

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 24465 of 2020

<i>M/s. SBM Nirman Construction Pvt. Ltd., Sambalpur</i>		<i>Petitioner</i>
		<i>Mr. Prabodh Ch. Nayak, Advocate</i>
	Vs.	
<i>State of Odisha & Others</i>		<i>Opposite Parties</i>
		<i>Mr. S.S. Kanungo, A.G.A.</i>

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

03.11.2022

Order No.
04

This matter is taken up through hybrid mode.

2. Heard Mr. P.C. Nayak, learned counsel appearing for the petitioner and Mr. S.S. Kanungo, learned Additional Government Advocate appearing for the opp. parties.
3. The petitioner has filed this Writ Petition to quash the order dated 30.04.2020 passed by Opp. party No.5 under Annexure-6, by which the calculation of excess recovered from the work bill of Contractor SBM Nirman Construciton Pvt. Ltd. for the work :- Widening and strengthening of existing single lane carriageway to two lane from km 159/200 to 167/200 km of Kuchinda-Bamra road (SH-24) under SHDP for the year 2014-15” vide Agreement No.1782 P1 of 2014-15, has been considered, but a part of amount of Rs.91,305/- has been decided to be refunded to the petitioner.
4. Mr. P.C. Nayak, learned counsel appearing for the petitioner submitted that while passing the impugned order, no opportunity of hearing was given to the petitioner and the entire determination/

calculation has been made unilaterally and the opp. parties arrived at a conclusion that the petitioner will get refund of Rs. Rs. 91,305/-, though it is entitled to get refund of much more amount, which the petitioner wants to apprise the authority.

4. Mr. H.M. Dhal, learned Additional Government Advocate contended that whatever amount determined to be refunded to the petitioner has been reflected vide Annexure-6 and on the basis of counter affidavit the claim was admitted and consequence thereof, the petitioner is not entitled to get any more amount as claimed in the writ petition.

5. Having heard learned counsel for the parties and after going through the materials available on record, it appears that after filing of the counter affidavit by the opp. parties, the matter was taken up on 15.03.2021 and the following order was passed:

“Heard Mr. P.C. Nayak, learned counsel for the petitioner and Mr. M.S. Sahoo, learned Additional Government Advocate for the State-Opp. Parties.

In the counter affidavit filed, it is stated that the refund amount to which the petitioner was found entitled worked out to Rs. 91,305/-. However, it is stated that the above amount has not yet been refunded to the petitioner.

Learned counsel for the Petitioner points out that against the claim of refund made by the petitioner to the tune of Rs.52,87,469/-, only the aforementioned sum has been allowed and that too without actually hearing the petitioner.

This Court directs that the admitted amount i.e. Rs. 91,305/- shall be straightaway refunded to the petitioner by the Opposite Parties positively on or before 19th April, 2021.

As regards the Petitioner’s plea that for the balance refund claim, the Petitioner should be given an opportunity of hearing, the Court will pass appropriate orders on the next date.

List on 27th April, 2021.”

6. In compliance of the aforesaid order, the amount of Rs. 91,305/-, which is admitted by the opp. Parties, has been released

in favour of the petitioner before 19th April, 2021 and thereby a part of the order has been complied with by the opp. parties. But the petitioner has claimed that he is entitled to get Rs.52,87,469/- and, as such, the amount which has been refunded is not meeting the requirement, as claimed by him, and more so, the order under Annexure-6 has been passed in violation of the principle of natural justice.

7. This Court has already observed that for refund of the balance amount, as claimed by the petitioner, an opportunity of hearing shall be given to the petitioner.

8. In such view of the matter, without expressing any opinion on the merit of the case, this Court disposes of the writ petition directing the opposite parties to exclude Rs. 91,305/- which has been paid to the petitioner, out of the total claimed amount of Rs. 52,87,469/- and adjudicate the balance claimed amount by giving an opportunity of hearing to the petitioner.

9. With the aforesaid observation and direction, the writ petition stands disposed of.

10. Issue urgent certified copy as per Rules.

(DR. B.R. SARANGI)
JUDGE

(B. P. SATAPATHY)
JUDGE

sangita