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**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 16409 of 2024**
**CNR No.ODHC010479552024**

***Bibekananda Patra*** .... ***Petitioner***

*-versus-*

***State of Odisha and others*** .... ***Opposite Parties***

**Advocates appeared in this case:**

For Petitioner : Mr. Shubhendu Kumar Parida, Advocate

For Opposite Parties-State : Mr. Debashis Tripathy,
Additional Government Advocate

**CORAM:**
**HON'BLE THE CHIEF JUSTICE**
**AND**
**HON'BLE MR JUSTICE CHITTARANJAN DASH**

**J U D G M E N T**

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**Date of Hearing and Judgment: 4th November, 2026**

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***HARISH TANDON, CJ.***

**1.** The challenge is made to the letters dated 10th March, 2023 and 18th March, 2024 passed by the F.A.-cum-Special Secretary to Government and the Executive Engineer, Mayurbhanj respectively by which, calculation was made as per the Codal Procedure issued by the Works Department vide O.M. No.15847/W dated 19.11.2019 and O.M. No.8189/W dated 07.06.2021.

**2.** It is fervently submitted that the aforesaid office memorandum was the subject matter of challenge in W.P.(C) No.30191 of 2021 and while allowing the said writ petition on 8th September, 2023, a Division Bench of this Court quashed and set aside the aforesaid Office Memorandums by which the said Codal Procedure was directed to operate retrospectively.

**3.** To appreciate the aforesaid contention, a genesis of the litigation is required to be succinctly narrated as under.

**4.** The petitioner was awarded the work for Up-gradation of Thakurmunda- Dongadiha- Podadiha- Udala- Manitri- Baisinga-Rupsa road, MDR-70 from km 50.770 to 55.100 km under One Time ACA. The stipulated time for execution of the work was fixed at eleven calendar months, including the rainy season and 9th March, 2015 was to be treated as the date of commencement of the said work. It is not in dispute that the petitioner completed the work and submitted the RA Bills in terms of the work order and the price so accepted by the parties.

**5.** A point was taken by the authorities that in view of the Office Memorandum dated 24th December, 2012, there is no fetter on the part of the authorities to deduct certain amounts in case of

variation in the price of the raw materials, which was the subject matter of challenge before this Court in W.P.(C) No.330 of 2013. The said writ petition was disposed of on 25th April, 2018 quashing the said Office Memorandum.

**6.** The petitioner approached this Court by filing a writ petition being W.P.(C) No.21303 of 2016 after the said judgment was delivered and the authorities are taking shelter under the said Office Memorandum dated 24th December, 2012. The said writ petition was disposed of on 18th June, 2018 holding that the ratio of the judgment rendered on 25th April, 2018 in W.P.(C) No.330 of 2013 squarely applies and the Office Memorandum dated 24th December, 2012 was quashed. Correspondingly, a direction was passed upon the authorities to issue a fresh circular with regard to the price variation/escalation clause in the contract in view of the directions given in the case of ***All Odisha Contractors' Association v. State of Odisha***, reported in ***2012 (II) OLR 586***.

**7.** It was further made clear that any deduction made from the bills of the contractors or any payment made to the contractors in pursuance of the said Notification dated 24th December, 2012 shall be refunded and/or adjusted, as the case may be. In compliance with the said order passed in the writ petition filed by the petitioner at an

earlier point of time, the Office Memorandum dated 19th November, 2019 was issued by the Commissioner-cum-Secretary to the Government, Works Department, where a codal/contractual provision regarding price adjustment clause due to increase or decrease in rate and the price of labours, materials, fuels, lubricants, plant and machineries, spare component to be incorporated in DTCN/conditions of the contract and the same shall be regarded as a part of the relevant clauses of the DTCN on and from the date of issue of the said Office Memorandum.

**8.** Subsequently, another Office Memorandum dated 7th June, 2021 was issued by the same authority to the effect that the said Office Memorandum dated 19th November, 2019 would operate retroactively between the periods from 7th July, 2012 to 18th November, 2019, subject to the following conditions mentioned therein. The said Office Memorandum by which the earlier Office Memorandum dated 19th November, 2019 which was to operate prospectively, was given a retroactive effect, the challenge was made in W.P.(C) No.30191 of 2021 before this Court. However, in terms of the order dated 18th June, 2018, a letter was issued by the Works Department on 10th March, 2023 directing the authorities to take appropriate steps to comply with the order passed in the said writ

petition by following the Codal Procedure under the Works Department dated 19th November, 2019 and 7th June, 2021.

**9.** The petitioner did not raise any objection after the said letter was issued to the competent authority but felt aggrieved when the Executive Engineer, Mayurbhanj (R&B) Division issued a letter dated 18th March, 2024 in compliance with the requisition made in the letter dated 10th March, 2023. The reason for such objection is basically founded upon the judgment dated 8th September, 2023 passed in W.P.(C) No.30191 of 2021, wherein the said Office Memorandum dated 7th June, 2021 was quashed and set aside on the ground that the administrative authorities cannot direct the operation of the administrative order from a retrospective effect or retroactive effect and, therefore, the said Office Memorandum dated 7th June, 2021 cannot stand.

**10.** Since the Office Memorandum dated 19th November, 2019 was issued to operate prospectively, anything done prior thereto cannot come within the purview thereof. Once the Court quashed the aforesaid Office Memorandum before a final calculation is made, it is imperative that the authorities would follow the mandate of the law and the *ratio decidendi* of the judgment rendered in this regard. Any departure from the law declared by the Court is susceptible to

be interfered with and the same cannot be regarded as a valid order in the eye of law.

**11.** We are conscious that the impugned letter dated 18th March, 2024 is issued in compliance to the direction passed in letter dated 10th March, 2023, which was issued at the relevant point of time when the said judgment dated 8th September, 2023 was not in existence yet, at the time of taking a final decision or complying with the said direction, once it is made known to the authorities, it is inconceivable that the authority would ignore the law declared by this Court and proceed to follow the administrative mandate given to them.

**12.** The said Executive Engineer has applied the Codal Procedure retroactively when the subsequent Office Memorandum was already quashed and set aside by this Court on such score. We, thus, find that the exercise undertaken by the said authority and communicated vide letter dated 18th March, 2024 is violative of the judgment rendered by this Court on 8th September, 2023 and, therefore, cannot be sustained in the eye of law.

**13.** Accordingly, both the letters dated 10th March, 2023 and 18th March, 2024 are hereby quashed and set aside. The authorities

are directed to recalculate the price escalation in terms of the order dated 18th June, 2018 within four (4) weeks from the date of communication of this order.

**14.** With these observations and direction, the instant writ petition is disposed of.

***(Harish Tandon)***
***Chief Justice***

***(Chittaranjan Dash)***
***Judge***

*Sisira*

Signature Not Verified
Digitally Signed
Signed by: SISIRA KUMAR BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 09-Nov-2026 17:14:17