

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 15857 OF 2022

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Jogendra Nayak Petitioner

-Versus-

State of Odisha and others Opp. Parties

For Petitioner : Miss. Deepali Mahapatra,
Advocate

For Opp. Parties : Mr. S.N. Nayak,
Addl. Standing Counsel
[O.Ps. 1 & 2]

M/s. Jitendra Mohapatra,
S. Mohapatra, K. Mohanty
and A.K.Mishra, Advocates.
[O.P. No.4]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HON'BLE MR. JUSTICE SANJAY KUMAR MISHRA**

DECIDED ON : 30.06.2022

DR. B.R. SARANGI, J. The Petitioner, by means of this Writ
Petition, seeks to quash the letter dated 24.06.2022 at
Annexure-3 issued by Opposite Party No.3 and to issue

direction to the Opposite Parties to declare the Petitioner as successful bidder in the auction held on 21.06.2022 pursuant to Car Festival Quotation Call Notice No.8669 dated 13.06.2022 at Annexure-1.

2. The factual matrix of the case, in a nutshell, is that Opposite Party No.3-Executive Officer, Puri Municipality, Puri, issued Car Festival Quotation Call Notice No.8669 dated 13.06.2022 at Annexure-1 inviting sealed quotations from the intending persons/ agencies for auction of “Temporary Stalls from Badasankha to Gundicha Temple” during Car Festival 2022. As per the said notice, the intending persons were to visit www.purimunicipality.nic.in & www.puri.nic.in and download the auction papers along with the terms and conditions made available on the above website from 11.00 A.M. of 13.06.2022 up to 5.00 P.M. of 20.06.2022. It was also stipulated in the Notice that the quotation should reach the Office of Opposite Party No.3 by Registered Post/Speed Post on or before 21.06.2022 by 3.00 P.M. and the same would be opened on 21.06.2022

at 4.00 P.M. in presence of quotationers or their authorized agents. It was also indicated that Puri Municipality Authority would in no way be responsible for delay in reaching the quotations. The terms and conditions were also prescribed in the said Quotation Call Notice.

2.1 Pursuant to said Quotation Call Notice dated 13.06.2022, the Petitioner and Opposite Party No.4 submitted their tender documents within the time stipulated. Their documents were taken into consideration and ultimately Opposite Party No.4 was selected to undertake the work, as per the Quotation Call Notice. Since Petitioner was aggrieved by the selection of Opposite Party No.4, he has approached this Court by filing the present Writ Petition.

3. Miss. Deepali Mohapatra, learned Counsel appearing for the Petitioner, vehemently contended that the Quotation Call Notice at Annexure-1 dated 13.06.2022, specifies certain terms and conditions under Clause-1 to 12, out of which he relied on Clauses-9 and

11, the requirements of which Opposite Party No.4 has failed to satisfy. Therefore, acceptance of quotation of Opposite Party No.4 by the Puri Municipality cannot sustain in the eye of law and the same is liable to be quashed.

4. Mr. S.N. Nayak, learned Addl. Standing Counsel, has defended Opposite Party Nos. 1 and 2 and contended that because of the urgency in the matter, Quotation Call Notice at Annexure-1 was invited by Opposite Party No.3 and it is a matter among Opposite Party No.3, Opposite Party No.4 and the Petitioner.

5. Mr. J.K. Mohapatra, learned Counsel appearing along with Mr. S. Mohapatra, learned Counsel for Opposite Party No.4, vehemently contended that Opposite Party No.4 has complied the Terms and Conditions stipulated in the Quotation Call Notice, more particularly Clauses-9 and 11 and, thereby Opposite Party No.4 has been selected to undertake the work, as per the Quotation Call Notice issued by the Authority under Annexure-1. Consequentially, no illegality or irregularity has been

committed by the Authority by issuing the Work Order in favour of Opposite Party No.4, vide letter dated 24.06.2022 at Annexure-3. Therefore, question of declaration of the Petitioner as the Successful Bidder, as claimed by the Petitioner, cannot sustain in the eye of law. Consequentially, the Writ Application filed by the Petitioner is liable to be dismissed. To substantiate his contention, reliance is placed on the decision of the apex Court in the case of **M/s N.G. Projects Limited v. M/s Vinod Kumar Jain & Ors**, Civil Appeal No. 1846 of 2022 (arising out of SLP (Civil) No. 2103 of 2022), disposed of on 21.03.2022.

6. This Court heard Miss. Deepali Mohapatra, learned Counsel appearing for the Petitioner, Mr. S.N. Nayak, learned Additional Standing Counsel appearing for State-Opposite Party Nos. 1 and 2, and Mr. J. Mohapatra, learned Counsel appearing along with Mr. S. Mohapatra, learned Counsel for Opposite Party No.4. Since Counter Affidavit has already been filed by Opposite Party No.4 and the same has already been exchanged with the

Petitioner, keeping in view the urgency in the matter, as Car Festival 2022 is going to be held tomorrow (01.07.2022), this Writ Petition is being disposed of at the stage of admission with the consent of the parties, without even issuing notice to Opposite Party No.3, who was the Quotation Inviting Authority.

7. Having regard to the factual matrix as well as the rival submissions made by the learned Counsels for the parties, the sole question arose for consideration is whether Opposite Party No.4 has complied the Terms and Conditions stipulated in Clauses-9 and 11 of the Quotation Call Notice, which read thus:-

“9. The agency/person who have past experience of three years on installation of such stalls with work more than Rs.7,00,000/- will be considered.

11. The quotation must be accompanied with a Bank Draft from any Nationalized Bank in favour of the Executive Officer, Puri Municipality, Puri towards cost of auction paper and earnest money deposit (EMD) of amount of Rs.6,000/- + Rs.12,00,000/- respectively.”

8. Clause-9 requires that the agency/person should have past experience of three years on installation

of such stalls with work more than Rs.7,00,000/-. In the Counter Affidavit filed by Opposite Party No.4, it has been specifically stated that Opposite Party No.4 has got vast experience in such type of works since last 18 years. In the year 2008, Opposite Party No.4 had also participated in the auction of stalls during Car Festival and accordingly he was selected in the tender and the work was allotted in his favour. Opposite Party No.4 was also awarded such type of works by the “Odisha Tourism Development Corporation Ltd., Government of Odisha; Eastern Zonal Cultural Centre, Ministry of Culture, Government of India; Director, Airport Authority of India; and the Programmes of Prime Minister and President of India organized by the Government of Odisha”. Therefore, considering the vast experience of Opposite Party No.4, his quotation was accepted and Work Order was issued in his favour.

9. So far as the objection raised with regard to Clause-11 of the Quotation Call Notice, as mentioned above, it has been specifically stated that though

Bandhan Bank is not a Nationalized Bank, but Bandhan Bank was appointed as RBI's agency Bank and authorized as agency Bank of RBI for undertaking Government business. As an agency Bank of RBI, the Bandhan Bank will be able to handle transactions related to collection of State Taxes. As such, the functioning of the Bank in question being authorized by the RBI, the same was duly considered by the Authorities and Opposite Party No.4 was selected and awarded with the work.

10. It is brought to the notice of this Court at the time of hearing that pursuant to the award of the Work Order, the work has already been completed since the Car Festival is scheduled to be held tomorrow (01.07.2022). Thereby, there is no time to go for a fresh auction and, as such, since the work has already been completed, this Court is not inclined to interfere with the same. More so, reliance has been placed, on behalf of Opposite Party No.5, on the judgment of the apex Court in the case of **M/s. N.G. Projects Limited** (supra), wherein at

Paragraphs 22, 23 and 26, the apex Court held as follows:-

“22. The satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. In the tender in question, there were 15 bidders. Bids of 13 tenderers were found to be unresponsive i.e., not satisfying the tender conditions. The writ Petitioner was one of them. It is not the case of the writ Petitioner that action of the Technical Evaluation Committee was actuated by extraneous considerations or was malafide. Therefore, on the same set of facts, different conclusions can be arrived at in a bona-fide manner by the Technical Evaluation Committee. Since the view of the Technical Evaluation Committee was not to the liking of the writ Petitioner, such decision does not warrant for interference in a grant of contract to a successful bidder.

23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or

interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.

26. A word of caution ought to be mentioned herein that any contract of public service should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good. The grant of interim injunction by the learned Single Bench of the High Court has helped no-one except a contractor who lost a contract bid and has only caused loss to the State with no corresponding gain to anyone.”

11. In view of the law laid down by the apex Court, as mentioned above, this Court does not feel inclined to interfere with award of work in favour of Opposite Party No.4 and, as such, the Writ Petition merits no consideration and the same stands dismissed. No order as to costs.

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DR. B.R. SARANGI,
JUDGE

S.K. MISHRA, J. I agree.

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S.K. MISHRA,
JUDGE

Orissa High Court, Cuttack
The 30th June, 2022, Arun/GDS