

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 15307 of 2022

Banamali Mishra

.....

Petitioner

Mr. S.S. Rao, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. P.P. Mohanty, AGA

Mr. T. Nanda, Adv. (O.P. No.7)

CORAM:

DR. JUSTICE B.R. SARANGI

MR JUSTICE S.K. MISHRA

ORDER

28.06.2022

Order No.

02.

This matter is taken up by hybrid mode.

2. Heard Mr. S.S. Rao, learned counsel for the Petitioner; Mr. Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-Opposite Parties; and Mr. T. Nanda, learned counsel for Opposite Party No.7.

3. The Petitioner has filed this Writ Petition seeking to quash the decision taken in Annexure-11 dated 12.05.2022 and also the consequential order dated 27.05.2022 issued under Annexure-12, by which tagging of new Level-II Transport Contractor appointment for the year 2021-22 has been made.

4. Mr. S.S. Rao, learned counsel for the Petitioner vehemently contended that earlier the Petitioner had approached this Court by filing W.P.(C) No. 41 of 2022 because of the reason that the A.D.M. has decided the matter in a proceeding, which he could not have done as he does not have jurisdiction to decide the same. As such, power has been vested with the Collector to decide the same. Therefore, this Court, vide order dated 21.04.2022, set aside the said decision and remitted the matter back to the Collector for reconsideration. Thereafter, the Petitioner submitted all the

relevant documents before the Collector vide Annexure-9 and on consideration of the same, the Collector passed the order impugned in Annexure-11, by which the tender of the Petitioner has been rejected. It is contended that tender of some other persons was accepted whereas Petitioner's tender has been rejected, as he had approached this Court against the order passed by the A.D.M. It is further contended that some of the persons were not noticed while the impugned decision was taken. Thereby, the entire decision taken by the Collector is illegal, arbitrary and contrary to the provisions of law. Therefore, he seeks for interference of this Court.

5. Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-Opposite Parties contended that the A.D.M. has passed the earlier order in Annexure-7, which was set aside by this Court as he has no competence. Thereafter, on being remand, the Collector applied its mind and passed the order impugned. As such, the documents, which were produced by the Petitioner at the time of submission of tender, were considered and the order impugned was passed. Hence, the documents filed by the Petitioner subsequently at the time of consideration of his tender to rectify the defect, which had incurred at the time of submission of tender, should not have been taken into consideration. Thereby, the Committee headed by the Collector is well justified in passing the order impugned as at Annexure-11. The contention raised by learned Counsel for the Petitioner that some of the bidders have not been noticed, is not correct. As a matter of fact, they had been noticed and were present at the time of consideration of the bid and their names have been reflected in the relevant documents,

and, as such, no illegality or irregularity has been committed by the Collector in passing the order impugned so as to call for interference of this Court.

6. Mr. T. Nanda, learned counsel for Opposite Party No.7 contended that the Collector is well justified in passing the order impugned, which does not require any interference of this Court and, as such, the Petitioner has no right to claim as his bid document is purely defective one. It is further contended that subsequent submission of document cannot cure the defect.

7. Having heard learned counsel for the parties and after going through the records, this Court finds that for transportation of food grains from RRC-Cum-DSC to Retail Points of Balangir, Advertisement was issued by the Opposite Parties. In response to the same, the Petitioner along with others participated in the process of Tender and, as such, the Petitioner, while submitting his Application, had not submitted the required documents, as per the Tender Notice. But subsequently, when the case was considered for allotment of tender, he produced the relevant documents, but the same were not considered by the Tender Committee. Therefore, subsequent submission of relevant documents at the time of consideration of the bid, cannot cure the defect. Thereby, while considering the case of the Petitioner the Committee had taken note of the submission of the Petitioner that at the time of submission of bid even if he had valid documents with him, in hurridness he uploaded an invalid document, i.e., expired fitness Certificate and “as such thinking it a petty mistake his application for appointment of Level-II Contractor for 2021-22 may be considered”. It appears that the fitness Certificate of the

vehicle, i.e., OR 19 D 1745 uploaded in the e-tender was invalid document and violated Clause-2(xiii) and Clause-2(xiv) of tender document. Thereby, the Petitioner was disqualified in Technical bid.

8. In such view of the matter, since the Petitioner was disqualified in technical bid, question of consideration of his case, in view of the documents filed subsequently, does not arise. Therefore, this Court does not find any illegality or irregularity on the face of the order impugned passed by the Collector so as to warrant interference with the same.

9. Accordingly, the Writ Petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Ashok/PCD

