

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.17 Of 2019
(Through hybrid mode)**

Dhiren Kumar Singh

....

Appellant

*Mr. J.K.
Mohapatra,
Advocate*

-versus-

State of Odisha and another

....

Respondents

*Mr. P.C. Panda,
AGA*

CORAM: JUSTICE ARINDAM SINHA

**Order
No.**

**ORDER
04.04.2022**

5. 1. Mr. Mohapatra, learned advocate appears on behalf of appellant and submits, impugned is judgment dated 14th May, 2019, whereby award dated 1st May, 2017 was erroneously set aside. He submits, State was employer. It found that the work contemplated to be of 10 months required 39 months, per letter dated 25th January, 2005 of Additional Secretary to Government. He draws attention to annexure-B1 in the affidavit objection filed by respondent, to show post fact extension of time approval up to 31st January, 2000 without compensation or either side and without leave of penalty, as by said

letter.

2. He submits, date of commencement given in the objection is 3rd October, 1996. Ten months therefrom expired on 2nd August, 1997. He refers to agreement clause 47, reproduced below.

“If the Contractor fails to complete the work or a designated part thereof by the stipulated completion date he shall pay liquidated damages at one tenth of one percent of contract value for each incomplete part per day of delay in completion and handing over to the Government. The amount of liquidated damages shall however be subject to a maximum equal to the amount of security for performances as payable under Clause GC-5. Delay requiring payment of liquidated damages in excess of the amount of security for performance will be sufficient cause for termination of contract and forfeiture of all security for performance.”

He submits, in effect the contract was for a long period and the Tribunal went into the facts to award price adjustment. There was nothing wrong in the award that could be said to be against public policy, let alone any patent illegality appearing on face of it.

3. Mr. Panda, learned advocate, Additional Government Advocate appears on behalf of respondent (State) and draws attention to the affidavit objection. He submits, disclosed is extract of price adjustment clause-33, which clearly says that provision of price

adjustment may be adopted in respect of works contract, the period of completion of which is one year or more.

4. It stands demonstrated that the work was completed in a period more than one year. The completion was accepted by the employer, who did not impose liquidated damages for delayed completion. Therefore, the works contract having been executed in a period more than one year, the Tribunal applied the price adjustment clause. Nothing has been shown that application thereof was erroneous, resulting in patent illegality.

5. Impugned judgment is set aside in appeal and the award restored.

6. The appeal is disposed of.

(Arindam Sinha)
Judge

Sks