

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.7868 Of 2022
(Through hybrid mode)**

***The Public Works Dept., Govt. of
Odisha***

Petitioner

Mr. U.Ch.Mohanty, Advocate

-versus-

M/s. Larsen and Toubro Ltd.

Opposite Party

Mr. G.Mishra, Senior Advocate
Mr. A.Dash, Advocate

CORAM: JUSTICE ARINDAM SINHA

**ORDER
29.03.2022**

**Order No.
01.**

1. Mr. Mohanty, learned advocate appears on behalf of petitioner and submits, his client is respondent in the reference. Prescribed fees demanded by the tribunal in procedural order dated 20th May, 2019 records that 4th schedule (entry 6) in Arbitration and Conciliation Act, 1996 was agreed to be paid. It was paid. Purportedly by reason of view expressed by a learned Single Judge of Delhi High Court by decision dated 10th July, 2020 in O.M.P.(T) (COMM) 28/2020 (Rail Vikas Nigam Ltd. Vs. Simplex Infrastructures Ltd.), paragraph 23 saying that the ceiling limit of Rs.30 lakhs (entry 6) is not inclusive of base fee of Rs.19,87,500/-, the tribunal has demanded additional fees.

He refers annexure-14 in the writ petition **being order dated 9th July, 2021 in Petition for Special Leave to Appeal (C) no.10358 of 2020 (Rail Vikas Nigam Ltd. Vs. Simplex Infrastructures Ltd.)** to submit, the petition is challenge to said decision and had been fixed for final disposal on 4th August, 2021. He submits, the petition is still pending. Prayer in the writ petition is for quashing of the subsequent procedural order of the tribunal, demanding additional fees. As on date, there are conflicting views of several High Courts. He seeks adjudication for view of this Bench.

2. Mr. Mishra, learned senior advocate appears on behalf of opposite party. His client is claimant in the reference. He submits, his client has put in the additional fees demanded by the Tribunal. His client is interested in the award being published by the tribunal. There should be no interference, interim or otherwise, in preventing the tribunal from, now publishing the award. On query from Court regarding possible peril for his client to not be able to recover the additional fees paid, in event the Supreme Court decides that view taken by the learned Single Judge of Delhi High Court is incorrect he submits, his client will face that peril.

3. Since demand for additional fees by the tribunal has been met

by opposite party and said party's willingness to exposure to peril of being unable to recover a part or whole thereof, in event the Supreme Court decides that view taken by the learned Single Judge in **decision dated 10th July, 2020** (supra) is incorrect, it is directed that any decision made by the tribunal, in the award to be made, regarding the additional fees paid will be subject to declaration of law on entry 6 in the fourth schedule, awaited in **SLP(C) no.10358 of 2020** (supra).

4. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant

