

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 13617 of 2013

***M/s Mubarak Buildcon Pvt.
Ltd.***

.....

Petitioner

Mr. J.K. Mohapatra, Advocate

Vs.

State of Odisha & Ors.

.....

Opposite Parties

Mr. S. N. Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

04.08.2022

Order No.
03.

This matter is taken up through hybrid mode.

2. Heard Mr. J.K. Mohapatra, learned Counsel for the Petitioner and Mr. S.N. Nayak, learned Additional Standing Counsel for the State.

3. The Petitioner has filed this Writ Petition seeking to quash the order of termination dated 30.01.2013 under Annexure-6 passed by the Executive Engineer, Rural Works Division No.1, Ganjam, Berhampur, on the ground that he is not the competent authority to pass such order.

4. Mr. J.K. Mohapatra, learned Counsel for the Petitioner contended that pursuant to the Notice Inviting Tender, the Petitioner participated in the tender and got selected and, thereafter, he was allowed to undertake the work for “Construction and Maintenance of Rural Road under the Pradhan Mantri Gram Sadak Yojana, Normal PMGSY/ADB Assisted PMGSY for the year 2007-08”. However, the work was terminated under clause 52.2 (a)(e) & (f) of the General

Conditions of the said contract as approved by the Committee of Chief Engineer, Rural Works, Odisha, Bhubaneswar vide letter dated 04.01.2013. It is contended that the order of termination having been passed by the Executive Engineer, Rural Works Division, the said order is nonest in the eye of law as he is not the competent authority in terms of Clause 52.1 of the Conditions of the Standard Bidding Document.

5. On perusal of the Clause 52.1 of the Standard Bidding Document, it is evident that it is the employer who may terminate the Contract if the Contractor causes a fundamental breach of the Contract. In the Contract Data to General Conditions of Contract, the Employer is Commissioner-cum-Secretary to Government in R.D Department, Government of Orissa, Bhubaneswar. However, the impugned order has been passed by the Executive Engineer, Rural Works Division No.1, Ganjam, Berhampur.

6. In view of the above, the order having not been passed by the Employer as prescribed in the Tender Data and the Tender Conditions of the Contract, the impugned order dated 30.01.2013 passed by Opposite Party No.3 cannot sustain in the eye of law and liable to be quashed and is hereby quashed.

7. The Writ Petition stands disposed of accordingly.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Arun/Banita