

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 20272 of 2021

*Sunil Kumar Sahoo*

.....

***Petitioner***

*Mr. M. Mishra, Adv.*

Vs.

*Principal Secretary to Government,  
Panchayatraj and Drinking Water  
Deptt. Govt. of Odisha and others*

.....

***Opposite parties***

*Mr. T.K. Pattnaik,*

*Addl. Government Advocate*

**CORAM:**

**DR. JUSTICE B.R. SARANGI**

**MR. JUSTICE V. NARASINGH**

**ORDER**

**22.02.2022**

**Order No.**

04.

This matter is taken up through hybrid mode.

2. Heard Mr. M. Mishra, learned counsel for the petitioner; Mr. T.K. Pattnaik, learned Addl. Government Advocate and Mr. Das, learned counsel on behalf of Mr. S. Mohanty, learned counsel for opposite party no.5.

3. The petitioner has filed this writ petition seeking to quash the acceptance of tender submitted by opposite parties no.5 and 6, as they were not qualified and further seeks to quash the work order issued in favour of opposite party no.6 under Annexure-7, and to issue direction to the opposite parties no.1 to 4 to make fresh tender for the selfsame work within a stipulated time.

4. Mr. M. Mishra, learned counsel for the petitioner contended that the selection of opposite parties no.5 and 6, cannot sustain in the eye of law, as they were not qualified. Since the bids of the opposite parties no.5 and 6 were accepted, the petitioner has approached this Court by filing the present writ petition on 26.07.2021 and seeks interference of this Court.

5. Mr. T.K. Pattnaik, learned Addl. Government Advocate contended that the petitioner, having participated in the tender

process and having not come out successful, and after the work has been awarded in favour of opposite parties no.5 and 6 fixing the date of completion of said work as 23.12.2021, has approached this Court by filing the present writ petition. Therefore, the claim of the petitioner, that opposite parties no.5 and 6 are not eligible to participate in the bid, at this point of time cannot sustain, as the petitioner had never raised such question during the process of selection before the authority concerned. Therefore, the subsequent steps taken by the petitioner challenging such tender cannot sustain in the eye of law.

6. Mr. Das, learned counsel appearing on behalf of Mr. S. Mohanty, learned counsel for opposite party no.5 contended that as per the terms and conditions of the agreement no.69 P1 of 2021-22, stipulation was made for completion of work on 23.12.2021 and, as such, opposite party no.5 has already completed the work. Thereby, the writ petition has to be dismissed.

7. Having heard learned counsel for the parties and after going through the records, this Court finds that the Government of Odisha in Panchayatiraj and Drinking Water Department issued a detailed bid document for the work "Execution for Retrofitting of Rural Piped Water supply schemes to village Kalapanchana under Nimapara Block" under Rural Water Supply and Sanitation Organization vide Annexure-1, fixing six months time limit for completion of such work because of urgency involve. Pursuant to such tender, the petitioner and opposite parties no.5 and 6 participated in the process of tender. Thereafter, when opposite parties no.5 and 6 were selected, the said work was awarded in

their favour by the authority stipulating to complete such work within a period six calendar months and date of commencement of work was fixed to 24.06.2021 and date of completion of work was fixed to 23.12.2021. Therefore, if the petitioner was aware of the fact that opposite parties no.5 and 6 were not eligible to participate in the process of tender, he could have raised objection during the process of tender as per the terms and conditions of the tender itself. Having not done so, it can be safely inferred that the petitioner participated in the process of tender and having not come out successful, has approached this Court by filing the present writ petition.

8. It is well settled law laid down by the apex Court in ***Madan Lal and others v. State of Jammu and Kashmir and others***, AIR 1995 SC 1088, that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.

9. In ***Om Prakash Shukla v. Akhilesh Kumar Shukla***, AIR 1986 SC 1043, it has been clearly laid down by a Bench of three learned Judges of the apex Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in the examination, he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Apart from the above, while entertaining this writ petition, this Court, vide order dated 02.08.2021 in I.A. No. 9317 of 2021, directed that the work order issued vide Annexure-7 would be

subject to the result of the writ petition. As such, after the order was passed on 02.08.2021, this matter was never listed before this Court and listed only on today, i.e., 22.02.2022. More so, by this time, the construction period has already been over and, as such, the work has already been completed, as has been placed by the counsel appearing for opposite party no.5 before this Court. Therefore, this Court is of the considered view that since the petitioner with eyes wide open and without any objection participated in the process of tender and merely because he was not come out successful, he cannot turn round and challenge the very same tender. As such, at his behest, the writ petition is not maintainable.

11. Accordingly, the writ petition is dismissed.

**(DR. B.R. SARANGI)**  
**JUDGE**

**(V. NARASINGH)**  
**JUDGE**

*Ashok*