

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 13584 of 2018

Gadadhara Mishra

.....

Petitioner

Mr. M.K. Mishra, Sr. Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. P.P. Mohanty, A.G.A.

CORAM:

DR. JUSTICE B.R. SARANGI

Mr. JUSTICE G. SATAPATHY

ORDER

06.09.2022

Order No.

04

This matter is taken up through hybrid mode.

2. Heard Mr. M.K. Mishra, learned Sr. Advocate appearing along with Mr. T. Mishra, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking direction to the opposite parties to release payment of Rs.24,28,470/- and Rs.15,15,500/- towards escalation bill and differential cost of cement claimed under Annexure-6 and recommended for payment by opposite party no.4 under Annexures-9 & 10 with interest @ 12%.

4. Mr. M.K. Mishra, learned Sr. Advocate appearing for the petitioner contended that the petitioner entered into contract under AIBP Scheme for restoration of work to Canal Section from RD 44660M to RD 45522M of Subarnarekha Main Canal. Pursuant to such agreement, the petitioner executed the work and now he claims for escalation price. It is contended that the opposite parties have admitted the claim of the petitioner for escalation cost in Annexures-9 & 10.

5. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties raises preliminary objection with regard to maintainability of the writ petition contending that it is a money claim of the year 2006 and the petitioner filed this writ petition in 2018 and in the meantime four years have elapsed. As such, there is no admission of the opposite party-authority with regard to grant of escalation cost in favour of the petitioner, rather in Annexures-9 & 10 it has only been observed to examine whether the petitioner is entitled to price escalation for the extended period the work was done by him. Therefore, it cannot be said to be admission of the opposite parties.

6. Having heard learned counsel for the parties and after going through the records, it appears that the petitioner was issued with work order for restoration of work to Canal Section from RD 44660M to RD 45522M of Subarnarekha Main Canal, for which he executed agreement. But due to some technical difficulties, the petitioner could not execute the work within the time stipulated. Therefore, the Chief Engineer and Basin Manager, Subarnarekha & Budhabalanga Basin, Laxmiposi inspected the work in question and also reported that there was no negligence either on the part of the Department or on the part of the executing agency. But the Principal Secretary to Govt., Department of Water Resources-opposite party no.1 also made a personal inspection of Subarnarekha Main Canal and reported that the right bank canal for a stretch of ground 250m has slipped due to presence of Kaoline soil and the problem was discussed with the Chief Engineer at the site. Against that, the petitioner preferred appeal vide his letter dated 29.04.2014 to the Chief Secretary, Govt. of Odisha with copy endorsed to all concerned to look into the matter. The petitioner has also submitted the escalation bill and the bill for differential cost

and price escalation for the extended period in terms of provisions of the Agreement under clause-31(e) of the conditions of the contract under Annexure-1. Payment of such amount has been recommended by opposite party no.4 to the Financial Advisor-cum-Joint Secretary to the Govt. But the same has not been adhered to till date. But fact remains, on the basis of document under Annexure-6 series dated 07.05.2012, wherein the petitioner has already contended that opposite party no.5 has already recovered huge amount from his bill and requested to close his contract with immediate effect and pay his legitimate dues without further delay. On the request made vide Annexure-6, the Chief Engineer & Basin Manager, Subarnarekha & Budhabalanga Basin, Laxmiposi issued letter dated 05.01.2017 under Annexure-9 series to the Financial Adviser-cum-Joint Secretary to the Government of Odisha, Department of Water Resources, Bhubaneswar indicating as follows:

“In the mean while the contractor claimed the price escalation for the extended period in terms of the provision of the Agreement laid down under clause 31(e) of the CC. As the extension of time has been sanctioned without any attribution, the contractor is entitled to price escalation for the extended period. The price escalation has been checked at the level of the Executive Engineer, Betnoti canal Division, Laxmiposi and rechecked at the level of the Superintending Engineer, Subarnarekha Irrigation Circle, Laxmiposi. The price escalation for the extended period comes to Rs. 24, 28,470.00.

Therefore, in enclosing the calculation sheet in duplicate along with relevant documents, it is requested that necessary approval of the Government may kindly be accorded for payment of the price escalation for the extended period amounting to Rs24, 28,470.00 to the contractor”.

7. The above letter clearly indicates that request has been made for approval of Government to accord payment of price escalation for the extended period amounting to Rs.24,28,470/-to the petitioner. But in Annexure-11, the

letter dated 22.11.2017 issued by the F.A.-cum-Joint Secretary to Govt. to the E.I.C., Water Resources, Bhubaneswar intimating to the following effect:

“You are therefore requested to examined the matter and offer your specific views, whether the agency is entitled for price escalation and differential cost of cement on the value of collapse portion of works or not”.

8. In view of the above, whether price escalation for the extended period and differential cost of cement are admissible to the petitioner or not has been directed to be examined instead of approval of the recommendation made by the E.I.C. Water Resources, Bhubaneswar. Since dispute still exists with regard to entitlement of the petitioner, so far as price escalation for the extended period and differential cost are concerned, this Court is not inclined to issue any direction for payment as per prayer made in the writ petition. Even though counter affidavit has been filed, nothing has been indicated to the above extent. More so, it is purely a money claim, which is prevailing from 2006. Therefore, this Court disposes of the writ petition directing the petitioner to approach the appropriate forum in terms of the agreement/DTCN, which is applicable to him in accordance with law.

9. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE