

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 5538 of 2022

Dilip Kumar Panda

.....

Petitioner

Mr. A. Tripathy, Advocate

Vs.

State of Odisha and others

.....

Opposite parties

Mr. T.K. Patnaik, ASC &

Mr. S. K. Mishra, Advocate for O.P.2

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

10.03.2022

Order No.

02.

This matter is taken up through hybrid mode.

2. Heard Mr. A. Tripathy, learned counsel for the petitioner, Mr. T.K. Patnaik, learned Additional Standing Counsel appearing for State-opposite parties, and Mr. S.K. Mishra, learned counsel for opposite party no.2.

3. In view of the order we intend to pass, we do not propose to issue notice to opposite party no.6.

4. The petitioner files this writ petition seeking to quash the order dated 01.01.2022 passed by the Collector-cum-Chairman of the Tender Committee, Nayagarh under Annexure-1, by which the tender allotted in favour of the petitioner has been cancelled.

5. Mr. Tripathy, learned counsel for the petitioner contended that pursuant to the tender call notice invited by opposite party no.3, the petitioner, opposite party no.6 along with other bidders participated in the process of tender. The petitioner submitted his technical bid in respect of four blocks of Nayagrah District, namely Khandapada,

Odaagaon, Daspalla and Nayagarh Block and one Prasanna Kumar Panigrahi had applied for remaining 4 blocks, i.e. Bhapur, Nuagaon, Ranpur and Gania. Though technical bids of both the bidders were in order, however they both had quoted price for all the 8 blocks in their price bid. The Committee selected the bidders by comparing their quoted rate and work order was issued for four blocks to each of them. However, the order of cancellation of the petitioner has been made on the ground of single bidder. It is further contended that pursuant to such allotment, an agreement was executed with the petitioner on 26.11.2021 and the petitioner started operation pursuant to such agreement. But at this point of time one Deepak Kumar Behera, the opposite party no.6 filed a writ petition before this Court bearing W.P.(C) No. 37768 of 2021, seeking direction to the Collector & District Magistrate Nayagarh-cum-Chairman, District Tender Committee to reconsider the technical bid submitted by the petitioner. In compliance to the direction given by this Court, vide order dated 02.12.2021 in W.P.(C) No. 37768 of 2021, the Collector enquired into the matter and passed the order of cancellation of the tender of the petitioner on the ground of single tender. It is further contended by learned counsel for the petitioner that such cancellation is in gross violation of Clause-VIII (b) (ii) of the agreement and therefore, the same cannot be sustained in the eye of law.

6. Mr. S.K. Mishra, learned counsel for the Odisha State Civil Supply Corporation submits that since the decision was taken at the level of the Collector, he has nothing to say in the matter. However, the action so taken by the Collector by the impugned order is to be examined by this Court in its proper prospective.

7. Mr. T.K. Patnaik, learned Additional Standing Counsel

contended that admittedly pursuant to the selection of the petitioner in the tender process, work order had been issued in favour of the petitioner by executing the agreement. But one Deepak Kumar Behera approached this Court in W.P.(C) No. 37768 of 2021 challenging non acceptance of his technical bid. This Court disposed of the matter directing the Collector to re-consider the matter and at the stage of inquiry it was revealed that the petitioner is the single tenderer. Therefore, the order impugned has been passed. In such circumstances, the Collector has not committed any error so as to warrant interference by this Court.

8. Having heard learned counsel for the parties and after going through the record, it appears that pursuant to the tender call notice, the petitioner participated in the process of selection and, as such, he had submitted his technical bid in respect of four blocks of Nayagrah District, namely Khandapada, Odaagaon, Daspalla and Nayagarh block, though he had quoted price bid in respect of eight blocks. More so, opposite party no.6, having been found technically unfit when the price bid was opened, the petitioner was allowed to operate in respect of four blocks. Needless to say, there are other persons who had also applied for technical bid, but they were not qualified. As a consequence thereof, the petitioner, being the single bidder was called upon to execute the agreement and accordingly agreement was executed on 26.11.2021. After executing the agreement, he started operation. All of a sudden, the order impugned dated 01.01.2022 under Annexure-1 has been passed cancelling the agreement executed between the petitioner and the opposite party.

9. For better appreciation, Clause-VIII (b) (ii) of the agreement is extracted hereunder:-

“ii. To terminate the contract at any time during its currency without assigning any reasons by giving a 15 days’ notice in writing to the contractor at their last known place of residence/ business and the contractor shall not be entitled to any compensation by reason of such premature termination.”

10. In view of such position, at least 15 days notice should have been given to the petitioner. Therefore, the order of cancellation/ termination of agreement passed by the Collector-cum-Chairman, Tender Committee, Nayagarh cannot have any justification and the same is liable to be quashed and hereby quashed. The matter is remitted back to the Collector-cum-Chairman, Tender Committee, Nayagarh-opposite party no.3 to reconsider the grievance of the opposite party no.6 afresh after giving opportunity of hearing to all the bidders, who had participated in the process of selection by giving them due notice, and pass appropriate order in accordance with law, as expeditiously as possible, within a period of four weeks from the date of receipt of the order passed by this Court.

11. Till a decision is taken by the Collector-cum-Chairman, Tender Committee, Nayagarh-opposite party no.3, the petitioner shall continue to discharge his obligation in terms of the agreement made between the parties on 26.11.2021.

12. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Arun

(SAVITRI RATHO)
JUDGE