IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 6566 of 2022

Pravas Behera	…..	***Petitioner***
		Mr. A.K. Pattnaik, Advocate
	Vs.	
State of Odisha & Others	…..	***Opposite party***
		Mr. P.P. Mohanty, A.G.A.

CORAM:
DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO

ORDER
25.03.2022

Order No.
02.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Pattnaik, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Addl. Govt. Advocate of the State.

3. The petitioner has approached this Court, by means of this writ petition, due to his disqualification from participating in the tender process on account of non-compliance of the condition stipulated under clause-2.1(6) of the general instructions to the tenderers.

4. Mr. A.K. Pattnaik, learned counsel for the petitioner contended that as per clause-2.1(6) of the DTCN, the intending tenderers should have in possession of the machineries indicated therein, either being owned or on hire/lease, required for execution of the work as per relevant clauses of the specification of road and bridge work of Ministry of Road Transport and High Ways. He further contended that though the petitioner provided the information as per Annexure-4 in respect of vehicles, but the same was not taken into consideration in proper perspective. Therefore, disqualification of technical bids of the petitioner by the authority, cannot sustain in the eye of law.

5. Mr. P.P. Mohanty, learned Addl. Govt. Advocate appearing for the State contended that the condition stipulated in clause-

2.1(6) of general instructions to tenderers is very clear that the petitioner has to satisfy such requirement. The petitioner, having not satisfied such requirement, his bid has been cancelled. Thereby, no illegality or irregularity has been committed by the authority, in disqualifying the petitioner from participating in the tender process.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the technical bid of the petitioner has been cancelled as per Clause-2.1(6) general instructions to tenderers, which provided as follows:-

> *"GENERAL INSTRUCTION TO TENDERES*
> ***2.1 Eligibility Criteria***
> *The eligibility criteria for participation in this tender are given below. The tenderer (s) should go through these eligibility criteria before purchasing the tender documents. Tenderer(s) not fulfilling the eligibility criteria and submit the tender, can do so at their own risk, as the tender will summarily be rejected.*
> *(2) The intending tenderers(s) should have not abandoned any work of similar nature nor should their contract have been rescinded during the last five years. An affidavit to that effect is to be enclosed.*
>
> *(2) The intending tenderer(s) should have the valid Registration Certificate as on date, of the required class mentioned in Col-6 of the table in NIT.*
>
> *(3) The intending tenderer(s) should have up to date, GSTIN Certificate, & possess PAN CARD & Labour License. No undertaking towards GSTIN & PAN CARD is acceptable.*
>
> *(4) The intending tenderer(s) should have executed* ***similar nature of work*** *worth 75% of the estimated cost put to tender (as in Col-4 of the Table) during any three financial years taken together of the last preceding five years (starting from 2016-17 to 2020-21) excluding the current financial year 2021-22).* ***In case of Contract spanning for more than one financial year, the breakup of execution of work in each of financial year should be furnished.*** *A certificate to this effect must be enclosed from the officer not below the rank of Superintending Engineer/Executive Engineer as per enclosed Format-I.*
>
> *(5) The intending tenderer(s) should have the total financial turn over* ***in respect of Civil Engineering works*** *of an amount not less than the amount put to tender (as in*

*Col-4 of the Table) during any 3(three) financial years taken together of the last proceeding five financial years(starting from 2016-17 to 2020-2021 excluding the current financial year). The financial turn over certificate for **Civil Engineering works** should be submitted from the Charted Accountant showing clearly the financial turn over financial year wise.*

(6) The intending tenderer(s) should have in possession of the following machineries either being owned or on hire/lease required for execution of the work as per relevant clauses of specification of Road and Bridge work of Ministry of Road Transport and High Ways (4th Revision)."

The provision contained in clause-2.1(6) is very loud and clear that intending tenderers should be in possession machineries either being owned or on hire/lease required for execution of the work. It is contended that though the petitioner provided all the documents as per Annexure-4 series, but no specific reply was given while disqualifying the petitioner and, therefore, such action of the authority cannot sustain in the eye of law. But fact remains, the documents which are placed on record under Annexure-4 series do not satisfy the requirements as per the clause 2.1(6) of the general instructions to tenderers. Therefore, the authority is well justified in rejecting the technical bid of the petitioner by disqualifying him from participating in the tender process.

8. In view of such position, this Court does not find any illegality or irregularity committed by the authority in rejecting the technical bid of the petitioner, so as to interfere with the same. Consequentially, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Ashok/Sukanta