

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 12440 of 2015

M/s IVT & VECPL (JV)

.....

Petitioner

*Mr. Asok Mohanty, Sr. Adv. along with
Mr. Md. Fauaz, Adv.*

Vs.

*Mahanadi Coalfields Ltd. and
others*

.....

Opposite parties

Mr. R. Sharma, Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

07.03.2022

Order No.

24.

This matter is taken up through hybrid mode.

2. Heard Mr. Asok Mohanty, learned Senior Counsel appearing along with Mr. Md. Fauaz, learned counsel for the petitioner and Mr. R. Sharma, learned counsel for opposite party-MCL.

3. Though a number of intervenors have sought to intervene, and one of them has been allowed to be impleaded, but none is there to represent them.

4. In this case, as it appears, opposite party no.2 issued a tender call notice on 15.04.2015 for the work "Hiring of Pay Loaders for Mechanical transfer of Rom/Crushed/Surface Minor coal from Pit head stocks into Road sale Trucks/Tippers and also into Tippers for Transportation to Railway Siding, at Kulda OCP of B-G Area for a quantity of 166,00,000 Tes". As per the notice, on 25.05.2015, the price bid was opened wherein the petitioner was found to be L1 for having quoted a price of Rs.0.63 paise per ton. Aggrieved by the inaction of the MCL in issuing LOA and work order, the petitioner filed W.P.(C) No.11499 of 2015. In the

said case, vide order dated 02.07.2015, notice was issued through special messenger. Even though the said notice was received by the opposite parties on 06.07.2015, but on the very same day the tender was cancelled on the ground that the offer rate of the L1 bidder, i.e., the petitioner was abnormally low. As a consequence thereof, the said writ petition was withdrawn. Thereafter, the petitioner filed this writ petition on 08.09.2015, challenging cancellation of tender, which was made vide letter dated 06.07.2015. Subsequently, opposite party no.2 issued tender call notice dated 28.09.2015 in respect of the very same work, but on 05.10.2015 the same was cancelled due to wrong creation. As a matter of fact, the present writ petition has been filed challenging the tender call notice dated 15.04.2015, as per which the work was to be completed within 1095 days. As it appears, while issuing notice, vide order dated 10.11.2015, this Court passed interim order to the extent that the process of e-tender notice dated 28.09.2015 would be subject to further orders that may be issued by the Court and no work order shall be issued by the opposite parties pursuant thereto without an order of this Court. But subsequently, the said order was clarified on an application filed by the opposite parties, vide order dated 20.01.2016, in which this Court passed following orders:-

“Under the circumstances and having heard learned counsel appearing for the parties, it appears to be expedient and in the interest of justice that the final bids pursuant to the fresh tendering process should be opened after inviting all the bidders to remain present in person or through representative at the appointed time and place. The result of assessment of the financial bids needs to be submitted to this Court by the opposite party-Company on the next date of hearing and in the meantime, no contract be awarded to any of the parties

to the bidding. Accordingly, hearing is adjourned to 16.02.2016 as jointly suggested by the learned counsel for the parties.”

5. Subsequently, Misc. Case No.2192 of 2016 was filed by the opposite parties seeking modification of the order dated 20.01.2016 and, as such, the said order was clarified to the extent that all the bids which were found to be valid be opened within a period of three weeks from today and the result be submitted to this Court as had been directed vide order dated 20.01.2016. Pursuant to such order, though bids have been opened, but the same were not finalized and, as such, in the meantime, more than seven years have passed and the period of contract being 1095 days, by efflux of time, the writ petition has become infructuous.

6. Mr. Asok Mohanty, learned Senior Counsel appearing along with Mr. Md. Fauaz, learned counsel for the petitioner contended that the petitioner had quoted lowest price but as because the offer rate was abnormally low, the tender was not settled in favour of the petitioner. It is contended that the work has not yet commenced and, therefore, the period of contract should be counted from the date it is commenced and, as such, even though 1095 days was fixed, that itself cannot lapse.

7. Mr. R. Sharma, learned counsel for opposite party-MCL contended that the period of 1095 days was to commence from the date of issuance of tender, i.e., 15.04.2015 and, as such, the said period has already over. It is contended that since the period has already over, it is not within his knowledge as to what is the stage of settlement of the tender in favour of anybody.

8. In the above view of the matter, since this Court passed interim order restraining the opposite parties not to award the tender in anybody's favour, this Court is not inclined to decide the legality and propriety of the impugned order of cancellation of tender at this stage, as because by efflux of time, the price index has already gone up and, as such, the opposite parties have already floated fresh tender in the meantime. Therefore, this writ petition stands disposed of permitting the opposite parties to go for fresh tender by cancelling the tender of the year 2015. Needless to say if the petitioner has any grievance, it may pursue its remedy before the appropriate forum in terms of the contract itself.

9. With the aforesaid observation and direction, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Ashok