

**HON'BLE THE CHIEF JUSTICE MR. MOHAMMAD RAFIQ
HON'BLE DR. JUSTICE B.R. SARANGI**

04. 16.10.2020 Mr.A. Mohanty Sr. Advocate
along with Mr. P.C. Nayak, Adv. : For petitioner
- Mr. A.K. Parija, Advocate General
along with Mr. T. Pattnaik , ASC : For State-opposite parties

ORDER

Heard learned counsel for the parties through video conferencing.

M/s. Ram Kumar Agrawal Engineers Pvt. Ltd., the petitioner herein, has filed this writ petition to quash the order dated 12.08.2020 in Annexure-1 passed by the Lokayukta- opposite party no.1 and further seeks direction to remand the matter for fresh hearing of the proceeding initiated against it by the Lokayukta.

The petitioner is a private limited company, registered under Companies Act and the present Managing Director has been duly authorized by the Board of Directors to file the writ petition. Pursuant to tender call notice invited by the Engineer-in-Chief, Rural Works Odisha, Bhubaneswar, the petitioner participated in the said process of tender and ultimately it was awarded with the work "Construction of HL bridge over river Suktel on Tamian to Mundalsar road in the district of Bolangir under Biju Setu Yojana". The agreement was executed between the parties on 26.02.2014 bearing Agreement No. 3341 F2 of 2013-14. The date of

completion of work was fixed to 25.02.2016, but the petitioner completed the work in all respect before the schedule date i.e. on 07.09.2015 as per drawing, design and instructions of the site Engineer, and final bill was paid as the work was executed satisfactorily. After expiry of five years of project, it was open for public transportation. It was found by opposite party no.3 that horizontal cracks were developed in the bridge S-4 girder between soffit slabs and outer webs and some horizontal cracks in total deflection was 140 mm in the quarter span, for which the Executive Engineer informed the contractor for restoration of the same. The petitioner agency, who was executing the work under the department, as per instruction of Executive Engineer, undertook to rectify and restore the work even after expiry of maintenance period. But during rectification of work, all on a sudden there was a nationwide lockdown due to Corona Virus, for which the dismantle and reconstruction work could not complete. After second lockdown period, the office of the Executive Engineer, Rural Works Division, Patnagarh intimated the Collector and District Magistrate, Bolangir and sought permission stating that as the dismantling work was going on, leaving the said work in the present stage, the span may collapse in its own way and may push the other two spans adjacent to, causing failing of the same to the ground. But the span No. S-4 was collapsed on 29.04.2020 and two persons died and two injured, who were immediately taken to district hospital. Thereafter,

the petitioner was blacklisted and it approached this Court by filing W.P.(C) No. 12438 of 2020 and W.P.(C) No. 14053 of 2020, which are pending for adjudication. Further a criminal case was registered before Larambha P.S. vide P.S. Case No. 320 of 2020 for commission of offence under Section 337/304-A/338/287/34 of IPC, for which the Managing Director and Director moved anticipatory bail before this Court vide ABLAPL No. 4853 of 2020. The same was disposed of on 15.05.2020 with a direction to surrender before the learned S.D.J.M., Patnagarh and move for bail. Pursuant thereto, all the accused persons surrendered before the learned Court below and released on bail. The said fact was published in "The New India Express" on 30.04.2020 under the caption "Two killed as bridge over Suktel river collapses." Consequentially, the Lokayutka suo-motu registered a complaint case vide Complaint No. LY-509 of 2020 and issued notice to the petitioner on 04.05.2020 for filing reply and the matter was placed to 22.06.2020. Due to lockdown, the petitioner could not able to appear and impart instructions to its advocate to appear and accordingly, on that date the counsel for the petitioner appeared and undertook to file vakalatnama and accordingly, the matter was adjourned to 12.08.2020. The notice was issued to the Managing Director of the petitioner company, but the said Managing Director died on 03.08.2020. But the counsel for the petitioner submitted vakalatnama on 12.08.2020 on behalf of the present Managing Director of the Company and sought

time. As such, the present Managing Director is the son of earlier Managing Director, who passed away on 03.08.2020. The Lokayukta passed the order on 12.08.2020 vide Annexure-1 by observing that a recently constructed bridge was collapsed resulting in death of two labourers and, therefore, in exercise of power conferred under Section 20(6) of the Odisha Lokayukta Act, 2014, directed the Director, Vigilance, Odisha to carry out investigation and submit status report of the same within a period of three months from the date of passing of the order, and the matter was adjourned to 12.11.2020. Hence this application.

Mr. Asok Mohanty, learned Senior Counsel appearing along with Mr. P.C. Nayak, learned counsel for the petitioner contended that for the selfsame cause of action the petitioner has been blacklisted and for that the writ petitions are pending before this Court for consideration and, as such, the petitioner is also facing criminal charges by lodging an FIR registered as Larambha P.S. Case No. 320 of 2020 and again the Lokayukta is causing an enquiry, which is prejudicial to the interest of the petitioner. It is further contended that the direction given in Annexure-1 dated 12.08.2020 to the Director, Vigilance, Odisha is without complying the principles of natural justice and, thereby, the said order cannot sustain in the eye of law.

Mr. A.K. Parija, learned Advocate General appearing along with Mr. T. Pattanaik, learned Addl. Standing Counsel for the State vehemently contended

that by passing the impugned order dated 12.08.2020 the Lokayukta has only directed for investigation by the Vigilance authority, which is within the complete domain of the Lokayukta under Section 20(6) of the Odisha Lokayukta Act, 2014. If the Lokayukta has been empowered under the statute to issue such direction for investigation, the same should not be interfered with by this Court by passing an interim order and seeks that such interim order should be vacated and allow the Lokayukta to proceed with the matter in accordance with law. It is further contended that for the lapses of the petitioner, two innocent persons have been killed and, as such, there was poor performance of the work, which is required to be dealt with in proper manner. More so, even though the petitioner has been blacklisted, that itself is a separate cause of action than that of the present one. It is further contended that the claim made that there was non-compliance of the principles of natural justice, the same is required to be followed at the stage of investigation by the investigating agency. Therefore, the writ petition should be dismissed.

Having heard Mr. Asok Mohanty, learned Senior Counsel appearing for the petitioner and Mr. A.K. Parija, learned Advocate General appearing for the State opposite parties and after going through the records, this Court finds that admittedly due to lapses committed by the contractor the bridge was collapsed resulting in death of two workers. Even though the order blacklisting the contractor has been challenged before this Court and the

matter is pending adjudication, and the contractor himself is facing criminal case lodged against it for such negligence in the work, but that ipso facto cannot disentitle the Lokayukta to cause an enquiry under the provisions of the Odisha Lokayukta Act, 2014 for alleged corruption in the matter of execution of the work itself. As such, the Lokayukta had issued notice to the petitioner directing the Managing Director to appear and in response to the same, it was stated that the Managing Director expired on 03.08.2020 and subsequently the present petitioner, being the Managing Director, instructed the lawyer, who also appeared before the Lokayukta on 12.08.2020. Since Lokayukta wanted to have an enquiry about the construction of the bridge and reasons for construction of substandard work and crack created within a period of five years of construction resulting in its collapse and ultimately causing death of two labourers and, therefore, the Lokayukta came to a prima facie view that loss of two lives and huge public money could have been averted, had the public servants in charge of the construction of the bridge discharged their duties honestly and diligently. Then, taking cognizance of such fact the Lokayukta issued direction to the Director, Vigilance, Odisha to carry out the investigation and submit status report within a period of three months. Therefore, if the direction has been given to find out the lapses caused on the part of the government servant and such direction has been issued under Section 20(6) of the Odisha Lokayukta Act, 2014,

this Court does not find any illegality or irregularity by issuing such direction by the Lokayukta. More particularly, in the event the i-nterim order dated 09.09.2020 passed by this Court is allowed to continue, it will obstruct the investigation itself. If the investigation is in embryonic stage and, as such, the authorities are now proceeding with the investigation, at this stage, this writ petition should not have been entertained and interim protection should not have been granted.

In any way, this Court is not inclined to entertain the writ petition at this stage and the same is accordingly dismissed. Consequentially, the interim order passed on 09.09.2020 stands vacated.

(DR. B.R. SARANGI)
JUDGE

(MOHAMMAD RAFIQ)
CHIEF JUSTICE