
(2010) 03 OHC CK 0069
In the Orissa High Court

Dandasi Sahu

APPELLANT

Vs

Executive Engineer, Minor Irrigation Division and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Citation : (2010) 110 CLT 127

Hon'ble Judges : I.M. Quddusi, Acting C.J.;B.P. Ray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Ray, J.—The Petitioner has filed this writ application with the following prayers:

- (a) To issue writ of mandamus quashing Annexures-3,5 &8,
- (b) Writ of mandamus directing Opp. Parties to refund & pay the dues of the Petitioner under Agreement No. 20F2/91-92 & No. 1F2/97-98 with interest at the Commercial rate from withheld date, &;
- (c) to declare that the Opp. Parties have no authority to recover/ withheld/adjust the amount in question in pursuance of the letter vide Annexure-7 dtd. 23.2.93 & allow the application with cost.

2. The case of the Petitioner is that the Petitioner was awarded with a work for construction of Badadeb Sagar M.I.P. in Kudakhandi Block & after the award of work, the Petitioner was asked to execute F/2 Agreement No. 20 F2 of 1991-92 with the State of Orissa on 11.2.1992. A copy of the agreement has been annexed to the Writ Petition as Annexure-1. After completion of the work on 10.2.1994, a completion certificate was Issued. The said certificate has been annexed as Annexure- 2 & the final bill to the tune of Rs. 59,777 was paid on 5.6.1995. As the matter stood thus, the Petitioner was asked by letter dated 7.6.1997 issued by the Executive Engineer-Opp. Party No. 1 to refund the aforesaid amount as the price escalation on labour was not admissible where the

agreement, estimate has been framed in minimum wages of Rs. 25 w.e.f. 1.7.1990. In the said letter it was clarified that the Petitioner was not entitled to get escalation charges on labour as the bills were calculated basing on the Reserve Bank of India Bulletin, in reply to the said letter, the Petitioner has said in his letter dated 30.6.1997 that he has offered the rates at the time Of tender keeping in an eye view to the D.T.C.N. & increased labour rate for which he has been reimbursed. Since no excess amount has been paid to him, no amount is liable to be refunded. The aforesaid matter was reported to the Opp. Party No. 2- Chief Engineer, Minor Irrigation, Bhubaneswar & the Chief Engineer directed that the Petitioner is not entitled to excess amount as there has been no change in the minimum wages by the State Government. Therefore, the Chief Engineer by letter dated 14.8.1997 vide Annexure-8 directed to the effect that in accordance with the instruction issued by the Government in Rural Development Department vide their letter No. 3369 dated 23.2.1993 excess payment of escalation charges made towards labour components are to be recovered from the contractor as there has been no change in the minimum charges after 1.7.1990 till the completion of the work by the Petitioner.

3. A counter affidavit has been filed by the Opp. Party No. 1 on behalf of all the Opp. Parties wherein it has been indicated that as per Clause-1 of F2 contract all compensation or other sums of money payable by the Contractor to Government may be deducted from any sums which may be due or may become due to the contractor by Government on any account whatsoever & therefore, the Opp. Party No. 1 has recovered the excess amount paid to the Petitioner from the work bill of Khairabanka Minor Irrigation Project vide Agreement No. 1F2/97-98.

4. Mr. K.N. Jena, Learned Senior Counsel appearing for the Petitioner stated that the extra amount has been paid to the Petitioner towards the price escalation on labour charges on the basis of average consumer price index issued by the R.B.I. Bulletin. In this regard, Mr. Jena relied upon a decision reported in State of Orissa Vs. Birat Chandra Dagara, .

5. Learned Addl. Govt. Advocate has brought to our notice the Fair Wage Clause in the Agreement which reads as follows:

Clause 34-(A) The contractor shall not employ for the purpose of this Contract any person who is below the age of twelve years & shall pay to each labourer for work done by such labourers fair wages.

EXPLANATION- "Fair Wage" means wages, whether for time, or piece work prescribed by the State Public Works Department Provided that where higher rates have been prescribed under the Minimum Wages Act, 1948 wages at such higher rates should constitute fair wages. The Executive Engineer shall have the right to enquire into & decide any complaint alleging that the wages paid by the contractor to any labourer for the work done by such labourer is less than the wages as per sub-paragraph I above.

6. It is the specific case of the State Government that the amount has been paid

wrongly on the basis of the calculation made by the Petitioner-contractor basing on the average consumer price index issued by the R.B.I. Bulletin. Therefore, it was necessary to deduct the same from the bills of the contractor. Admittedly there has been no increase in the fair wages after 1.7.1990 & the deduction, if any, has been made after giving notice to the Petitioner. We have thoroughly gone through the materials on record & the decision cited by the Petitioner. In the aforementioned decision, arbitrator has awarded extra amount to be paid to the Contractor in pursuance of the minimum wages of the State Government. On a plain reading of the aforesaid Fair Wage Clause in the contract, we are of the considered view that the Petitioner is not entitled to any extra payment towards extra labour charges in pursuance of the average consumer price index as fixed by the R.B.I. Bulletin.

7. Therefore, we do not find any merit in the writ application. Accordingly, the Writ Petition is dismissed. .

I.M. Quddusi, A.C.J

8. I agree.

9. Writ Petition dismissed.