

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 33904 of 2021

M/s. Kalinga Combines Pvt. Ltd. and ***Petitioners***
another

Mr. Gouri Mohan Rath, Advocate

-versus-

Odisha Industrial Infrastructure ***Opposite Parties***
Development Corporation (IDCO) and
others

Mr. Pronoy Mohanty, Advocate

CORAM:
THE CHIEF JUSTICE
MR. JUSTICE D. DASH

Order No.

ORDER
15.02.2024

04.

This matter is taken up through Hybrid mode.

2. Heard Mr. Gouri Mohan Rath, learned counsel appearing on behalf of the Petitioners and Mr. Pronoy Mohanty, learned counsel appearing on behalf of the Opposite Parties.

3. The facts of the case are not at all in dispute. The Petitioner No.1 is the Company engaged in the business of execution of the works contract, whereas Petitioner No.2 is the Managing Director of Petitioner No.1 and a shareholder of the said company.

4. Pursuant to the Tender Call Notice dated 29.07.2017 inviting bids for execution of the work of "Construction of Driving Track at Keonjhar", the Petitioner had submitted his bid and was successful. The letter of acceptance was issued by Opposite Party No.2 on 27.03.2018 whereupon the Petitioner had submitted the requisite

security deposit and had also deposited the additional performance security. Clause-9 of the said letter of acceptance dated 27.03.2018 and the agreement clearly stipulated that the finalized rate was inclusive of GST.

5. It is pertinent to note that on 18.05.2018, the Chief General Manager (Civil), I/c in his communication to the Divisional Head, IDCO, Jajpur Road Division, Jajpur with reference to Clause-9 of the said letter of acceptance had clearly mentioned that it shall be read as under:

“Sl. No.9- The contractor is to bear all local taxes, Cess, ferry, tollage charges, royalties and any other charges but excluding GST. GST as applicable will be borne by IDCO.”

6. It is also an admitted position that the Petitioner had successfully completed execution of the work in March, 2021. After completion of the work by the Petitioner, the Chief General Manager (Civil), in its communication dated 06.09.2021 addressed to the Divisional Head, IDCO, Jajpur Road Division, Jajpur regarding the same contract noted as under:

“The Technical Sanction to the estimate for the work noted above was accorded based on Pre GST rates and tender was also approved accordingly. You are therefore requested to follow the guide lines issued vide the Finance Dept. office memorandum referred above (copy enclosed) for implementation of GST for the works.”

The instructions issued on payment of GST vide this office letter no.10371 dt. 18.05.2018 is withdrawn. Payments made to the executing agencies may be adjusted accordingly.”

7. The Petitioners have questioned the subsequent decision of the Opposite Parties as contained in the said communication dated 06.09.2021 on the ground that the concerned Opposite Parties after execution of the work have unilaterally withdrawn the substituted Clause-9 as per letter dated 18.05.2018 and thereby varied the term of the letter of acceptance which is wholly arbitrary and illegal.

8. After having heard learned counsel appearing on behalf of the Petitioners and learned counsel for the Opposite Parties, we are of the considered view that the Opposite Parties after the work having already been executed by the Petitioners could not have varied the terms contained in Clause-9 of the letter. The impugned communication dated 06.09.2021 cannot be sustained and is accordingly set aside. The consequences of the quashing of the said communication shall follow.

All actions taken based upon the said communication dated 06.09.2021 are held illegal.

The Opposite Parties shall be required to proceed accordingly.

9. With the aforesaid observations, the writ petition stands disposed of.

(Chakradhari Sharan Singh)
Chief Justice

(D. Dash)
Judge