

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 4409 of 2012

Swinky Poddar

.....

Petitioner

Mr. G.M. Rath, Adv.

Vs.

State of Orissa and another

.....

Opposite Parties

Mr. M. Kanungo, Sr. Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

21.09.2022

Order No.

11.

This matter is taken up through hybrid mode.

2. Heard Mr. G.M. Rath, learned counsel for the petitioner and Mr. M. Kanungo, learned Senior Counsel appearing for the opposite parties.

3. The petitioner has filed this writ petition seeking to declare the agreement under Annexure-1 as void, unconscionable, unfair, unreasonable and opposed to public policy and to issue direction to the opposite parties to accept surrender of 3rd Toll Gate on Sambalpur-Rourkela ADB Road, Sundargarh from the petitioner. He further seeks direction to the opposite parties to refund the E.M.D. amounting to Rs.88,51,250/- as well as penalty amount of Rs.10,18,848/- paid by the petitioner on demand of the opposite parties, within a stipulated time.

4. Mr. G.M. Rath, learned counsel for the petitioner contended that since the period of tender has already been expired, though the petitioner does not want that the work should be allotted in his favour as per the agreement, but he challenges the validity of the contract itself made between the parties.

5. Mr. M. Kanungo, learned Senior Counsel appearing for the opposite parties contended that since the work has already been over, whether the contract is valid or invalid that itself has now become academic for the purpose of adjudication of the case. If

the petitioner claims for refund of any amount on any score, it is open to him to pursue his remedy before the appropriate forum in terms of the DTCN/Agreement, which is applicable to the parties.

6. Having heard learned counsel for the parties and after going through the records, this Court is of the considered opinion that since the period of tender has already been over, the question as to whether the agreement under Annexure-1 is void, unconscionable, unfair, unreasonable and opposed to public policy has become academic, as the work has already been over and payments are already made. So far as refund of E.M.D. and penalty amount is concerned, it is open to the petitioner to pursue his remedy before the appropriate forum in terms of the DTCN/Agreement, which is applicable to the parties.

7. With the above observation and direction, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Ashok/Kishore