

Government of Odisha
Works Department

No.07554600022021- 15334 W, Bhubaneswar, Dated, 8.11.21

From

Sri Sibashis Dhal,
F.A-cum-Addl. Secretary to Govt.

To

The F.A-cum-Additional Secretary to Govt.,
Rural Development Department.

Sub:- Clarification on disposal of cases pertaining to escalation claims on agreements signed prior to 07.07.2012.

Madam,

In inviting a kind reference to D.O. No.28235301012020 dated 01.11.2021 of the Additional Chief Secretary to Government, Department of Rural Development, Government of Odisha, I am directed to say that the matter was examined in Works Department OSWAS File No.07554600022021 and kind orders of Commissioner-cum-Secretary, Works Department obtained there on. The relevant copy of the Note-Sheet on examination of the proposal and orders there on, copy of Works Department earlier guideline bearing Letter No.5608/W dated 03.04.2007 are enclosed herewith for kind perusal and further necessary action.

Yours faithfully

Encl:- As above


F.A.-cum-Addl. Secretary to Govt | 8/11/21

Notings File No. WORKS/FA-CLARIFICATION/0902/2021
 Subject: Clarification to Cost and Contractal Provision
 Description: Clarification on Labour Escalation Bill for the work
 "Construction of H.L. Bridge over river Budhabalanga near Kauchighat at 11
 th KM. on Kuchilakhunta-Pratappur road in the District of Mayurbhanj"

Noting 17

Notes above.

Earlier, R.D. Department had endorsed OSWAS FILE NO-RD-BUD-MISC-0101-2020 in connection with Labour Escalation Bill for the work "Construction of H.L. Bridge over river Budhabalanga near Kauchighat at 11th Km. on Kuchilakhunta-Pratappur Road in the District of Mayurbhanj" vide Agreement No.214F2/2009-10. The specific clarification as sought for by R.D. Department is with regard to escalation claims in respect of Agreement signed prior to 07.07.2012.

2) Works Department with kind orders of Commissioner-cum-Secretary, Works Department based on the approved minutes of the meeting on "Price Adjustment /Escalation Clause in works contract for the period from 07.07.2012 to 18.11.2019 in pursuance of directions of Hon'ble High Court of Orissa" under the kind chairmanship of Chief Secretary, Government of Odisha held on 13.05.2021 at 12:30 P.M in virtual mode have communicated to R.D. Department as under;

"Escalation claims prior to 07.07.2012 may be decided taking into account the directions of Hon'ble Court, if any by the Administrative Department concerned on case to case basis based on prevailing circulars in force and after due diligence of the claims, if any".

3) Now, Additional Chief Secretary to Government, Rural Development Department in D.O. No.28235301012020 dated 01.11.2021 (10106/WORKS/2021 scan0039'Page1) stated that as all previous circulars issued between 2007 to 2012 have been quashed by the Hon'ble High Court, it is not clear which circular will be taken into account while disposing of such cases. Accordingly, A.C.S, R.D. Department have requested to make clear the relevant circular to be taken into account for disposal of such cases and to

provide a copy of the relevant circular for the purpose.

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4) In this connection, it may kindly be stated that in the meeting held on 13.05.2021 at 12:30 PM in virtual mode (MS-Team) on the Agenda "Price Adjustment/Escalation clause in works contract for the period from 07.07.2012 to 18.11.2019 in pursuance of directions of Hon'ble High Court of Orissa", which is attended by the Additional Chief Secretary to Government, R.D. Department, Principal Secretary to Government, Finance Department, Principal Secretary to Government, Water Resources Department, Commissioner-cum-Secretary to Government, Works Department and Learned Advocate General, Odisha, it was inter-alia decided that in respect of escalation claims prior to 07.07.2012, the issue may be decided taking into account the directions of the Hon'ble Court, if any by the Administrative Department concerned on case to case basis based on prevailing circulars in force and after due diligence of the claims, if any. The approved minutes of the meeting is linked here for kind perusal. (Noting-17 PROCEEDINGS OF MEETING'Page1)

In the instant case of R. D. Department, the Agreement with the agency was executed prior to 07.07.2012. Prior to 07.07.2012, Works Department Circular bearing Letter No.5608/W dated 03.04.2007 (Noting-17 CIRCULAR-5608'Page1) was in force. On 06.07.2012, (7724/WORKS/2019 Circulars of Escalation'Page7) Hon'ble High Court of Orissa passed judgement in All Orissa Contractors' Association-vrs-State of Odisha & Others in W.P. (C) NO.11889 of 2009 where-in Hon'ble High Court have quashed the guideline under Annexure-1 and the O.Ps are directed to issue fresh guideline treating the contractors /executing agencies uniformly with regard to payment/refund of differential cost of material, wages of labour and POL irrespective of the period of contract keeping the observations made in the said order of Hon'ble High Court. Accordingly, in the meeting chaired by the Chief Secretary, Odisha, it was decided that escalation claims from 07.07.2012 to 18.11.2019 may be decided as per Works Department O.M. No.15847/W dated 19.11.2019 and the escalation claims in respect of agreement drawn prior to 07.07.2012 may be decided based on clause in the agreement at that point of time and the prevailing circular, which is Works Department Letter No.5608/W dated 03.04.2007 (Noting-17 CIRCULAR-5608'Page1), which was in force up to 06.07.2012.

If approved, we may endorse the view in the matter as mentioned at SI.4 to R.D. Department.

Submitted for kind orders of Commissioner-cum-Secretary, Works Department.

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Sibashis Dhal (FA cum Additional Secretary, Works),06-Nov-2021 17:57:52

PROCEEDINGS OF MEETING.pdf


CIRCULAR.pdf

CIRCULAR-5608.pdf

Noting 18

As proposed.

Krishan Kumar (Commissioner cum Secretary, Works),08-Nov-2021


16:40:23