

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 7931 of 2018

Prafulla Kumar Pradhan

.....

Petitioner

Mr. P.C. Nayak, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. T. Patnaik, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

18.04.2022

Order No.

08.

This matter is taken up through hybrid mode.

2. Heard Mr. P.C. Nayak, learned counsel appearing for the petitioner and Mr. T. Patnaik, learned Additional Standing Counsel appearing for the State.

3. This is the 2nd journey of the petitioner to this Court. The petitioner had earlier approached this Court in W.P.(C) No. 8247 of 2016, claiming grant of incentive for early completion of the work, as per clause-6.21 of the tender call notice, which was denied to him vide order dated 30.05.2016. This Court disposed of the said writ petition, vide judgment dated 20.12.2016, by quashing the order dated 30.05.2016 and directing the Engineer-in-Chief, Public Health Orissa to pass a fresh order in accordance with law giving the petitioner the benefit of clause-6.21 of the tender call notice within two months. In compliance to the said direction of this Court, the impugned order dated 02.02.2018 has been passed by the Engineer-in-Chief stating therein that the claim for payment of balance incentive dues amounting to Rs.16,02,374/- computed at the rate of 10% of the contract value as per Note-III of Para 3.5.5 (V) is not acceptable, since Note III is an inclusion to Para 3.5.5 (V) not a substitution to note 1 of Para

3.5.5 (V) which is reflected in Clause 6.21 of DTCN. The said order dated 02.02.2018 is under challenge in the present writ petition.

3. Mr. P.C. Nayak, learned counsel for the petitioner contended that on an erroneous premises, the claim of the petitioner has been denied. This question had come up before this Court in the case of *Maa Santoshi Construction v. State of Odisha* (W.P.(C) No. 18655 of 2017), which was disposed of vide order dated 12.07.2018 by extending the benefit as claimed by the petitioner in the present writ petition. The State of Odisha challenged the said order of this Court in SLP (Civil) Diary No. 16151 of 2019, which was dismissed vide order dated 03.07.2019. Therefore, the petitioner is entitled to get the incentive as claimed by him in terms of Clause-6.21 of the DTCN.

4. Mr. T. Patnaik, learned Additional Standing Counsel contended that since Note-III is an inclusion to para-3.5.5 (V) and not a substitution to note-I of para3.5.5 (V) which is reflected in clause 6.21 of the DTCN, which was made in the year 2016, thereby the petitioner is not entitled to get the benefit as claimed by him.

5. Having heard learned counsel for the parties and after going through the record, it is evident that the agreement was executed on 28.11.2014 vide P1 Agreement No. 228 P₁ of 2014-15 for execution of the work in question. The petitioner thereby claimed that it is covered under the terms and conditions of the agreement. Clause 6.21 of the DTCN relates to incentive for early completion of the work. The inclusion was made in the year 2016 as has been stated in the impugned order, cannot have any application to the present case. Law in this regard has already been settled by this

Court in the case of *Maa Santoshi Construction* (supra), which has been upheld by the apex Court.

6. In view of such position, the order dated 02.02.2018 passed by the Engineer-in-Chief (P.H.)-Opposite Party No.2 under Annexure-12 is not sustainable in the eye of law, and is liable to be quashed and is hereby quashed. Opposite Party no.2 is directed to calculate and release the incentive in favour of the petitioner in terms of the Clause-6.21 of the tender call notice, as was existed at the time of execution of agreement between the parties. The entire exercise shall be completed within a period of two months from the date of communication of the order.

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

8. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Arun/Bichi