

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 31296 of 2022

*M/s MDSG Construction Pvt. Ltd.,
Nuapada*

.....

Petitioner

Mr. P.C. Nayak, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

06.12.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. P.C. Nayak, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the decision making process adopted by the opposite party no.5 in terminating the contract dated 15.10.2022 under Annexure-7, before expiry of the contract period under penal clause 2(a) and 2(b)(i), and to issue direction to the opposite parties to allow it to execute the work "Construction of 150 seated Gents Hospital (Foundation G+4, Construction (G+3) with provision of lift at Govt. ITI, Koida under DMF in the district of Sundargarh for the year 2021-22" vide Agreement No.137P1 of 2021-22 including all deviation work in terms of the agreement under Annexure-1.

4. Mr. P.C. Nayak, learned counsel for the petitioner contended that the petitioner was allotted with the work "Construction of 150 seated Gents Hospital (Foundation G+4, Construction (G+3) with provision of lift at Govt. ITI, Koida under DMF in the district of Sundargarh for the year 2021-22" and accordingly agreement was executed. But subsequently, the authority decided to go for 200 seated Gents Hospital and,

thereby, the project which was allotted in favour of the petitioner was withdrawn vide Annexure-7 dated 15.10.2022, putting clause 2(a) and 2(b)(i) for such withdrawal. It is contended that clause-2(a) relates to payment of compensation, whereas clause-2(b)(i) relates to imposition of penalty. Though the petitioner has no objection with regard to payment of compensation, but raised objection to the extent of penalty which was charged against it as per clause-2(b)(i).

5. Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties contended that the writ petition is premature one, as no demand was raised by the authority against the petitioner under clause-2(b)(i) of the agreement. More so, the petitioner did not start the work for a period of nine months, thereby putting the Government into difficulties and, as such, the Government in the interest of public, withdrawn the work allotted in favour of the petitioner and extended the number of beds from 150 to 200 and also gone for a fresh selection of bidder. Thereby, no illegality or irregularity has been committed on the part of the authority by withdrawing the work which was allotted in favour of the petitioner. More so, the petitioner has not annexed any document indicating the quantum of demand raised by the authority towards penalty under clause-2(b)(i) of the agreement. Consequentially, he seeks for dismissal of the writ petition.

5. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner had entered into an agreement for execution of the work "Construction of 150 seated Gents Hospital (Foundation G+4, Construction (G+3) with provision of lift at Govt. ITI, Koida under DMF in the district of Sundargarh for the year 2021-22" vide Agreement No.137P1 of

2021-22 including all deviation work in terms of the agreement under Annexure-1. Even though the work order was issued, the petitioner did not start the work for a period of nine months. Thereby, the opposite parties took steps for withdrawal of the work and in the meantime due to necessity Government enhanced the number of seats from 150 to 200 and, as such, the work has been allotted in somebody's favour which has been indicated in the writ petition itself. So far as withdrawal of agreement is concerned, the same has been done by terminating the contract in terms of clauses-2(a) and 2(b)(i) of the agreement itself. Learned counsel for the petitioner contended that so far as compensation under clause-2(a) is concerned, the petitioner may not have any objection. But so far as imposition of penalty under clause-2(b)(i) is concerned, the petitioner objected to the same, as because the petitioner is not liable for such penalty, on which this Court has not expressed any opinion at this stage. If the agreement permits to impose penalty, the same is to be demanded by the authority and, as such, the petitioner has not annexed any document indicating that demand has been raised by the authority by imposing penalty. In absence of any such material before this Court, the writ petition is premature and is accordingly disposed of.

(DR. B.R. SARANGI)
JUDGE

(B.P. SATAPATHY)
JUDGE

Ashok