

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14022 of 2018

***Nanda Infra Construction Pvt.
Ltd., Angul***

.....

Petitioner

Mr. Kamal Behari Panda, Advocate

Vs.

***Chairman-cum-Managing,
Director, Orissa Industrial
Infrastructure Development
Corporation, Bhubaneswar
and Others***

.....

Opposite Parties

*Mr. P. K. Mohanty, Senior Advocate,
appearing along with P. Mohanty,
Advocate
(O.P. No. 1 to 3)*

*Mr. P. A. Dash, Advocate
(O.P. No. 4)*

*Mr. P.P. Mohanty, AGA
(O.P. No. 5)*

CORAM:

**DR. JUSTICE B.R. SARANGI
Mr. JUSTICE S. K. MISHRA**

**ORDER
28.07.2022**

Order No.

9

This matter is taken up through hybrid mode.

2. Heard Mr. K. B. Panda, learned Counsel for the Petitioner; Mr. P. K. Mohanty, learned Senior Counsel appearing along with Mr. P. Mohanty, learned Counsel for Opposite Parties No. 1 to 3; Mr. P.A. Dash, learned Counsel for Opposite Party No. 4 and Mr. P. P. Mohanty, learned Additional Government Advocate for Opposite Party No. 5.
3. Though Notice was issued to Opposite Party No. 6, none appeared on his behalf.
4. The Petitioner, being a Super-Class Contractor, has filed this Writ Petition seeking to quash the Order dated 12.07.2018 under Annexure-18 issued by the Divisional Head, Angul Division, rescinding Agreement No. 01-F2/16-

17, dated 07.06.2016 as per clause No. III(e) of the conditions of contract.

5. Mr. K. B. Panda, learned Counsel appearing for the Petitioner vehemently contended that the impugned Order dated 12.07.2018 has been passed by the Divisional Head, Angul Division, without assigning any reason, which is contrary to the Principles of Natural Justice. More so, it is contended that as per Clause-III(e) of the conditions of contract, to rescind the contract of which recession notice in writing to the Contractor under the hand of the Divisional Head/Executive Engineer shall be conclusive evidence and the same has to be signed by such person and as such, though such rescission of contract order was signed by the Divisional Head, Angul Division, but the notice of the rescission of contract has been given by Opposite Party No. 4, who is none else less but a Consultancy Authority vide Annexure-5 Series dated 15.05.2018. Thereby, incompetent person has issued notice against the Petitioner to rescind the contract, which cannot be sustained in the eye of law. To substantiate the case of the Petitioner, he has relied upon the judgment of this Court in *(M/s.) East Coast Constructions Industries Ltd., Odisha v. State of Odisha and others*, 2016 (II) CLR-359.

6. Mr. P. K. Mohanty, learned Senior Counsel appearing for Opposite Parties No. 1 to 3 contended that since the Petitioner has not completed the work within the time stipulated in the agreement itself, the Authority has taken steps for rescinding the contract. It is further contended that by virtue of interim Order, the Bank Guarantee has been extended from time to time, but after 01.04.2021, it has not

been renewed. Therefore, it is contended that direction may be given to the Petitioner to renew the Bang Guarantee so that the Opposite Parties can take necessary steps in accordance with law.

7. Mr. P. A. Dash, learned Counsel appearing for Opposite Party No. 4 contended that Opposite Party No.4 was engaged as Consultant to look after the work undertaken by the Petitioner and, as such, except the consultant work, it has not done anything, which will cause prejudice to the Petitioner.

8. Having heard learned Counsel for the parties and after going through the records, it appears that the Opposite Party No.1 invited bids from the Contractors vide Bid Identification No.PC-EST-74/2015-16 dated 28.01.2016 for a sum of Rs. 4873.19 lakh approximately. The work was to be completed within a period of 12 calendar months. In response to Invitations for Bids, the Petitioner participated and as such, he was selected to undertake the work. Accordingly, his bid was accepted by Opposite Party No.1 to 3 and issued the work order on 31.05.2016. On receipt of the work order, the Petitioner visited the work site and upon inspection of the same, he intimated IDCO, vide letter dated 02.06.2016 regarding narrow approach to site through which materials could not be transported. Therefore, he requested for demarcation of the land and for detailed drawings before commencement of work. Instead of giving communication in writing, the Petitioner was verbally assured that the land would be demarcated. Vide letter dated 08.06.2016, he was issued with 62 nos. of drawings which had neither been approved by the CGM (P&G) nor the Division head.

Thereafter, the agreement was signed between the IDCO and the Petitioner on 17.06.2016, wherein the stipulated date of commencement was shown as 10.06.2016 and the date of completion as 09.06.2016, thereby reducing the work period. Vide letter dated 18.06.2016, the Petitioner was informed that the work site had been demarcated and handed over on 10.06.2016 and the detailed drawings had been issued vide letter dated 08.06.2016, even though no passage has been shown to the land in question. But the Petitioner undertook the work on the approach road to the site, which was neither demarcated nor handed over as per the tender document. By this process, there is delay in handing over the site to the Petitioner and in the meantime time was elapsed. As a consequence thereof, Opposite Party No. 4 vide letter dated 18.05.2018 intimated the Petitioner that considering the present status of the work, the contract is proposed to be rescinded for abandonment of work and in case the Petitioner wish to resume the work and apply for extension of time within 7 days of issuance of the said letter, failing which action as deemed fit as per contract shall be taken up in due course.

9. In response to same, the Petitioner gave reply vide letter dated 10.05.2018, but without considering the same, Opposite Party No. 3, vide letter dated 12.07.2018 under Annexure-18 intimated the Petitioner that the work in question vide agreement No. 01-F2/16-17 Dated 17.06.2016 has been rescinded.

On 02.06.2016, upon visiting the site, the Petitioner intimated the IDCO regarding narrow approach road to the site for which materials could not be transported to the site. The Petitioner requested for removal of the hurdle and demarcation on last before commencing any activity. The Petitioner also requested for details of various drawings before commencement of work. On 08.06.2016, the Petitioner was issued 62 Nos. of unapproved drawings. On 17.06.2016, Agreement for the execution of work was signed between the Petitioner and IDCO, wherein it was mentioned that the date of commencement of the work was 10.06.2016 and date of completion on 09.06.,2017 thereby reducing the working period. On 28.06.2016, the Petitioner informed the IDCO that the land demarked vide notification dated **10.06.2016**. Even though the land in question indicates that the widening of approach road to site, addressing local problems and sought information on action taken as per the tender documents. By this process, there was a delay in handling the site of the Petitioner and in the meantime, the time is lapsing and receiving thereafter. Opposite Party No. 4 for which Order dated 15.05.2018, implicated the Petitioner.

Considering the present status of the work, the direction has been released under the provision of the agreement to resume the work. The Petitioner may execution within seven days for issuance of this letter, failing which again cannot deem fit shall be initiated for termination of agreement. In response to the same, cannot reply vide Annexure-18 to rescind the contract for just and proper

adjudication of the case. Clause-III(e) of the conditions of contract as follows:-

***CLAUSE-III(e):** Recession of contract (Amendment as per letter No. 10639 dtd. 27.05.2005 of works Department, Odisha): To rescind the contract (of which rescission notice e in writing to the contractor under the hand of the Divisional Head/Executive Engineer shall be conclusive evidence) 20% of the value of left over the work will be realized from the contractor as penalty.*

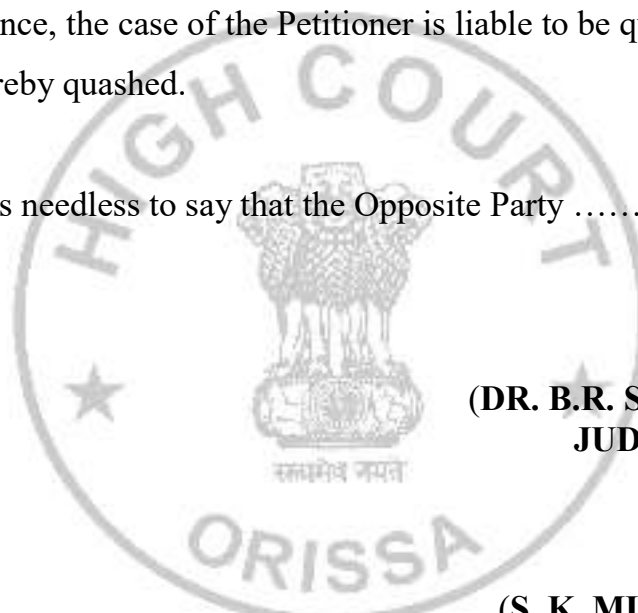
On perusal of the above mentioned Clause to rescind the conditions of the contract of which rescission notice in reading the contract under the Division Head, Angul Division under the hands of Executive Engineer shall be conclusive evidence. Rescission of the contract which was consultant and as such he has no jurisdiction to such notice. The seal and signature of the Division Head/Executive Engineer vide dated 18.5.2018, replay has been taken into consideration without considering the same. Even though the notice in concomitant to the authority and the same is without jurisdiction order impugned. Order dated 17.07.2018, which is required under the contract dated Clause-III(e). In consequence thereof, the notice has been due by competent authority and the same has not been considered and quashed the impugned order dated 08.06.2016 under Annexure-18, cannot sustain in the eye of law. **M/s. East Coast Construction Industrial** (supra), this Court has already held that once show-cause notice was given and detail reply serving by the parties, it is expected by the authorities to pass appropriate order and after considering the reply and perused the order satisfactory. It has also been stated that issuance of notice to show-cause and requires to furnish the reply is not being an

impediment and the parties would not be
 order impugned

Appropriate order on the basis of the reply furnished merely because it is stated that the contract has been received as per the Clause-III(e) cannot sustain in the eye of law and the same is gross violation of natural justice.

Even on perusal of the Clause-III(e) that the reasons of contract is rescission of contract under the Executive Engineer shall be conclusive evidence issued by the Opposite Party No. 4 is not confirmed the Clause-III(e). Consequence thereof, Annexure-18 cannot sustain in the eye of law. Hence, the case of the Petitioner is liable to be quashed and is hereby quashed.

It is needless to say that the Opposite Party



(DR. B.R. SARANGI)
JUDGE

(S. K. MISHRA)
JUDGE