IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 1848 of 2022

Biswajit Sahoo .... ***Petitioner***

Mr. D.R. Swain, Advocate

-versus-

State of Odisha & others .... ***Opp. Parties***

Mr. A.K. Nanda, AGA for opposite parties 1 to 6

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M. S. SAHOO

ORDER

Order No. **25.01.2022**

01. **1.** This matter is taken up through virtual mode.

2. The petitioner in the writ petition challenges the letter dated 17.01.2022 (Annexure-5), issued by the Chief Construction Engineer, Rural Works Circle, Angul (opposite party no.4) requesting the 2nd lowest bidder to attend the office of the opposite party no.4, along with the uploaded original documents for verification before 20.01.2022, in view of the petitioner-L1 bidder having failed to execute the agreement for construction of "NH-23 (Baliposi Chhak) to Damadorpur via Karadapal Road" under MMSY for the year 2021-22.

3. Learned counsel for the petitioner and learned Addl. Govt. Advocate for the State-opposite parties were heard at length.

4. The petitioner in the writ petition admits the fact that after having participated in tender process of "NH-23 (Baliposi Chhak) to Damadorpur via Karadapal Road", he did not proceed further after having been declared the lowest bidder(L1). It is further contended by the counsel for the petitioner that he was 'hospitalized' and could not check his e-mail or the Web Portal i.e. Odisha Tenders: providing the eProcurement System Government of Odisha, as a result of which he was unaware of having become successful being the lowest bidder. At para-5 of the writ petition, the following has been stated:-

> *"**5.** That the O.P. No.4 opened the technical bid on 21.12.21 wherein the petitioner was succeeded and duly intimated to the petitioner on same day through his mail Id categorically informing him for evaluation of the financial bid which will be opened on 22.12.21."*

5. From the facts as delineated in the writ petition, it is apparent that after opening of the financial bid on

22.12.2021, the petitioner was requested by letter dated 23.12.2021 (Annexure-6) to take further steps in the matter after his tender was accepted by the Chief Construction Engineer, Rural Works Circle, Angul. The said letter dated 23.12.2021 itself shows that it was sent by e-mail/e-despatch to the petitioner.

6. To substantiate the plea of illness, resulting in the petitioner becoming unaware, having not checked his e-mail, the petitioner has annexed a "certificate" from a Hospital at Bhubaneswar enclosed to the writ petition marked as Annexure-4, wherein, the following has been stated;

> *"Certified that Biswajit Sahoo, S/o-Trilochana Sahoo aged bout 35 yrs/male whose signature is attested below was suffering from JAUNDICE from 21.12.21-18.01.22 and was treated under me."*

7. From whatever has been mentioned in the certificate as quoted above, concededly, the petitioner was not admitted in the hospital though the petitioner in para-6 of the writ petition has stated, which is being reproduced for ready reference:-

> *"6.... .... he therefore choose to get better treatment at Bhubaneswar, where he was admitted on same day in hospital due to his ailment and he was admitted in the hospital for about one month with medical care with his doctor's advice to take complete rest so he was in hospital upto 18.01.2022 thereafter he was discharged from the hospital on the same day."*

8. The document as at Annexure-4 somehow does not mention regarding admission of the petitioner as an indoor patient in the hospital and the signature of the Doctor is conspicuously absent. Further, though the said "certificate" mentions regarding attestation of signature of the petitioner but it does not contain any signature.

9. Apart from the fact that the contentions raised regarding illness and the hospitalization is very flimsy and not supported by any proper documents, the petitioner does not dispute the communication of the tendering authority by e-mail/e-despatch regarding the acceptance of the petitioner's bid as the lowest bidder. Moreover, the L2 bidder has been requested as per the conditions of the tender and the said action of the tendering authority cannot be faulted with, as the work

put to tender is construction of the road which requires early completion in the larger public interest.

10. In view of the above discussions, the writ petition is dismissed being devoid of any merit. However, it shall be open for the petitioner, if so advised, to seek his remedy under the common law forum for redressal of any of his grievances, in accordance with law.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

January 25th, 2022
Cuttack

RRJena/GS