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A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7422 of 2021

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

M/S. Panda Infraprojects (India) Pvt. Ltd.

Petitioner(s)

-versus-

State of Odisha & Ors.

Opposite Party (s)

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Merusagar Samantaray, Adv.*
Along with
Mr. S. Dwibedi, Adv.
Ms. J.J. Jyoti, Adv.

For Opposite Party (s) : *Mr. Prabhu Prasanna Behera, ASC*

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-13.03.2025

DATE OF JUDGMENT:-28.03.2025

Dr. S.K. Panigrahi, J.

1. In this Writ Petition, the Petitioner seeks a direction from this Court to issue a writ of mandamus directing the opposite parties to release 7.5% of the entire work executed by the petitioner, as per Clause 120, Sub-Clause 2.4 of the contract. Additionally, the petitioner prays for a declaration that the retrospective application of the 2015 circular is



illegal and that the petitioner's claim should be considered based on the agreement executed in 2014.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:
 - (i) The petitioner, a contractor, was awarded a government contract for constructing a Railway Over Bridge along with a bridge over Kanchi Nallah at CH.0/350 on the proposed road from NH-203 at Malatipatapur to Puri Konark Road NH-203A (Puri Bypass) in Puri District, Odisha.
 - (ii) The contract was awarded at 3% excess over the amount put to tender, and the agreement was executed on 03.03.2014 under Agreement No. 48 P1 of 2013-14. The original cost of the contract was Rs. 63,87,82,051, with a stipulated completion date 02.06.2015.
 - (iii) The contract contained a specific incentive clause under Clause 120, Sub-Clause 2.4.1, which entitled the contractor to an incentive payment for early completion of the work before the stipulated date. The incentive was structured on a graduated scale from 1% to 10% of the contract value, depending on how much earlier the work was completed.
 - (iv) The petitioner completed the entire project, including additional work, on 30.04.2015, well ahead of the stipulated deadline of 02.06.2015. Hence, he is claiming an incentive of 2.5% of the contract value as per the agreed terms.
 - (v) The petitioner received all payments due for the executed work, and the opposite parties claim that the payments were made in full and final



settlement. The incentive claim for early completion was initially considered but was ultimately rejected due to the petitioner allegedly not fulfilling the stipulated conditions required to claim an incentive.

- (vi) The opposite parties argue that the claim sidelines the Government Order under Note-I of Para 3.5.5. of OPWD Code Vol. I, which does not include bridge works for incentive eligibility.
- (vii) The OPWD Code Vol. I, as amended in 2004 and 2006, states that only buildings, PH works (Rs. 40 Lakh Minimum), Road Works (Rs. 3 crore Minimum), and irrigation works (Rs. 10 Crore Minimum) qualify for incentives.
- (viii) Since the petitioner's contract involves bridge work, the government contends that no incentive was applicable as per the codal provisions.
- (ix) A government office memorandum (No. 1046/W) dated 28.01.2015 amended Para 3.5.5 Note-III of OPWD Code Vol. I, making both road and bridge works eligible for incentives. However, this amendment was effective only from 28.01.2015, meaning any project executed under earlier agreements (before this date) would not qualify for an incentive. Since the petitioner's contract was signed on 03.03.2014, the opposite parties argue that his claim cannot be entertained under the revised policy.
- (x) The petitioner's incentive claim was officially rejected by the Executive Engineer, Puri (R&B) Division, through an order dated 19.01.2021, followed by the Government in Works Department's order dated 06.05.2021, and finally by the Commissioner-cum-Secretary to Government, Works Department, through an order dated 10.05.2021.



The rejection was based on the reasoning that "Bridge Works are not eligible for incentive" under the amended 2015 policy, which was not applicable retrospectively to the petitioner's contract executed in 2014.

- (xi) The petitioner asserts that additional work amounting to 15.07% over the original contract was executed and required extra time, which should be considered for the incentive. However, the opposite parties argue that the additional work was duly approved by the competent authorities, and payments were made accordingly. They further contend that the petitioner never formally applied for an extension of time as required under Clause 4 of the contract. Since no extension was sought or granted, the claim of extra time for additional work is an afterthought and lacks merit.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner Mr. Merusagar Samantray earnestly made the following submissions in support of his contentions:
- (i) The incentive clause (Clause 120, Sub-Clause 2.4.1) is clear and unambiguous, entitling the petitioner to a 2.5% incentive for completing the project ahead of schedule. The opposite parties' arbitrary reduction of the incentive to 2% is in direct violation of the contract terms and constitutes a breach of contractual obligations.
- (ii) The rejection of the incentive claim is based on a 2015 government circular, whereas the petitioner's contract was executed in 2014. The circular cannot be applied retrospectively to deny benefits that were



already contractually agreed upon. The opposite parties' reliance on an ex-post facto policy is illegal and unconstitutional.

- (iii) The denial of incentive violates Article 14 (Right to Equality), as similarly placed contractors have received their incentives while the petitioner has been arbitrarily denied the same. The arbitrary and unilateral reduction of the incentive violates Article 19(1)(g) (Right to Business and Trade) by imposing unjustified financial hardship on the petitioner. The withholding of contractual dues without justification violates Article 300A (Right to Property), as it deprives the petitioner of its legitimate earnings.
- (iv) The Orissa High Court, in its order dated 09.04.2021, had directed the authorities to reconsider the claim. The opposite parties failed to comply with the direction in a fair and just manner, instead reiterating the baseless rejection.
- (v) The petitioner had a legitimate expectation of receiving the full 2.5% incentive as per the clear contract terms and past practices. The arbitrary denial without justification frustrates the petitioner's legitimate expectation, violating the principles of fairness and natural justice.
- (vi) Initially, the government accepted the incentive claim and even considered processing it. However, after the petitioner produced the 2013 amendment, which supported the incentive claim, the government changed its stand. The government's reliance on Note-I of the OPWD Code is an afterthought to deny a legitimate entitlement.



- (vii) Note-III, inserted via notification dated 08.11.2013, expressly provides for an incentive for early completion of any project. The government misleadingly relies on Note-I, which was later amended in 2015 but has no impact on Note-III. The contract itself contains a clause (Clause 2.4.1) allowing incentives for early completion, making it contractually binding on the government.
- (viii) The government cannot selectively interpret road work as excluding bridge work. Bridges facilitate transportation just as roads do, and classifying them separately to deny incentives is arbitrary and irrational.
- (ix) Under Clause 10 of the contract, any additional work extends the completion period proportionately. Since the petitioner completed the work 19.29% ahead of the adjusted completion schedule, it is entitled to an incentive of 7.5% of the total contract value.
- (x) The petitioner invested heavily in manpower, machinery, and material procurement to complete the work early as per the government's urgent request. The State has benefitted from the petitioner's efficiency and diligence in completing the project before the *Nabakalebar* festival, yet refuses to honor its contractual commitment.
- (xi) Contractual provisions cannot be arbitrarily overridden by codal provisions, especially when the contract explicitly provides for incentives. The terms of the agreement are sacrosanct, and any ambiguity must be resolved in favor of the contractor.



III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. The Learned Counsel for the State Mr. Prabhu Prasanna Behera made the following submissions in support of his contentions:
- (i) The opposite parties assert that the writ petition is not maintainable either in law or on facts. The petitioner has allegedly suppressed material facts and presented false and baseless allegations to justify the claim.
 - (ii) The incentive provision outlined in Para 3.5.5 Note-I of OPWD Code Vol. I excludes bridge works from incentive eligibility. The contract was executed under Agreement No. 48 P1 of 2013-14 on 03.03.2014, before the amended government memorandum of 28.01.2015, which first allowed incentives for bridge works. Since incentive for bridge work was not permitted at the time of contract execution, the petitioner's claim was legally untenable.
 - (iii) The Office Memorandum No. 1046/W dated 28.01.2015 introduced the incentive scheme for bridge works with prospective effect. The petitioner's attempt to claim benefits under this amendment is contrary to settled legal principles, as retrospective application of policies is not permissible unless expressly provided.
 - (iv) The petitioner has already received full payment for all work done, including deviations and additional work. The government contends that there was no objection from the petitioner at the time of final settlement. The petitioner's claim for extra incentive at this stage is an afterthought.



- (v) The petitioner's reliance on legitimate expectation is misplaced, as there was no representation or assurance by the government that he would be granted an incentive. The contract and government norms at the time of execution did not include incentives for bridge works, so there was no enforceable expectation.
- (vi) The Works Department's orders rejecting the claim were passed in compliance with existing rules and were legally justified. The petitioner's contract was governed by the pre-2015 provisions, under which bridge works were not eligible for incentive. The rejection of the petitioner's claim was not arbitrary but was based on codal stipulations

IV. COURT'S REASONING AND ANALYSIS:

- 5. Heard Learned Counsel for parties and perused the documents placed before this Court.
- 6. The core issue in the present case revolves around the petitioner's claim for an incentive under Clause 120, Sub-Clause 2.4.1 of the Contract, on the premise of completing the contractual work ahead of schedule. The opposite parties assert that, at the time of execution of the agreement in 2014, bridge works were not covered under the incentive scheme prescribed by the OPWD Code. Although a subsequent amendment in 2015 extended such benefits to bridge works, the same was prospective in nature. Given that the petitioner's contract predates this amendment, his claim was rejected. In light of the foregoing, the principal question for determination before this Court is whether the petitioner is legally entitled to claim the incentive.



7. Before addressing the substantive issues, it is essential to delineate the contours of judicial intervention in matters concerning government contracts and tenders. It is well settled that such review is limited in scope. However, judicial restraint does not imply judicial indifference. While courts do not sit in appeal over administrative decisions in contractual matters, they remain obligated to ensure that such decisions are free from arbitrariness, unfairness, or an abuse of discretion. The authority of this Court to intervene in matters of tenders and government contracts under Article 226 has been aptly provided by the Supreme Court in *Michigan Rubber (India) Limited v. State of Karnataka and Others*¹. In this case, the Court has expounded upon the limits and scope of judicial review in this domain. The relevant excerpts are produced below:

“23. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by

¹ (2012) 8 SCC 216.



inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

24. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"; and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226"

8. The abovementioned precedent makes it clear that judicial intervention in contractual matters is rare, warranted only when government action veers into arbitrariness, irrationality, or a departure from settled legal principles. The Court's role is not to reshape agreements but to ensure that the State and its agencies operate with fairness, transparency, and



fidelity to the law. Here, the petitioner insists that the incentive clause is unambiguous and that his claim was unjustly denied based on a policy introduced after the contract was signed. The opposing side counters that, at the time of execution, the governing provisions offered no such incentive for bridge works, making the petitioner's reliance on later amendments legally unsound. The Court must now determine whether the rejection of the claim stems from a legitimate reading of the contract and applicable rules or whether it reflects an arbitrary exercise of power. If the decision stands on firm legal ground, judicial restraint is imperative. If, however, it rests on a flawed or unjust interpretation, the law must intervene to set matters right.

9. At this juncture, a thorough examination of the relevant contract clauses is essential to understand the dispute and determine whether any violation has occurred. The relevant excerpt is produced below:

"Clause 120. ADDENDUM TO THE CONDITION OF P1 CONTRACT.

XX XX XX

Clause- 2.4. Bonus for early completion

Clause- 2.4.1. Amendment to Para- 3.5.5(v) Note-III of OPWD Code, Vol-I by inclusion-

For availing incentive clause in any project which is completed before the stipulated date of completion, subject to other stipulations it is mandatory on the part of the concerned Executive Engineer to report the actual date of completion of the project as soon as possible through fax or email so that the report is received within 7 days of such completion by the concerned SE, CE & the Administrative Department. The Incentive for timely completion should be



on a graduated scale of one percent to 10 percent of the contract value. Assessment of incentives may be worked out for earlier completion of work in all respect in the following scale.

“Before 30% of contract period = 10% of Contract Value

Before 20 to 30% of contract period = 7.5% of Contract Value

Before 10 to 20% of contract period = 5% of Contract Value

Before 5 to 10% of contract period = 2.5% of Contract Value

Before 5% of contract period = 1% of Contract Value “

10. On 28.01.2015, Para 3.5.5 of the OPWD Code, Volume-I was amended through Office Memorandum No. 1046/W issued by the Government of Odisha, Works Department. The relevant excerpt is produced below:

“ After careful consideration Government have been pleased to make an amendment to Note-I of Para-3.5,5 of OPWD Code, Volume-I by way of substituting “Road Work” at Sl.No.2 with “Road Work/Bridge Work” (excluding the project funded by MoRTH, Govt, of India).

1. This shall take effect from the date of issue of this Office Memorandum.

2. This has been concurred in by the Finance Department vide their U.O R No 145-ACSF dt. 08.01.2015.”

11. The perusal of the abovementioned clauses and the subsequent amendment makes it clear that the petitioner’s claim for incentive finds support in the language of Clause 120 Sub-Clause 2.4.1 of the contract, which does not explicitly exclude bridge works from its ambit. At the time of execution, the prevailing OPWD Code may not have expressly provided for such an incentive, but neither did it categorically prohibit its application to bridge works.



12. The contract before this Court lends itself to two possible interpretations. The opposite parties urge a narrow reading, contending that the 2015 amendment marks the first recognition of bridge works within the incentive scheme, thereby excluding them from its purview prior to that date. The petitioner, on the other hand, advances a more purposive interpretation, asserting that the amendment does not introduce a new entitlement but merely affirms what was always implicit. The absence of any express exclusion of bridge works, coupled with the broader objective of rewarding efficiency, suggests that the amendment serves to clarify rather than to create. The question, then, is whether the contract ought to be read in a manner that rigidly confines its scope or in a way that best gives effect to its underlying purpose.
13. In such a scenario, it becomes essential for this Court to examine the jurisprudence surrounding implied terms in contracts. The seminal case of *BP Refinery (Westernport) Pty Ltd v. The Shire of Hastings*² serves as a guiding authority on this subject. The Privy Council in this case laid down the fivefold test for implying terms into a contract. The relevant excerpts are produced below:

“...for a term to be implied, the following conditions (which may overlap) must be satisfied:

- 1. it must be reasonable and equitable;*
- 2. it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it;*
- 3. it must be so obvious that it ‘goes without saying’;*
- 4. it must be capable of clear expression;*

² [1978] 52 AJLR 20.



5. it must not contradict any express term of the contract."

14. The precedent firmly establishes that a contract must be construed in a manner that upholds the evident intentions of the parties. There are instances where certain aspects may be inadvertently omitted or where the parties, though aligned in purpose, may fail to articulate their mutual understanding with precision. In such circumstances, the Court may, in the interest of business efficacy, imply a term to ensure that the contract remains functional and accords with commercial logic. The objective is not to rewrite the agreement but to give effect to what the parties, as rational actors, would have intended had the matter been expressly considered at the time of contracting.
15. One of the seminal cases, where the abovementioned principle has been interpreted is the case of *Delhi Cloth and General Mills Co. Ltd. v. K.L. Kapur*³ wherein it was held that the implication of term in contract can be made only where it is necessary in order to give efficacy to transaction which is intended by both parties. The relevant excerpts are produced below:

"The Courts, however, have recognized the danger of undue elasticity, and have circumscribed its limits. Based upon the presumed intention of the parties, it may not contradict or vary the express terms of the agreement. Nor can it be used simply to render the contract rather more attractive in the eyes of reasonable men.

It is for the parties, not for the judges, to determine the nature of their liabilities. The doctrine can be invoked only if an obligation, clearly intended as such, must fail to take

³ AIR 1958 PUNJAB 93.



effect unless obvious oversight is remedied; and, even so, the judges will supply the minimum necessary to save the contract from shipwreck."

16. At paragraph 27 of the Judgment, Justice Kapur held as follows:

"The existence of judicial power to remedy an omission arises "not under the pressure of external circumstances, but in order to repair an intrinsic failure, of expression" and whenever there is an omission due to inadvertence or clumsiness of draftsmanship, the Courts, it has been held, may remedy this omission. This judicial power was asserted and justified in (1889) 14 PD 64. Bowen, L.J. stated the law at page 68 to be:

".....

*In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are businessmen * * * The question is what inference is to be drawn where the parties are dealing with each other on the assumption that the negotiations are to have some fruit, and where they say nothing about the burden of this unseen peril, leaving the law to raise such inferences as are reasonable from the very nature of the transaction."*

17. While numerous precedents have examined the principle of business efficacy, the case of *Attorney General of Belize v. Belize Telecom Ltd.*⁴ offers a particularly precise perspective, cautioning against allowing the doctrine to assume an independent force beyond its intended scope. In this case, Lord Hoffmann notably observed the following:

"The danger lies, however, in detaching the phrase, "necessary to give business efficacy" from the basic process

⁴ [2009] UKPC 10.



of construction of the instrument. It is frequently the case that a contract may work perfectly well in the sense that both parties can perform their express obligations, but the consequences would contradict what a reasonable person would understand the contract to mean. Lord Steyn made this point in the Equitable Life case (at p 459) when he said that in that case an implication was necessary “to give effect to the reasonable expectations of the parties.” (Emphasis supplied).

18. The aforementioned judicial precedents make it amply clear that when it comes to the principle of business efficacy to contractual interpretation, courts must balance a strict textual approach with a pragmatic understanding of commercial efficacy. Where a contractual term is open to two interpretations, courts generally lean toward the one that promotes fairness and aligns with the broader objectives of the agreement. Equally significant is the need to uphold the reasonable expectations of the parties, interpreting and enforcing contracts in good faith and in line with their intended purpose.
19. The petitioner argues that Clause 120, Sub-Clause 2.4.1 of the Contract does not expressly exclude bridge works from the incentive scheme. In contrast, the opposite parties maintain that bridge works were never eligible, interpreting the 2015 amendment as the creation of a new entitlement rather than a clarification of an existing one. This position, however, invites a fundamental question: did the amendment merely formalize an understanding already inherent in the original agreement? A more purposive reading of the clause suggests that the absence of an explicit exclusion supports the petitioner's view.



20. The petitioner's position gains further support when considering the principle that commercial contract must be construed in a manner that upholds the reasonable expectations of the parties. The incentive clause, as worded, does not specify exclusions. Had the intention been to exclude bridge works, an express provision to that effect would have been expected. The subsequent amendment, while clarifying the applicability of incentives to bridge works, does not necessarily imply a prior exclusion but could instead reflect a formal acknowledgment of an already implicit right.
21. Another principle that weighs in favour of the petitioner is the doctrine of promissory estoppel, a well-established tenet of contract law. While not novel in its application, its essence was succinctly captured by the Division Bench of the Supreme Court in *M.P. Sugar Mills v. State of U.P.*⁵, where it was articulated in the simplest yet most profound terms:
- "Where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect, a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not."*
22. This case affirms that when a party, through words or conduct, induces another to act on a particular understanding, equity requires that the

⁵ AIR 1979 SC 621.



representation be honoured. The government, having introduced an incentive scheme that did not expressly exclude bridge works, cannot now impose a retrospective limitation. Commercial actors structure their investments and commitments based on assurances, whether express or implied, that are woven into their agreements. If the state were permitted to withdraw such implicit assurances at a later stage, it would not only unsettle commercial certainty but also weaken confidence in government contracts.

23. Another crucial aspect of this case is the application of the doctrine of *Contra Proferentem*. This principle is invoked when ambiguity arises in a contractual term drafted by one party. In essence, it applies only when it is undeniably evident that a party either authored the ambiguous clause or played a significant role in shaping its language. This principle is enshrined in the UNIDROIT Principles of International Commercial Contracts, specifically outlined in Article 4.6, which states the following:

"..if contract terms supplied by one party are unclear, an interpretation against that party is preferred."

24. Similarly, the Principles for European Contract Law (PECL) in terms of Article 5.103 stipulate the following:

"..where there is doubt about the meaning of a contract term not individually negotiated, an interpretation of the term against the party who supplied it is to be preferred."

25. When the principles outlined above are applied to the present case, it becomes evident that the doctrine of *Contra Proferentem* weighs against the opposite parties. The government, as the drafter of the contract, had



the opportunity to exclude bridge works from the ambit of Clause 120 Sub-Clause 2.4.1 had it so intended. The failure to do so leaves room for a reasonable interpretation that the incentive scheme was not inherently restricted to road works alone. If ambiguity exists, it must be construed against the party that authored the contract. To hold otherwise would be to permit the State to introduce exclusions post hoc, rewriting the agreement in a manner that disadvantages the contractor while absolving itself of obligations that could be fairly inferred from the contract's language.

26. This doctrine is no mere rule of form but a barrier against encroachment. When the government speaks in contract, it speaks with power, and with power comes the duty of precision. Its words must stand as written, not bent by discretion to serve a later purpose. In public procurement, the State is no ordinary merchant but a steward of fairness, bound to the discipline of its own bargains. To allow one party to reshape obligations at will is to dissolve the contract itself, casting it adrift from the anchorage of law.
27. In *State of Madhya Pradesh v. M/s Sew Construction Ltd. & Ors*⁶, the Court reaffirmed the settled principle: the terms of a contract, once agreed upon, bind both parties in letter and spirit. The government, despite its authority, holds no special privilege in the execution and enforcement of contracts. It cannot unilaterally impose new conditions during the course of performance, for to do so would undermine the

⁶ Civil Appeal No. 8571/2022 arising out of SLP (C) No. 907/2020.



certainty and fairness that contract law demands. The relevant excerpts are produced below:

“In the context of discretion, we may reiterate this principle. The rights and duties of the parties to the contract subsist or perish in terms of the contract itself. Even if a party to the contract is a governmental authority, there is no place for discretion vested in the officers administering the contract. Discretion, a principle within the province of administrative law, has no place in contractual matters unless, of course, the parties have expressly incorporated it as a part of the contract. It is the bounden duty of the court while interpreting the terms of the contracts, to reject the exercise of any such discretion that is entirely outside the realm of the contract.”

28. The law of contracts rests on a simple but inviolable premise: agreements, once made, must be kept. This principle is not a relic of rigid formalism but the foundation upon which trust in commerce and governance alike depends. In public contracts, the government is not just a participant but a steward of its own word, bound to the rigor of the obligations it has assumed. To permit discretion where none is bargained for is to introduce uncertainty where certainty is paramount. It would reduce obligations to suggestions, leaving performance at the mercy of unilateral will. The power to contract is not the power to escape, and authority cannot be used as a tool to revise what has been freely undertaken. If a contract is to mean anything at all, it must be enforced as made, not as later convenience might dictate.

V. CONCLUSION:

29. Considering the facts and circumstances of the case, this Court finds merit in the petitioner's claim. The Government's refusal to grant the



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incentive is unwarranted and inconsistent with established principles of contractual obligation.

30. Accordingly, the Writ Petition is allowed, and the opposite parties are directed to grant the incentive within THREE months from the presentation of this judgment. In case of non-compliance, the petitioner shall be entitled to interest at the rate of 8% per annum until the payment is made. This Court expects timely implementation of this order to uphold justice and equity.
31. Interim order, if any, passed earlier stands vacated.

(Dr.S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 28th March, 2025/*