefore, the no claim certificate so given by the petitioner can be construed that he will not claim any 'compensation'. But, fact remains the petitioner claims escalation cost as per provisions of Clause-32 (a) (b) (c) of the agreement.

18. In ***Food Corporation of India v. A.M. Ahmed & Co***., (2006) 13 SCC 779, the apex Court held that 'escalation' is normal and routine incident arising out of gap of time in this inflammatory age in performing any contract of any type.

19. In ***Suryamani Nayak v. Orissa State Housing Board***, AIR 2005 Ori. 26, this Court held that the expression 'escalation' used in an agreement ordinarily means an agreement allowing for adjustment up and down according to change in circumstances as in cost of material in work contract or in cost of living in wage agreement. It would not bring within its sweep

higher rate of wage which a contractor is otherwise liable to pay.

20. Therefore, taking into consideration the meaning attached to the word 'escalation', as per terms and conditions of the agreement, the petitioner is entitled to get escalation cost but not the compensation, for which the blockage of the escalation benefit has been made. Needless to say, an 'undertaking' is nothing but a standard form, which every contractor has to sign and submit to the effect that he shall not claim for compensation for delay in work and extend the period of work. This is submitted whenever extension of time is granted for completion of work or else extension will not be granted. This document is signed, without adjudicating the merits of the claim of the petitioner, and is done under duress or else the contract would be liable to be terminated with penalty, even though the petitioner may not be responsible for delay in execution of work.

21. The Government of Odisha in Works Department, vide letter dated 28.06.1996 under Annexure-12, introduced the provision of escalation clause in P.W.D. Contract form for payment of escalation charges to the contractor during the extended period, relying upon the extract of the proceedings of the Codes Revision Committee Meeting held on 25.11.1995 at 11.30 A.M. in the Office Chamber of Engineer-in-Chief-cum-Secretary to Government, Works Department in Item -1, which is extracted hereunder:-

> *"Item -1: Payment of escalation charges to Contractors.*
>
> *Xxx xxx xxx*
>
> *(ii) While granting extension of time to the Contractors "no claim certificate" is obtained from them in the prescribed form of the Department. The significance of such certificate is that the Contractor surrenders his claim for "compensation on any account". But it is seen in many cases that contractors are putting up their claims for escalation in spite of no claim certificate given by them earlier. It is to be decided if such claim of the contractors are consistent with the non claim certificate. At this point, Secretary, Works Department observed that compensation and escalation are not one and the same. The object of payment of compensation is to make good the loss suffered by the contractor on account of negligence, default or fraud committed by the other party and does not cover escalation. Hence "no claim certificate" will not be a bar to te claim of*

> *escalation. The members endorsed the above views of the Engineer-in-Chief-cum-Secretary.*
>
> *Xxx xxx xxx"*

In view of the above mentioned provision, even though the petitioner executed "no claim certificate", but that will not be a bar for him to claim escalation cost.

22. In the present case, the bill dated 27.08.2002 was raised towards escalation cost to the tune of Rs.16,06,147/-, but the authority considered the same, after the order was passed by this Court on 19.02.2008 in W.P.(C) No.15922 of 2007, and sanctioned a sum of Rs.11,85,207/- towards escalation cost, by deducting Rs.4,20,940/- without any rhyme or reason, for which the said amount of Rs.11,85,207/- was received by the petitioner with protest. Thereby, the opposite parties have agreed that the petitioner is entitled to escalation cost during extended period of work and as such, extension of work was not due to fault of the petitioner. As a matter of fact, the escalation cost was granted in part to the petitioner, relying upon no claim undertaking submitted by the petitioner, which is absolutely a myth. The opposite

parties, having accepted the entitlement of escalation cost by the petitioner as per Clause-32 of the agreement, have taken into consideration the "value of work done in rupees during the quarter under consideration". The said value of the work in rupees of the relevant quarter has already been decided and sanctioned by opposite party no.1 vide sanction order dated 18.08.2003. As per certificate dated 18.08.2003, the Junior Engineer F4 Engineering, Sub-Division, Bhadrak and Sub-Divisional Officer, Balasore, F4 Engineering Sub-Division, Bhadrak have certified the value in rupees of quarter-wise work, which states as follows:

Serial No.	Running Bill	Date of measurement by opposite party	Related quarter	Value of work in rupees
1	1st	18.2.2000	1st quarter of 2000	Rs.35,74,433
2	2nd	12.5.2000	2nd quarter of 2000	Rs.46,89,274
3	3rd and 4th	23.6.2000 & 11.8.2000	3rd quarter of 2000	Rs.18,15,326
4	5th and 6th	1.3.2001	1st quarter of 2001	Rs.15,00,596

The bill dated 27.08.2002 also reflects the same value even though it has been submitted earlier. As it appears, instead of taking note of own certified document dated 18.08.2003, the opposite parties, while dealing with the escalation bill of the petitioner dated 22.11.2010, have reduced the value of the work arbitrarily, so far it relates to the value of 1st quarter of 2000. Instead of reflecting the value as Rs.35,74,433/-, it has been reflected as Rs.1,21,600/-, which has resulted in arriving at a different amount as escalation cost and that is how instead of Rs.16,06,147/- the escalation cost has been calculated as Rs.11,85,207/-.

23. The reflection of work value for the first quarter of 2000 as Rs.1,21,600/-, instead of Rs.35,74,433/-, is erroneous and contrary to its own recording in certificate dated 18.08.2003. This is also fortified from the entries made by the opposite parties in the measurement book, which has been placed on record as Annexure-15, wherein for 1st quarter of 2000 the amount of Rs.35,74,433/- has been specifically mentioned at page 137. Though in respect of other

quarters the amount has been mentioned correctly, and the same has been reasonably placed, but erroneously calculated for payment of escalation cost as Rs.11,85,207/- in place of Rs.16,06,147/-. As per the measurement book and certificate dated 18.03.2002, the total value of work upon which escalation is to be calculated has come to Rs.1,15,79,625/-, i.e. the said amount is also the amount payable to the petitioner. The said amount has also been paid in the form of final bill, which has been paid much prior to the payment of escalation amount. Thereby, there is no dispute with regard to the value of work reflected in the measurement book or in the certificate dated 18.03.2002. But, due to erroneous intimation of amount for the 1st quarter of 2000 running account bill in the letter dated 22.11.2010 in Annexure-14 amounting to Rs.1,21,600/- in place of Rs.35,74,433/-, the escalation cost reduced from Rs.16,06,147/- to Rs.11,85,207/-. Therefore, due to wrong recording of value of work, the blockage amount of Rs.4,20,940/- towards escalation cost is payable to the petitioner.

24. Even in paragraph-23 of the writ petition, the petitioner has pleaded as follows:-

> *"23. That the said amount reflected for the 1st quarter of 2000 as Rs.1,21,600/- instead of Rs.35,74,433/- is not only contrary to its own recording in certificate dated 18.08.2003 but also to the entries made by the opposite party in measurement book. The amount reflected in certificate dt. 18.08.2003 is also supported by the entries in the measurement book which again is a document authored by the opposite party. It is clearly reflected in measurement book that the amount for 1st quarter of 2000 is not Rs.1,21,600/- but Rs.35,74, 433/-."*

But, there is no specific denial to such pleading. Rather in paragraph-11 of the counter affidavit, it is stated as follows:-

> *"11. That in reply to the averments made in Paragraphs-21 to 28 of the writ application, it is humbly submitted that the after examining the claim of the petitioner, the O.P. No.1, by conducting short audit and in consultation with the Finance Department has sanctioned the legitimate amount in favour of the petitioner and accordingly the same has been paid to the petitioner. No further claim of the petitioner is pending with the Opp. Parties. Considering the aforesaid facts, the Hon'ble Court may graciously be pleased to dismiss the writ being devoid of any merit."*

Since the pleadings made in paragraph-23 of the writ petition have not been disputed by the opposite parties and the claim has been denied only on the basis of no claim certificate, the petitioner is entitled to get the benefit of blockage amount of Rs.4,20,940/- towards escalation cost as per the bill submitted on 27.08.2002.

25. Considering the facts and law, as discussed above, this Court is of the considered view that the opposite parties are liable to pay the blockage amount of Rs.4,20,940/- towards escalation cost as per the bill submitted on 27.08.2002 along with interest @ 12% per annum w.e.f. 22.08.2012 till the actual payment is made. As such, the payment shall be made within a period of three months from the date of communication/production of the judgment, failing which it will carry further interest @ 18% per annum w.e.f. from 22.08.2012 till the actual payment is made.

26. In the result, the writ petition is allowed. However, there shall be no order as to cost.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed, vide Court's Notice No.4587 dated 25th March, 2020, as modified by Court's notice no. 4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

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DR. B.R. SARANGI,
JUDGE

S.K.PANIGRAHI,J. I agree.

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S.K. PANIGRAHI,
JUDGE

Orissa High Court, Cuttack
The 19th January, 2022, Alok