

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.13404 of 2022

***M/s. Shivajyoti Conpro Pvt.
Ltd., Bhubaneswar***

.....

Petitioner

Dr. P. Chuli, Advocate

Vs.

State of Odisha & Others

.....

Opposite Parties

Mr. P.K. Muduli, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

29.11.2022

Order No.

7

This matter is taken up through hybrid mode.

2. Heard Dr P. Chuli, learned counsel appearing for the petitioner and Mr. P.K. Muduli, learned Additional Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 04.04.2022 under Annexure-8 passed by opposite party no.5-Superintending Engineer, Mahanadi North Division-I, Jagatpur, and further to issue direction to opposite party no.5 to pay the petitioner incentive @ 5% for early completion of work, as per Clause-34 of the Condition of Contract of the Agreement under Annexure-1 and provisions contained under the OPWD Code as well as the order dated 25.06.2019 issued by opposite party no.4 within a stipulated period.

4. Dr P. Chuli, learned counsel appearing for the petitioner contended that the petitioner has completed the work earlier than the contract period. Therefore, the petitioner is entitled to get incentive @ 5% as per Clause-34 of the Condition of Contract of the Agreement under Annexure-1 and provisions contained under the OPWD Code. Even though recommendation has been made to that effect, the incentive @5% has not been paid to the petitioner. It is further contended that similar question had come up for consideration before this Court in ***Pradeep Kumar Mishra v. Vice-Chancellor, Veer Surendra Sai University of Technology, Burla*** (W.P.(C) No.25404 of 2021, decided on 14.07.2022), wherein this Court has already directed for grant of incentive for early completion of work. Thereby, the petitioner, being stood on similar footing, is entitled to get the said benefit. It is further contended that the petitioner is entitled to get the incentive @5%, pursuant to Annexure-3, the Office Memorandum dated 08.11.2013.

5. Mr. P.K. Muduli, learned Additional Government Advocate appearing for the State-opposite parties contended that so far as early completion of work is concerned, a bidder is entitled to get incentive in terms of Conditions of Contract of the Agreement, but so far as petitioner is concerned, he is entitled to get incentive @ 3% but not 5% in view of Annexure-9 dated 04.05.2016.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, it appears that there is no dispute with regard to claim of incentive for early completion of work. But so far as quantum of incentive is concerned, whether the petitioner is entitled to get incentive @ 5% or 3%, the same cannot be adjudicated by this Court, rather he has to approach the

appropriate forum. Therefore, this Court is not inclined to enter into the arena of such dispute. However, liberty is granted to the petitioner to pursue his remedy, as has been claimed in this writ petition before the appropriate forum annexing all the documents so that the quantum of incentive, as due and admissible, can be determined and disbursed in his favour.

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

(B. P. SATAPATHY)
JUDGE

Alok

