

IN THE HIGH COURT OF ORISSA, CUTTACK
(Original Jurisdiction Case)

W.P.(C) No 330 /2013

Code No.282008

In the matter of:- An application under Article-226 & 227 of the Constitution of India.

AND

In the matter of:- An application challenging the office Memorandum dated 24.12.2012 issued by Government of Odisha, Department of Works, since this notification is illegal, arbitrary, contrary to the Codal Provisions, Standard Bidding Documents and against the direction of this Hon'ble High Court issued by Judgment dated 6.7.2012 passed in W.P.(C) No.11889 of 20009.

AND

In the matter of:- All Orissa Contractors Association, Bhubaneswar represented through its president Pravat Dash, aged about 72 years, Son of Late Sankar Charan Dash, registered office, At 820-Palasuni Rasulgarh, Bhubaneswar-751010, Dist-Khordha

.....PETITIONER

Versus

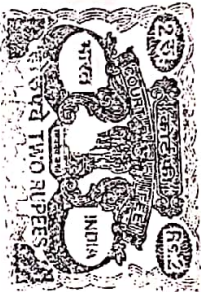
1. State of Odisha, represented through Chief Secretary to Government of Odisha, Secretariate Building, Bhubaneswar, Dist-Khordha.
2. Engineer-In-Chief-Cum Secretary to Government Department of Works, Secretariat Building, Bhubaneswar, Dist-Khordha.
3. The Secretary to Government, Department of Water Resources, Rajiv Bhawan, Bhubaneswar, Dist-Khordha.
4. The Secretary to Government Department of Rural Development, Secretariat Building, Bhubaneswar, Dist-Khordha.
5. The secretary to Government Department of Public Health, Secretariat Building, Bhubaneswar, Dist-Khordha.
6. That secretary to Government Department of urban Development, Secretariat Building, Bhubaneswar, Dist-Khordha.

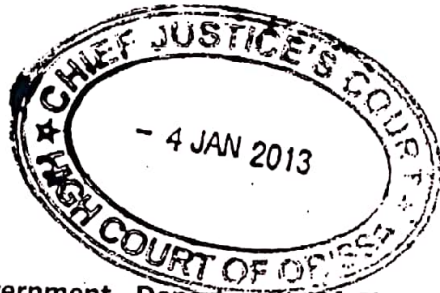
Pravat Dash.

Kr
AdN

Presented in Court
B.O.

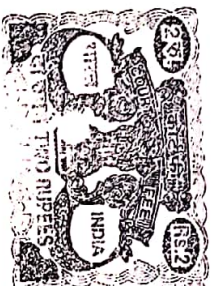
24/12/13





7. The Secretary to Government, Department Of Finance,
Secretariat Building, Bhubaneswar, Dist-Khordha.
8. The Secretary to Government, Department of Law,
Secretariat Building, Bhubaneswar, Dist-Khurdha.

..... OPP.PARTIES



Signature

[O. H. C.-98]

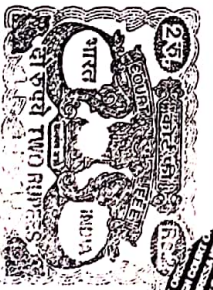
Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p style="text-align: center;">W.P.(C) No. 330 of 2013 and W.P.(C) No.11889 of 2009 and W.P.(C) Nos.16663, 20546, 9679, 11831, 12152, 12153, 12154, 12155, 12420, 12421, 12422, 12423, 12852, 13919, 14153, 14568, 14569, 14570, 14571, 14701, 15141, 15143, 15146, 15148, 15150, 15175, 16116, 16117, 16118, 16577, 17054, 17058, 17153, 17292, 17294, 17297, 17298, 17300, 17471, 17473, 17475, 17476, 17568, 17697, 17879, 17880, 18472, 18473, 18474, 18567, 18569, 18781, 18782, 18967, 19685, 19687, 20745, 20758, 20831, 21220, 21225, 21751, 21810, 22127, 22297 and 22843 of 2016 and W.P.(C) Nos.468, 469, 471, 472, 475, 476, 820, 1050, 1052, 2856, 2857, 2859, 3574, 7347, 10789, 22749 and 24913 of 2017.</p>	
07.	25.04.2018	<p>By means of these writ petitions, the petitioners have challenged the Office Memorandum dated 24.12.2012 issued by the Engineer-in-Chief-cum-Secretary to Government of Odisha, whereby the earlier departmental circular/letter No.5608 dated 03.04.2007 has been amended.</p> <p>2. We have heard Shri J. K. Mohapatra as well as Shri P.C. Nayak; learned counsel for the petitioners and Shri B.P. Pradhan; learned Addl. Government Advocate; and perused the record.</p> <p>3. Though the said circular has been challenged on several grounds, which include procedural flaws; unreasonable classification; discrimination; being</p>	

I.C.) 6-1,00,000-14-7-2016

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		<p>contrary to the judgment dated 06.07.2012 passed in the case of All Odisha Contractors' Association v. State of Odisha, 2012 (II) OLR 586; hit by Section 23 of the Indian Contract Act, 1872; being in violation of the Minimum Wages Act and notifications issued thereunder; and several other grounds, but we are considering the first ground alone.</p> <p>4. Learned counsel for the petitioners have submitted that earlier circular dated 03.04.2007 was issued with regard to price variation/escalation in contract entered into with the government, which is dated 03.04.2007, and was challenged in the case of All Odisha Contractors Association (supra), in which the said circular dated 03.04.2007, filed as Annexure-1 to the said writ petition, was quashed with the following observation:</p> <p><i>"14. In view of the above, we are of the view that the guideline under challenge is discriminatory, unreasonable in the matter of granting differential price to the contractors/executing agencies on account of price hike in Steel, Cement, Bitumen, Labour and POL as a result of which they sustained loss in course of execution of the work. The same is liable to be quashed and accordingly we quash the guideline under Annexure-1. Opposite parties 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</i></p>	




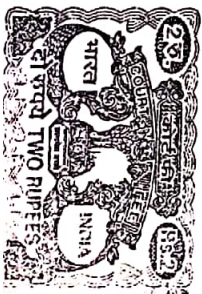
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		<p><i>of contract keeping in view the observations made hereinabove."</i></p> <p>5. The contention is that the impugned Office Memorandum issued on 24.12.2012 is not an independent Office Memorandum, but is an amendment to the earlier Works Department Circular/Letter dated 03.04.2007, which has already been quashed.</p> <p>6. It is submitted that there cannot be any amendment to the Government circular, which has been quashed, and the Office Memorandum/ order/circular should have been issued afresh with regard to the issue in question, keeping in mind the directions issued in the judgment of this Court rendered in the case of All Odisha Contractors' Association (supra).</p> <p>7. In our view, the said submission has force.</p> <p>8. Shri B.P. Pradhan, learned Addl. Government Advocate appearing for the State-opposite parties has submitted that the direction issued in the case of All Odisha Contractors' Association (supra) has been complied with, but the office memorandum was not well worded. He could not, however, justify the amendment of the earlier Circular dated 03.04.2007 made by the impugned Office Memorandum dated</p>	



OGP-

C.) 6-1,00,000-14-7-2016

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		<p>24.12.2012, as the Circular dated 03.04.2007 has already been quashed by this Court in the case of All Odisha Contractors' Association (supra), after having been held the same to be illegal.</p> <p>9. As such, on this ground alone, these writ petitions succeed and the Office Memorandum dated 24.12.2012 is quashed. The opposite parties are directed to issue a fresh circular with regard to price variation/escalation clause in the contract, keeping in view the direction given in the case of All Odisha Contractors' Association (supra). It is made clear that any deduction made from the bills of the contractors or any payments made to the contractors in pursuance of the Notification dated 24.12.2012 shall be refunded/adjusted by the opposite party-Department or the contractors, as the case may be.</p> <p>The writ petitions stand allowed to the extent indicated above.</p> <p>Sd/- V. Saran, C.J.</p> <p>Sd/- Dr. B. P. Sarangi, J.</p> <p>comp. by  7.5.18</p>	



pcp/skj

Date of Application: 7
 Date of Notification: 8
 Date of Supply: 8
 Date of Ready: 8
 Date of Delivery: 8

C.A No- 31702/18

MEMO OF COSTS

	Rs.	P.
Application Fee.....	5	00
Searching Fee.....	—	—
Extra Fee for Urgency.	4	00
Folios Pages.....	15	00
Hologram Fees ().....	6	00
Other items if any.....	3	90
Total	34	40

(Rupees *Thity four* & Paise *forty* only)

[Signature]
 EXAMINER OF COPIES
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 SUPERINTENDENT
 COPYING DEPARTMENT

[Signature]
 30-5-18

CERTIFIED TO BE A TRUE COPY

[Signature]
 Assistant Registrar (Estt.)
 ORISSA HIGH COURT
 Authorised Under Section-76 Act-I of 1972

