

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2557 of 2022

Mamal Haldar

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Petitioner

Mr. S.K. Acharya, Advocate

Vs.

State of Odisha & Ors.

.....

Opposite parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. PANIGRAHI

ORDER

07.02.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Acharya, learned counsel for the petitioner and Mr. T. Pattnaik, learned Additional Standing Counsel for the State.

3. The petitioner has filed this writ petition to quash the order under Annexure-2 series passed by opposite party no.4 and the order under Annexure-9 passed by the opposite party no.3, by which the detailed Tender Call Notice submitted by the petitioner has been rejected on the ground that he has not satisfied the conditions stipulated in Clause-48 read with Clause-113 (e) & (h) of the advertisement.

4. Mr. S.K. Acharya, learned counsel for the petitioner contended that the petitioner produced all the materials before the tendering authority indicating that he

is the owner of the machineries, which are required to be placed in compliance of the conditions stipulated in the DTCN. But, the tendering authority arbitrarily and unreasonably has rejected the bid of the petitioner. It is further contended that he has filed additional affidavit indicating that he is the owner of some machineries.

5. Mr. T. Pattnaik, learned Additional Standing Counsel contended that this is the second round litigation of the petitioner. He has relied upon Annexure-7, wherein the petitioner has not disowned the tender documents due to Clause-48 and 113(e) & (h) of the DTCN.

6. In view of the contentions raised by learned counsel for the parties, it is relevant to refer to Clauses-48 & 113 (e) & (h) of the DTCN, which read as follows:

“48.The machineries if available, with the department may be supplied on hire as per charges noted in the enclosed statement and may be changed from time to time subject to the condition that the contractor will execute in advance an agreement with the Engineer-in-Charge.

113. Condition for issue of plant & machinery to contractor on hire:

Xxx

xxx

xxx

(e). In the event of the tools and plants not being returned on the expiry of the above-mentioned period, the hirer shall without prejudice and any other liability pay to the Government on account equivalent to the rate of hire specified for the working period and an increase of ten percent.

(h) In case of breakdown, repairable at the site within a period of three days hire charges as specified in the schedule will be levied except in case of major repairs.”

On perusal of the aforesaid conditions, it reveals that the machineries, if available, with the department may be supplied on hire as per charges enclosed in the statement and may be changed from time to time subject to the condition that the contractor will execute in advance an agreement with the Engineer-in-Charge. So far as sub-clause-(e) & (h) of Clause-113 of the DTCN are concerned, it is stated that in the event of the tools and plants not being returned on the expiry of the period mentioned, the hirer shall without prejudice and any other liability pay to the Government on account equivalent to the rate of hire specified for the working period and an increase of ten percent and in case of breakdown, repairable at the site within a period of three days hire charges as specified in the schedule will be levied except in case of major repairs. But nothing has been placed on record to show the said fact save and except the petitioner is the owner of the vehicles. To substantiate his contentions, he has filed an additional affidavit on 03.02.2022, but the petitioner was required to file Schedule-C document before the authority concerned. Therefore, this Court, vide order dated 31.01.2022 called upon the petitioner to produce the documents relating to Schedule C. But, learned counsel for the petitioner failed to show the same and he seeks time today to produce the same on the next occasion. As

such, time was granted to the petitioner to file the document by way of affidavit.

7. In view of the above, this Court is of the view that the petitioners are not in possession of the documents as required under Schedule-C. Therefore, this Court is not inclined to entertain the writ petition. Accordingly, the same is dismissed.

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(**DR. B.R. SARANGI**)
JUDGE

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(**S.K. PANIGRAHI**)
JUDGE

