

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 15316 of 2022

Ajaya Kumar Nayak

.....

Petitioner

Mr. N. Panda, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S. Rath, A.S.C.

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

24.09.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Heard Mr. N.K. Panda, learned counsel appearing for the petitioner; Mr. S. Rath, learned Additional Standing Counsel appearing for the State-opposite parties and Mr. S. Mallik, learned counsel appearing for the intervenor.

3. The petitioner is one of the bidders, who participated in the process of tender, pursuant to tender call notice issued by opposite party no.2, and qualified in technical bid. He has filed this writ petition seeking direction to opposite party no.4 to appoint him as Transport Agent, as he is willing to work as per Government Approved Rate of Rs.75/- under Annexure-3.

4. Mr. N.K. Panda, learned counsel for the petitioner contended that since the petitioner has accepted the Government Approved Rate of Rs.75/-, he should be appointed as Transport Agent to carry on business. It is contended that the petitioner and other two candidates participated in the tender process, but the tender papers of one candidate, namely, Agarwal Distributors, Kesinga of Kalahandi were rejected due to non-submission of details in technical bid. Accordingly, the petitioner and another

participant became successful in technical bid. At this stage, the petitioner has approached this Court by filing this writ petition.

5. Mr. S. Rath, learned Additional Standing Counsel appearing for the State-opposite parties contended that the petitioner has not impleaded the contesting person as party to the writ petition. Therefore, the writ petition is not maintainable before this Court and the same should be dismissed.

6. Though M/s. Singal Transport Company through Mr. S. Mallik, learned counsel has filed an application, the same has not been taken into consideration at this stage, because the writ petition filed by the petitioner is defective one, in view of the fact that he has not impleaded the contesting person as party to the writ petition.

7. Considering the contentions raised by learned counsel for the parties and after going through the records, it appears that the petitioner along with other two others participated in the tender process and, as such, he has not made the contesting bidder as a party to the writ petition. Consequentially, the writ petition is defective one in view of judgment of the apex Court in *Afcons Infrastructurre Ltd. v. Nagpur Metro Rail Corporation Ltd.*, (2016) 16 SCC 818, wherein it is held that it would be more appropriate for the Constitutional Court to insist on all eligible bidders being made parties to the proceedings filed by an unsuccessful or ineligible bidder. Meaning thereby, the parties to the bidding proceeding are to be impleaded before passing any order at the behest of any of the person, who challenge the action of the authority concerned.

8. Taking into consideration the law laid down by the apex

Court in *Afcons Infrastructurre Ltd.* (supra), the writ petition is dismissed for non-joinder of party.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Alok/Subhasmita

