

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No. 8375 of 2022

**M/s. SCC Infrastructure Pvt. Ltd.
and another**

Petitioners

Mr. G.M.Rath, Advocate

-versus-

State of Odisha and another

Opposite Parties

**CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S.SAHOO**

ORDER

Order No.

24.11.2022

Hybrid Mode

- 04.** 1. The petitioner, a registered company undertaking civil construction work has filed the writ petition challenging the action of the opposite party-State authorities in retendering the work of “*Renovation and Restoration of Upper Indravati Right Main Canal Under CLSRP from RD-41. 10 Km to 83.706 Km.*” vide tender call notice pertaining to the bid identification No. CCEW,UIP-01(01)/2021-22 dated 22/12/2021.
2. The petitioner participated in the earlier bid dated 10.4.2018 for the self-same work and his technical bid was rejected, therefore, it is alleged that subsequent retendering is not sustainable under law.
3. Earlier the petitioner challenged rejection of his bid pursuant to the earlier tender call notice dated 10.4.2018 by filing W.P.(C) No. 19701 of 2018. In the said writ petition on 07.12.2018 the following interim order was passed :

“As an interim measure it is directed that the status quo in respect of the tender call notice dated

10.04.2018 under Annexure-1 shall be maintained till the next date.”

On 19.08.2019 the following order was passed :

“Heard.

Admit.

The impugned order, which came to be passed, was admittedly passed on a complaint received on 04.09.2018. The technical bid was opened on 10.04.2018.

Learned counsel for the petitioner draws attention to sub-clause-f of 3.7.11 of the Technical Bid, which reads as under :

“f. Have been black listed/suspended by the competent authority.

Technical qualifications will be based on meeting all the following minimum criterion regarding the bidders’ general and particular experience, personnel and equipment capability and financial status, as demonstrated by the bidders’ responses in the forms attached.

All the tables appended to this booklet are to be filled up by the bidders. If no information is there to be furnished in any of the form/s the bidder is required to record NIL on those instead of leaving it blank and sign.

The bidders, who wants to complaint about the authenticity of the documents/in formations furnished by other bidder, may do so before tender inviting authority within 7 days from the date of opening of technical bid, failing which his/her complaint will not be entertained.”

(emphasis supplied)

In view of sub-clause (f) of 3.7.11, the complaint could not have been entertained after 17.4.2018. The financial bid was opened on 03.09.2018. In that view of the matter, the entertainment of complaint on 04.09.2018 is not bona fide. The authority has apparently tried to favour one of the tenderer, which is not permissible.

In that view of the matter, the matter requires consideration.

It will be open for the authority to proceed for fresh tender, if the petitioner is not found to be eligible, but it

cannot be proceeded further in favour of the other opposite parties.

This matter is fixed for final hearing on 30.09.2019.

Till then, interim order passed earlier shall continue, subject to the observation made above.”

4. The said order of this Court dated 19.08.2022 was challenged before the Hon'ble Supreme Court by SLP(C) No. 22448/2019 filed by O.P. No.3 in the writ petition, i.e., M/s. D.D.Builders Ltd. Ultimately the SLP filed by the M/s. D.D.Builders Ltd. was withdrawn and the SLP was dismissed by order of the Hon'ble Supreme Court dated 31.01.2022.

5. It is fairly submitted by the learned counsel for the petitioner that pursuant to the subsequent tender call notice dated 22.12.2021, the bid evaluation process has been completed after due participation of the petitioner and the successful bidder has been selected, thereby the prayer made in the present writ petition to quash the tender call notice has been rendered infructuous.

6. Accordingly, the writ petition is dismissed as infructuous. However, the petitioner shall have the liberty to pursue any remedy available under law if so advised.

**(Jaswant Singh)
Judge**

**(M.S. Sahoo)
Judge**

November 24th, 2022
Cuttack

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