

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 13055 of 2022

***M/s. Hindustan Builders,
BBSR***

.....

Petitioner

Mr. S.K. Dalai, Advocate.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. T. Patnaik, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

19.05.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Dalai, learned counsel appearing for the petitioner and Mr. T. Patnaik, learned Additional Standing Counsel appearing for the State.

3. The petitioner has filed this writ petition seeking to quash the show cause notice dated 12.05.2022 under Annexure-16 and to direct the tender inviting authorities to grant extension of time as per the terms of the contract, so as to complete the work within the specified time.

4. Mr. S.K. Dalai, learned counsel for the petitioner contended that notice of show cause has been issued on 12.05.2022 for rescission of work, i.e. “Construction of H.L. Bridge over river Rushikulya at 0.500 km on NH-59 to Nuagam via Keshara in the district of Ganjam under BSY vide divisional agreement No. 47P1/2018-19”. He further contended that the show cause notice indicates that the petitioner was provided with ample opportunity to

expedite progress of work and complete within the time period and with due compliance to instruction from higher authority, even though the petitioner was provided with extension of time up to 28.02.2022, but due to poor progress of work, the same was not done as per the prayer vide show cause reply dated 22.11.2021. Thereby the show cause notice dated 12.05.2022 has been issued to show cause within seven days as to why the work will not be rescinded under clause-2(b)(i) of contract.

5. Learned counsel for the petitioner contended that the agreement was executed vide Annexure-1 showing the date of commencement 05.10.2018 and stipulated date of completion 04.10.2020. As such the agreement is no more subsisting. Clause-2 (b)(i) of the contract prescribes that “to rescind the contract of which rescission notice in writing to the contractor under the hand of the Executive Engineer shall be conclusive evidence, 20% of the value of left over work will be realized from the contractor as penalty”. It is contended that since the period of agreement is already over, clause 2(b)(i) of the contract is not applicable in view of the fact that there is no subsisting of contract between the petitioner and opposite parties. Thereby the initiation of proceeding and calling upon the petitioner to show cause under Annexure-16 cannot sustain in eye of law.

6. Mr. T. Patnaik, learned Additional Standing Counsel for the petitioner contended that against notice to show cause, the writ petition is not maintainable. Since the petitioner has been called upon to show cause, instead of filing his show cause, he has approached this Court in the present writ petition, for which the writ petition cannot sustain in the eye of law. He further contended that

the petitioner could have placed all such facts, as has been raised in this writ petition, while filing the show cause reply.

7. Having heard learned counsel for the parties and after going through the record, it is evident that against the notice of show cause, the present writ petition is filed, which is not maintainable. In any case, since the petitioner has raised certain questions in the present writ petition as well as in his argument, it is open to him to file its show cause reply in compliance to the show cause notice dated 12.05.2022 under Annexure-16 before the authority concerned, raising the question, which has been raised before this Court in the present writ petition. In such event, the authority concerned shall consider the same and pass appropriate reasoned/speaking order, after giving opportunity of hearing to the petitioner within a period of two months from the date of communication of the order.

8. The writ petition is accordingly disposed of.

9. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Arun/Puspa