

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 6983 of 2022

Biswajit Sahoo

.....

Petitioner

Mr.A. Patnaik, Advocate

Vs.

State of Odisha and others

.....

Opposite parties

Mr. T.K. Patnaik, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

17.03.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. A. Patnaik, learned counsel for the petitioner and Mr. T.K. Patnaik, learned Additional Standing Counsel for the State opposite parties.

3. The petitioner files this writ petition seeking direction to opposite parties 4 and 5 to cancel the award of construction work “Kosala (Changudia) to Chhendipada Road bearing Tender I.D. 2021_CERWI_73547_16 pursuant to Detailed Tender Call Notice dated 25.11.2021” and consequential execution of agreement made in favour of opposite party no.7. He further seeks to the direct opposite parties to execute the agreement in favour of the petitioner pursuant to the said Detailed Tender Call Notice.

4. Mr. A. Patnaik, learned counsel for the petitioner contended that though the petitioner was shown as the LI bidder, but the L2 bidder was called upon to execute the agreement. Challenging such action, the petitioner had earlier approached this Court in W.P.(C) No. 1851 of 2022, wherein the claim of the petitioner was rejected and against such rejection the petitioner had preferred SLP (C) No. 3390 of 2022 and the apex Court though dismissed the same, but however, made certain observation. In terms of the observation made in the said order, the petitioner has approached this Court in the present writ petition.

5. Mr. T.K. Patnaik, learned Additional Standing Counsel contended that the petitioner has no locus standi to approach this Court in the present writ petition, since for the self same relief he had approached this Court earlier and having been unsuccessful in the writ petition, he approached the apex Court by filing Special Leave to Appeal, which was also dismissed. Therefore, the petitioner cannot approach this Court for second time with the self same prayer. Hence this writ petition is liable to be dismissed in limine.

6. Having heard learned counsel for the parties and after going through the record, it appears that as per tender document, if the LI bidder does not turn up for agreement after finalization of the tender, then he shall be debarred from participation in bidding for three years and action will be taken to blacklist the contractor. Besides, the consortium JV/firm where such an agency/ firm already happens to be or is going to be a partner/member/proprietor, he/ they shall neither be allowed for participation in bidding for three years nor his/ their application will be considered for registration and action will be initiated to blacklist him/ them. In that case, the L2 bidder, if fulfils other required criteria, would be called for drawing agreement for execution of work subject to condition that the L2 bidder negotiates to make an offer at par with that quoted by the LI bidder, otherwise the tender will be cancelled.

7. It further appears that challenging the order passed by this Court in W.P.(C) No. 1851 of 2022, the petitioner had approached the apex Court in SLP (C) No. 3390 of 2022. The apex Court disposed of the said case with the following observation/direction:-

“It goes without saying that in case where the bids submitted by L-1 is rejected on the ground that the petitioner as L-1 bidder did not turn up for agreement after finalization of the tender, in that case while awarding the contract to L-2, the procedure as required under clause 10.4 reproduced hereinabove, is to be followed and L-2 is required to be called for the negotiation so as to enable him to make an offer at par with the quoted by L-1 bidder

otherwise the tender shall be cancelled. In the present case, once the claim of the petitioner as L-1 is rejected and the L-2 is to be called for negotiation, in that case it goes without saying that he has to bring his offer at par with the quoted by L-1 bidder.

With this observation, we dismiss/dispose of the present Special Leave Petitions.”

8. Needless to say, the apex Court had taken into consideration the grievance made by the petitioner in the Special Leave to Appeal, wherein challenge was made to the order passed by this Court. The procedure, as required under Clause 10.4, was to be followed and the L-2 was required to be called for the negotiation so as to enable him to make an offer at par with that quoted by L-1 bidder, otherwise the tender shall be cancelled. Nothing has been placed on record to indicate that any deviation has been made by the authority to the order of the apex Court.

9. In view of the above, this Court is not inclined to accede to the prayer made in this writ petition. If there is any violation of the order of the apex Court, it is open to the petitioner to approach the appropriate forum.

10. The writ petition is accordingly disposed of.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Arun