

**W.P.(C) No.16278 of 2020**

**HON'BLE THE CHIEF JUSTICE MR. MOHAMMAD RAFIQ**

**HON'BLE DR. JUSTICE B.R. SARANGI**

02.	30.09.2020	Mr. Jashobanta Dash Advocate	:	For the Petitioner
		Mr. P.P. Mohanty, Addl. Govt. Advocate	:	For Opp. Parties

**ORDER**

Heard learned counsel for the parties by Video Conferencing mode.

**2.** This writ petition has been filed by the petitioner-M/s. Durga Stone Crusher represented through its Managing Partner, Er. Ambika Prasad Bhatta, a Super Class Contractor, with a prayer to direct the opposite parties to revise estimate as per prevailing market price and execution of supplementary agreement indicating the actual date of commencement and completion of work as per new drawing and design of November 2017 for the work "Construction of H.L. Bridge over Lingara Nallah at 11<sup>th</sup> Km on Nuahata-Maidharpur road on state plan, vide Agreement No.-440-P<sub>1</sub> of 2016-17" within a stipulated time.

**3.** The facts of the case as averred in the writ petition are that opposite parties-Government of Odisha, Works Department invited tenders from the intending parties for execution of the work, i.e. "Construction of H.L. Bridge over Lingara Nallah at

11<sup>th</sup> Km on Nuahata-Maidharpur road under State Plan”. The petitioner submitted the tender for execution of the said work, which was accepted by the opposite parties. A contact agreement for performance of the contract work was executed on 22.12.2016 for a contract value of Rs.4,38,84,447/- with the stipulated date of commencement of the work was on 22.12.2016 and completion thereof was on 21.11.2017.

**4.** Learned counsel for the petitioner submits that the petitioner in consonance with the terms and conditions stipulated in the said agreement commenced the work. But unfortunately, the execution of the work was delayed as preparation of new designs and fresh specifications consumed time and was made just before commencement of the work, and the same was finalized by the Department about one year after the preliminary agreement dated 22.12.2016. It is contended that the petitioner approached the Executive Engineer (R & B) Division, Angul-opposite party no.4 on 06.03.2017 and submitted an application requesting to provide him the drawing, design and layout of the work as per work order dated 22.12.2016 under Annexure-2 for commencement of the work. In the meantime, just after GST Act came into force, the petitioner again approached opposite party no.4 by submitting another representation requesting therein that for early

completion of the detailed drawing and design of work to be issued with all additional, extra substitute items subject to regular payment along with GST. It was only in the month of October, 2017 that revised drawing and design without fresh estimate were made available to the petitioner after approval of the same on 24.08.2017 by the higher authority. It is contended that the petitioner commenced the work in the month of November, 2017 and completed the same on 31.12.2019.

**5.** Learned counsel for the petitioner has drawn attention of the Court towards the representation made to opposite party no.4 on 29.10.2018 under Annexure-6, wherein it was contended that the petitioner started the work in the month of November, 2017 and had completed five numbers of deck slab before July, 2018 and was ready to cast the balance two slabs in August 2018, but due to untimely rain, depression, cyclone 'TITLEY', it was difficult for the petitioner to complete remaining two slabs till 29.10.2018. He therefore requested him to take necessary steps for removal of obstruction and provide him clear encroachment free land for construction of approach road and completion of work. Further, learned counsel has drawn our attention towards Annexure-7, the representation dated 12.05.2020 addressed to opposite party no.4 requesting him to take quick steps for preparation of revised agreement indicate

the actual date of commencement and completion of the work. The last representation was made to the Chief Engineer (DPI & Roads) Bhubaneswar, Odisha-opposite party no.2 on 09.06.2020 under Annexure-8 requesting him to instruct opposite party no.2 for preparation of revised estimates as per prevailing market price and execution of supplementary agreement.

**6.** Mr. P.P. Mohanty, learned Additional Government Advocate for the State-opposite parties of course submits that the representation under Annexure-6 was made by the petitioner belatedly on 29.10.2018. As per own showing of the petitioner, he commenced the work in November, 2017 and completed the same in about two years on 31.12.2019. Whereas the original period of completion of the work provided to him was about eleven months upto-21.11.2017. Therefore, the delay is not attributable to the Department.

**7.** Be that as it may, the kind of writ that the petitioner has prayed for, to be issued to the opposite parties to take steps for preparation of revised estimate as per the prevailing market price and execute supplementary agreement indicating the actual date of commencement and completion of work as per new drawing and design of November, 2017 relating to the work

in question, cannot be granted in the scope of writ jurisdiction under article 226 of the Constitution of India as it would involve the question of determining the responsibility on either side of the delay in commencement and completion of the work. Considering however that the petitioner had already submitted representation to the Chief Engineer (DPI & Roads) Bhubaneswar, Odisha-opposite party no.2 on 09.06.2020 under Annexure-8, we deem it appropriate to direct the Chief Engineer to consider the said representation and cause an inquiry in the matter so as to find out whether the grievance of the petitioner is genuine and do the needful as warranted in law after providing opportunity of hearing to the petitioner. If the grievance of the petitioner is not remediated, it would be upon for him to avail his remedy before the appropriate Civil Court.

As Lock-down period is continuing for COVID-19, learned counsel may utilize the soft copy of this order available in the High Court's website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587, dated 25.03.2020.

***(Dr. B.R. Sarangi)***  
***Judge***

***(Mohammad Rafiq)***  
***Chief Justice***