

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 19679 of 2020

*M/s. Maa Chandi Stone
Crushing*

.....

Petitioner

Mr. S.S. Das, Sr. Advocate

Vs.

Union of India and others

.....

Opposite Parties

*Mr. J. Nayak, CGC (O.P.Nos.1 to 5)&
Mr. S.R. Mohanty, Advocate (O.P. No. 6)*

CORAM:

**DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO**

ORDER

10.05.2022

Order No.

17.

This matter is taken up through hybrid mode.

2. Heard Mr. S.S. Das, learned Senior Advocate appearing for the petitioner; Mr. J. Nayak, learned CGC appearing for opposite party nos.1 to 5 and Mr. S.R. Mohanty, learned counsel appearing for opposite party no.6.

3. The petitioner has filed this writ petition seeking to quash the order dated 05.08.2020 under Annexure-7, by which the representation of the petitioner to cancel the bid of opposite party no.6 was disallowed. The petitioner has further prayed for quashing of the decision of the opposite parties holding opposite party no.6 as L-1 bidder.

4. Mr. S.S. Das, learned Senior Advocate appearing for the petitioner contended that pursuant to the tender invited by opposite parties 1 to 5 on 26.02.2020, the petitioner along with opposite party no.6 and others participated in the tender process. During the process of selection, the conditions of the tender was changed, for which opposite party no.6 got selected. He further contended that this case is fully covered by the judgment of this Court in the case of *Prafulla*

Kumar Pradhan v. State of Odisha and others, 2017 (I) OLR 108 and of the apex Court in the case of **Vidarbha Irrigation Development Corporation v. M.s Anoj Kumar Garwala**, Civil Appeal No. 1049 of 2019 arising out of SLP (C) No. 26811 of 2018 disposed of on 23.01.2019.

5. Mr. J. Nayak, learned Central Government Counsel contended that during pendency of the writ petition, the work has already been completed by opposite party no.6.

6. Mr. S. R. Mohanty, learned counsel appearing for the opposite party no.6 also contended that the work has already been completed pursuant to the tender invited by the authorities and if any step is taken at this stage, the same will become academic in nature. As a consequence thereof, he prayed for dismissal of the writ petition.

7. Having heard learned counsel for the parties and after going through the record, since the petitioner has challenged the change of conditions of the tender process in the midst of the tender, which disentitle the similarly situated persons to participate in the tender, such action is contrary to the ratio decided by this Court in the case of **Prafulla Kumar Pradhan** (supra). This Court, at paragraph-24 of the said judgment observed as follows:-

“By giving relaxation to Sub-clause (i) of Clause (6) at the midst of the tender process, many other similarly situated persons have been debarred from participating in the tender process, as they found themselves ineligible to offer their bid when it was invited. If such subsequent relaxation is allowed to stand and benefit of such relaxation is extended to opposite party no.4 only, it would amount to unequal treatment in favour of opposite party no.4, which is unconstitutional and impermissible in law.

Similar view has also been taken by the apex Court in the case of **Vidarbha Irrigation Development Corporation** (supra).

8. Be that as it may, in view of the position that the work has already been completed, by efflux of time the writ petition has become infructuous. However, it is made clear that when ever, the opposite parties 1 to 5 will issue fresh tender in future, they should be very careful and adhere to the ratio decided in the cases mentioned above.

9. With the above observation/direction, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

Arun/Bichi

(SAVITRI RATHO)
JUDGE

