

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 2430 OF 2022,
W.P.(C) NO. 2920 OF 2022
AND
W.P.(C) NO.2160 OF 2022

In the matter of applications under Articles 226 and 227 of
the Constitution of India.

AFR

W.P.(C) NO. 2430 OF 2022

SRB Transport, Sambalpur Petitioner

-Versus-

Union of India & Ors. Opp. Parties

For Petitioner : Mr. B. Routray, Sr. Adv. along with
M/s. R.P. Dalai, S.K. Samal, S.P.
Nath, S.D. Routray, S. Sekhar, A.K.
Das & M. Panda, Advocates.

For Opp. Parties : Mr. P.K. Parhi, ASGI
(O.P. No.1)
Mr. P.K. Rath, Advocate
[O.P. Nos.2-5]

W.P.(C) NO. 2920 OF 2022

Avtar Filling Station, Sambalpur Petitioner

-Versus-

Union of India & Ors. Opp. Parties

For Petitioner : Mr. B. Routray, Sr. Adv. along with
M/s. S.K. Samal, S.P. Nath, S.
Routray, S. Sekhar, J. Biswal, A.K.
Das & M. Panda, Advocates.

For Opp. Parties: Mr. P.K. Parhi, ASGI
(O.P. No.1)

Mr. P.K. Rath, Advocate
[O.P. Nos.2-5]

W.P.(C) NO. 2160 OF 2022

M/s. Maa Kalijae Transport,
Sambalpur

..... Petitioner

-Versus-

Union of India & Ors.

..... Opp. Parties

For Petitioner : M/s. D. Panda, S. Panda, A. Mehta &
D.K. Panda, Advocates.

For Opp. Parties : Mr. P.K. Parhi, ASGI
(O.P. Nos.1-3)

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR. JUSTICE V. NARASINGH**

Date of hearing & judgment : 14.02.2022

DR. B.R. SARANGI, J.

W.P.(C) No.2430 of 2022 has been

filed seeking following reliefs:

- i) *Admit the writ application.*
- ii) *Call for the record.*
- iii) *Issue Rule NISI calling upon the Opp. Parties more particularly Opposite Party no.2 to 4 as to why the impugned order as communicated in the mail dtd. 18.1.2022 under Annexure-9*

issued by the Opp. Party No.3 shall not be quashed.

- iv) If the Opp. Parties failed to show cause or show insufficient cause, issue a writ in the nature of certiorari or pass any other writ/writs, direction/directions by quashing the said decision as reflected in the mail dtd. 18.1.2022 under Annexure-9 cancelling the letter of acceptance made in favour of the petitioner pursuant to Annexure-4 series.
- v) Issue a writ in the nature of mandamus or any other writ/writs, direction/directions directing the opposite parties, more particularly opposite party Nos.2 to 5 to withdraw THE SAID MAIL UNDER Annexure-9 and both the Opp. Party may be directed to act in terms of the letter of acceptance, already issued in favour of the petitioner on 19.11.2021 under Annexure-4 series and allow the petitioner to execute the work for the entire period as per the tender document under Annexure-2 series.
- vi) And/or pass such other order/orders, direction/directions as this Hon'ble Court may deem fit and proper for the ends of justice."

Similarly, in W.P.(C) No.2920 of 2022 the following prayer has been made:

- i) Admit the writ application.
- ii) Call for the record.
- iii) Issue Rule NISI calling upon the Opp. Parties more particularly Opposite Party no.2 to 4 as to why the impugned order of cancellation as communicated in the mail dtd. 18.1.2022 under Annexure-9 issued by the Opp. Party No.3 shall not be quashed.
- iv) If the Opp. Parties failed to show cause or show insufficient cause, issue a writ in the nature of certiorari or pass any other writ/writs, direction/directions by quashing the order of cancellation vide mail communication dtd. 18.1.2022 under Annexure-9.

- v) *Issue a writ in the nature of mandamus or any other writ/writs, direction/directions directing the opposite parties, more particularly opposite party Nos.2 to 5 to act in terms of the letter of acceptance, already issued in favour of the petitioner on 19.11.2021 under Annexure-4 and allow the petitioner to execute the work for the entire period as per the tender document under Annexure-1 series.*
- vi) *And/or pass such other order/orders, direction/directions as this Hon'ble Court may deem fit and proper for the ends of justice."*

In the same way, W.P.(C) No.2160 of 2022 has been preferred seeking following reliefs:

"Under the circumstances the Petitioner firm most humbly prays that this Hon'ble Court may be graciously pleased to issue notice of Rule Nisi calling upon the Opposite Parties to show cause as to why the cancellation of LOA issued to Petitioner firm vide Annexure-2 should not be quashed as being illegal and arbitrary:

And upon the Opposite Parties not showing cause/or insufficient cause being shown, this Hon'ble Court be further pleased to quash Annexure-2 for being illegal and null and void and the Opposite Parties and more particular Opposite Party Nos.2 & 3 be directed to award Petitioner firm the work of transportation of IOCLs bulk petroleum products ex-IOCLs Jharsuguda terminal by re-issuing LOA at Annexure-1/ 1 above to it;

And pass such other and further orders as this Hon'ble Court may deem fit and proper;"

2. Essentially, in the above noted three writ petitions, the petitioners seek to quash the letters/ orders, whereby the Letters of Acceptance issued in their

favour have been cancelled, and to issue direction to the opposite parties to allow the petitioners to execute the works for the entire period as per their respective tender documents. Therefore, these three writ petitions are heard together and disposed of by this common judgment, which will govern all the cases.

3. For the sake of convenience, brevity and better appreciation, the facts of W.P.(C) No.2430 of 2022 are taken into consideration, according to which, opposite party-Indian Oil Corporation Ltd. (IOCL) floated a tender on 01.07.2021 inviting bids for the work "Road Transportation of Bulk Petroleum Products by bottom loading tank trucks at Jharsuguda terminal". The petitioner in the said writ petition, having satisfied all the terms and conditions of the tender, submitted its bid through online on 24.07.2021. In compliance of the tender conditions, the bid was opened on 27.07.2021. On 02.11.2021, the technical bid was accepted, and thereafter financial bid was accepted. As the petitioner was declared L-1 by opposite party no.4 on 15.11.2021,

letter of acceptance was issued on 19.11.2021. Opposite party no.4 communicated the same to the petitioner by e-mail and on 04.12.2021, after the contract was executed, it was called upon to furnish the security deposit of Rs.50,000/- within 15 days from the date of letter of acceptance and to execute the agreement. Thereafter, the petitioner on 07.12.2021 submitted security deposit in the shape of demand draft, which has duly acknowledged by the authority. After submission of required security deposit, agreement was executed on 07.12.2021 between the petitioner and opposite party no.4. Pursuant to such agreement, opposite party no.4 vide e-mail dated 10.12.2021 intimated the petitioner for physical inspection of Tank Truck before 19.12.2021. In response to said e-mail, petitioner on 16.12.2021 intimated that its 9 (nine) nos. of Tank Trucks were ready for verification and sought permission to physically place all the ready built Tank Trucks at the location (Jharsuguda Terminal) for physical inspection on 19.12.2021. At this point of time, opposite party no.4,

vide e-mail dated 18.01.2022, cancelled the letter of acceptance issued to the petitioner on 19.11.2021, which is the subject matter of challenge in W.P.(C) No.2430 of 2022. The facts of W.P.(C) No.2920 of 2022 and W.P.(C) No.2160 of 2022 are almost similar to the facts of W.P.(C) No.2430 of 2022, as therein cancellation of Letter of Acceptance is also the subject matter of challenge.

4. Mr. B. Routray, learned Sr. Counsel appearing along with Mr. S.D. Routray, learned counsel for the petitioner in W.P.(C) No.2430 of 2022 and W.P.(C) No.2920 of 2022 urged before this Court that the petitioners therein, having satisfied the requirements of the tender call notice, submitted their bids and were selected as L-1, and on deposit of security amount, agreements were executed and were called upon to comply the conditions by presenting the Tank Trucks. When the petitioners were going to comply with the same, all on a sudden the orders impugned dated 18.01.2022 were issued cancelling the Letters of

Acceptance without assigning any reasons thereof. Thereby, the cancellation of Letters of Acceptance, vide orders impugned dated 18.01.2022, cannot be sustained in the eye of law. To substantiate his contentions, he has relied upon the judgment of this Court in **Krishik Infrastructure Developers Pvt. Ltd. v. Orissa Industrial Infrastructure Development Corporation and Ors.**, AIR 2018 (Ori) 139 : 126 (2018) CLT 1152.

5. Mr. D. Panda, learned counsel appearing for the petitioner in W.P.(C) No.2160 of 2022, relying upon the arguments advanced by Mr. B. Routray, learned Sr. Counsel appearing for the petitioners in W.P.(C) No.2430 of 2022 and W.P.(C) No.2920 of 2022, contended that the cancellation of Letter of Acceptance cannot be sustained in the eye of law and the same is liable to be quashed.

6. On being noticed in W.P.(C) No.2430 of 2022 and W.P.(C) No.2920 of 2022, Mr. P.S. Nayak, learned Central Government Counsel appearing for

opposite party no.1 contended that since the action taken by opposite parties no.2 to 5 is impugned herein, opposite party no.1 has no role to play, as it is an inter se dispute between the petitioners and opposite parties no.2 to 5.

7. Mr. P.K. Rath, learned counsel for opposite parties no.2 to 5 has tried to justify the action taken by the said opposite parties and stated that since it is purely a contractual matter, pursuant to execution of agreement, these opposite parties are well justified in cancelling the Letters of Acceptance and, as such, the Court has no jurisdiction to interfere in a contractual matter. Thereby, he seeks for dismissal of the writ petitions.

8. This Court heard Mr. B. Routray, learned Sr. Counsel appearing along with Mr. S.D. Routray, learned counsel for the petitioners in W.P.(C) No.2430 of 2022 and W.P.(C) No.2920 of 2022, Mr. D. Panda, learned counsel for the petitioner in W.P.(C) No.2160 of

2022 by hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petitions are being disposed of finally at the stage of admission.

9. Reverting back to the factual matrix of WP(C) No. 2430 of 2022, which is being referred to for effective adjudication of these writ petitions, admittedly, the petitioner, having been qualified both in technical as well as price evaluation, was declared as L-1 and contract was awarded in its favour on 19.11.2021 and, thereafter, the petitioner was called upon to furnish security deposit, which has also been complied with. As a consequence thereof, agreement was signed between the parties. In such scenario, cancellation of contract at this point of time, vide communication dated 18.01.2022, cannot have any justification, as the petitioner was all along ready for physical inspection of the Tank Trucks, as required by the opposite parties in their letter dated 10.12.2021. As such, the impugned order of cancellation is without assigning any reason.

10. A similar matter, i.e., W.P.A. No.19365 of 2021 (***Ganesh Movers & Logistics (P) Ltd. V. Indian Oil Corporation Limited & Ors***) was filed before the High Court of Calcutta challenging the action of the Indian Oil Corporation Ltd. rejecting the bid of the petitioner, namely, Ganesh Movers & Logistics (P) Ltd., and the learned Single Judge of the High Court of Calcutta, vide judgment dated 2012.2021 at Annexure-12 series, allowed the writ petition with the direction that the petitioner in the said writ petition is entitled for selection in the tender.

11. Similarly, in ***Nilendra Mohan Mohapatra v. Indian Oil Corporation Ltd., New Delhi*** [W.P.(C) No.39451 of 2021], this Court passed interim order of status quo with regard to supply of petroleum products, pursuant to which the petitioner has been continuing for supply of the same. As it reveals, in the order cancelling the Letter of Acceptance no reason has been assigned and it is wholly a bald order of cancellation.

12. **Franz Schubert** said “Reason is nothing but analysis of belie”.

In **Black’s Law Dictionary**, 5th Edition, ‘reason’ has been defined as a “faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts or from propositions”.

‘Reason’ means the faculty of rational thought rather than some abstract relationship between propositions and by this faculty, it is meant the capacity to make correct inferences from propositions, to size up facts for which they are and what they imply, and to identify the best means to some end, and, in general, to distinguish what we should believe from what we merely do believe.

13. In **Raj Kishore Jha v. State of Bihar**, JT 2003 (Supp.II) SC 354, the apex Court has held that “reason” is the heart beat of every conclusion and without the same it becomes lifeless. The same view has

also been taken in ***State of Orissa v. Dhaniram Luhar***, JT (2004) 2 SC 172.

14. In ***Union of India v. Mohan Lal Capoor***, AIR 1974 SC 87 : (1973) 2 SCC 836, it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached.

Similar view has also been taken by the apex Court in ***Uma Charan v. State of Madhya Pradesh***, AIR 1981 SC 1915 : (1981) 4 SCC 102.

15. The requirement of giving reasons is based on sound principles. The requirement is intended to achieve the following objects and laudable purposes:

In the first instance, the requirement to give reasons ensures application of mind to the material, for, how does one give reasons for an order unless one applies one's mind to the material which it is called upon to consider.

Secondly, it incorporates a built-in safeguard against arbitrariness in the exercise of power. It immediately introduces an element of rationality into an executive decision-making process. The requirement makes the authority pause for a moment and articulate for itself why it was making the order. It feels that it is answerable for its order and the validity of the order would be tested on the touch-stone of reasoning, rationality and logic.

Thirdly, it makes any further examination or review in appeal or other proceedings before courts more meaningful and effective. It enables all subsequent authorities dealing with the matter to know how the mind of the authority, which made the order, was

functioning; what is it that appealed to it when it made the order and how it dealt with the objections as to why the order should or should not be made.

Lastly, it is intended to inform the person aggrieved, if an individual, or if it involves wider rights, interests, freedoms, the public in general, as to why the action has been taken. This requirement would be particularly important where there remains a superadded requirement of publication in a Gazette. Such an order has to meet the larger public gaze. The authority in such cases is answerable to the people in general because the nature of the order is such that all of them must be informed as to what order has been made and why it has been made.

16. In ***re Racal Communications Ltd***, (1980)

2 All ER 634 (HL), it has been held that the giving of reasons facilitates the detection of errors of law by the Court.

17. In ***Secretary of State for Education and Science v. Tameside Metropolitan Borough Council***, (1976) 3 All ER 665, it has been ruled that it will be often from an authority's reasons that an error of law may be inferred

18. In ***Padfield v. Minister of Agriculture, Fisheries and Food***, (1968) 1 All ER 694 (HL), it has been held a failure to give reasons may permit the court to infer that the decision was reached by reasons of an error in law.

19. In ***R. (on the application of Quark Fishing Ltd) v. Secretary of State for Foreign and Commonwealth Affairs***, (2002) All ER (D) 450, it has been observed that where again conflicting reasons are given, court is not prepared to assume that the decision was taken on rational grounds.

20. In ***Menaka Gandhi v. Union of India***, AIR 1978 SC 597, the apex Court held as follows:

“The reasons, if disclosed, being open to judicial scrutiny for ascertaining their nexus with the order, the refusal to disclose the reasons would equally be open to the scrutiny of the Court; or else, the wholesome power of a dispassionate judicial examination of executive orders could with impunity be set at naught by an obdurate determination to suppress the reasons.”

21. In **S.N. Mukherjee v. Union of India**, AIR 1990 SC 1984, the apex Court held that keeping in view the expanding horizon of the principles of natural justice, the requirement to record reasons can be regarded as one of the principles of natural justice which governs exercise of power by administrative authorities. Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority is required to record reasons for its decision.

Similar view has also been taken by this Court in **Krishik Infastructure Developers Pvt. Ltd.** (supra).

22. In view of the above settled propositions of law, it can be safely held that the order impugned, having been passed without assigning any reason, cannot be sustained.

23. A contention is raised by Mr. P.K. Rath, learned counsel appearing for opposite parties no.2 to 5 that, since it is purely a contractual matter, this Court has no jurisdiction to entertain the writ petition. There is no justification in such contention, in view of the fact that if there is arbitrariness and unreasonableness and the order is tell tale on the face of the record, then this Court has jurisdiction to entertain the writ petition under Article 226 of the Constitution of India. In this case, when the order of cancellation of Letter of Acceptance has been passed without assigning any reason, this Court has jurisdiction to take account of the same with the touch stone of the reasonableness, which violates Article 14 of the Constitution of India.

24. In view of the facts and settled propositions of law, as discussed above, this Court is of the considered opinion that the orders impugned cancelling the Letters of Acceptance, viz., the order dated 18.01.2022 under Annexure-9 to W.P.(C) No.2430 of 2022, the order dated 18.01.2022 under Annexure-9 to W.P.(C) No.2920 of 2022 and the order dated 18.01.2022 under Annexure-2 to W.P.(C) No.2160 of 2022 cannot sustain in the eye of law. Accordingly, the same are liable to be quashed and hereby quashed.

25. In the result, the writ petitions are allowed. However, there shall be no order as to costs.

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DR. B.R.SARANGI,
JUDGE

V. NARASINGH,J.

I agree.

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V. NARASINGH,
JUDGE