IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.11160 of 2019

New India Agency, Dhenkanal	…..	***Petitioner***
		Mr. J.K.. Mohanty, Advocate
State of Odisha and others	Vs.	
	…..	***Opposite Parties***
		Mr. A.K. Mishra, AGA (O.Ps.1, 3 & 4)
		Mr. B.P. Tripathy, Advocate (O.P.4)
		Mr. K. Pattnaik, Advocate (O.P.5)

CORAM:
DR. JUSTICE B.R. SARANGI
MR. JUSTICE G. SATAPATHY

ORDER
13.10.2022

Order No.
10

This matter is taken up through hybrid mode.

2. Heard Mr. J.K. Mohanty, learned counsel for the petitioner; Mr. A.K. Mishra, learned additional Government Advocate appearing for opposite parties no.1, 3 and 4; Mr. B.P. Tripathy, learned counsel appearing for opposite party no.4 and Mr. K. Pattnaik, learned counsel appearing for opposite party no.5.

3. The petitioner has filed this writ petition seeking direction to opposite party-authorities not to award the project in favour of opposite party no.5 for management of Dadaraghati and Khankira PHC (N) under National Health Mission in the district of Dhenkanal under Public Private Partnership Mode and award the said project in favour of the petitioner after proper verification.

4. Mr. J.K. Mohanty, learned counsel for the petitioner contended that the tender was invited in 2018 and the process of awarding contract was started in 2019 and no decision has been taken thereof though in the meantime three years have passed.

Therefore, direction may be issued to the opposite party-authorities to take a decision on the basis of the tender floated by the authority concerned.

5. Mr. A.K. Mishra, learned additional Government Advocate appearing for opposite parties no.1, 3 and 4 contended that because of the interim order dated 09.07.2019 passed by this Court, the opposite party-authorities are not able to proceed with the tender, though everything is at final stage.

6. Mr. B.P. Tripathy, learned counsel appearing for opposite party no.4 contended that in the interest of public at large, sanitization of PHC is being undertaken. As such, unless the premises in question maintains properly, it will cause great prejudice to the patients, who are coming to the hospital. Therefore, in the interest of justice, equity and fair play, direction be issued to the authority concerned to take steps immediately to conclude the tender process so that better benefit can be extended to the public at large.

7. Mr. K. Pattnaik, learned counsel appearing for opposite party no.5 contended that though the petitioner and opposite party no.5 participated in the tender process, but on flimsy ground the petitioner has approached this Court, wherein interim order has been passed. Thereby, no final decision has been taken by the opposite party-authorities and the matter is still lying for consideration.

8. Considering the contentions raised by learned counsel for the parties and after going through the records, it appears that the petitioner has approached this Court seeking direction to the opposite party-authorities not to proceed with the process of

awarding project in favour of opposite party no.5 for management of Dadarahati and Khankira PHC (N) under National Health Mission in the district of Dhenkanal under Public Private Partnership Mode. While entertaining the writ petition, this Court passed interim order on 09.07.2019, pursuant to which cleaning process has been stalled. But on being noticed, opposite parties no.1 to 4 have filed their counter affidavit, paragraphs-14, 15 & 16 whereof read as follows:

> *"14. That with regard to the averments made in paragraph-4 of the writ petition, it is submitted that the State Scrutiny Committee of NHM during scrutiny of the proposals recommended by the District NGO Committee was made some observations on awarding score to the NGO CARAM in the score sheet point no. 1(e) Multistate experience in managing health institutions & point no.1(f): Experience in managing/part of any network of hospitals. Accordingly, the CDM&PHO was requested vide letter No.1737/Dt.30.01.2019 under Annexure-7 to revisit the documents pertaining to such experience submitted with the proposal along with detail compliance report. To ascertain the authentication of the documents submitted by the NGO CARAM upon, which the State Scrutiny Committee has made observation, the CDM&PHO has issued a letter vide No.381/02.02.2019 to the Executive Director, CARAM, Bhubaneswar to submit the relevant documents supporting to such experience. Furthermore, Managing Director, Kalinga Hospital, Bhubaneswar, The Chief of the office/Managing Director, BYL Nair Hospital, Mumbai, The Chief of the office/Managing Director of AIIMS, New Delhi and the Director, Capital Hospital, Bhubaneswar have been requested by the Chief District Medical & PH Officer, Dhenkanal vide letter No. 447/Dt.20.02.2019 to submit the reliability of the documents relating to their hospital submitted by NGO CARAM. The response from NGO CARAM as well as the above institutions not yet been received by the CDM&PHO, Dhenkanal. Further, another reminder letter has been issued by the CDM&PHO, Dhenkanal vide letter No.1784 dated 31.07.2019. Hence, the selection process is still under consideration.*
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> *15. That with regard to the averments made in paragraph-5 of the writ petition, it is submitted that*

Memo No.979/Dt.17.04.2019 of the Chief District Medical & PH Officer, Dhenkanal was issued in compliance to the letter No.2392/Dt.12.02.2019 under Annexure-4 of NHM where extension was allowed for the ongoing PHC (N) Management projects upto 31/03/2019 due to delay in the process of selection for engagement of new agencies as per the said advertisement made in 2018. The Selection process is under consideration and no award of contract has been sanctioned yet.

16. That with regard to the averments made in paragraph-6 of the writ petition, it is submitted that since the selection process is under consideration, no award of contract in favour of the Opp. Party No.5 has been given till now."

9. In course of hearing, learned counsel for the petitioner contended that since the tender process has been stalled, the same may be decided by the opposite party-authorities in accordance with law.

10. In view of such position, this Court disposes of the writ petition directing opposite party no.4 to take a decision with regard to the tender already floated for the purpose and the entire exercise shall be completed as expeditiously as possible preferably within a period of one month from the date of communication/production of the certified copy of this order. The interim order dated 09.07.2019 stands vacated.

12. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Alok/Subhasmita

(G. SATAPATHY)
JUDGE