

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 30911 of 2021

M/s. Bhabani Security Agency

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Petitioners

Md. Golam. Madani, Adv.

Vs.

State of Odisha and Anr.

.....

Opposite parties

Mr. T. Patnaik, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

08.04.2022

Order No.

02

This matter is taken up through hybrid mode.

2. Heard Mr. G. Madani, learned counsel for the petitioner and Mr. T. Patnaik, learned Additional Standing Counsel for the State.

3. The petitioner has filed this writ petition seeking to quash the tender cancellation notice dated 18.08.2021 under Annexure-10 issued by opposite party no.2-Chief District Medical & Public Health Officer, Bhadrak and to issue direction to opposite party no.2 to execute the agreement in terms of Annexure-1, by declaring the fresh tender call notice issued vide advertisement no.10 of 2021 dated 23.09.2021 as illegal.

4. Mr. G. Madani, learned counsel for the petitioner contended that pursuant to request for proposal issued by opposite party no.2 on 03.12.2020 for engagement of security personnel at different hospitals of Bhadrak, the petitioner participated in the bid process. The technical bid was opened on 18.12.2020 and the petitioner was found qualified. When financial bid was opened on 30.03.2021, L & K Security Service was found to be L1 and the

petitioner as L2. The L1 bidder L & K Bhubaneswar declined to work in view of Clause-4.3 of the request for proposal, as it had already accepted work order of maximum five districts in the meantime. As a consequence thereof, opposite party no.2 issued a letter on 04.06.2021 to the petitioner to give consent letter to accept the work order. On 08.06.2021, the petitioner submitted the letter of acceptance of work order and declaration, as required under Annexure-3, vide Annexure-4 series. On 17.06.2021, opposite party no.2 directed the petitioner to deposit Rs.8,65,991/- as performance security, to which the petitioner responded to by depositing the said amount. Opposite Party no.2 acknowledged the acceptance of performance security amount on 01.07.2021 and directed the petitioner to sign the agreement. Thereafter, on 07.07.2021, the petitioner submitted a list of man-power, as required by opposite party no.2 and as a consequence thereof, on 23.07.2021, the petitioner requested opposite party no.2 to sign the agreement to work. Without doing so, opposite party no.2 issued cancellation notice dated 18.08.2021 stating therein that due to unavoidable circumstances the advertisement no.14 of 2020 dated 03.12.2020 is cancelled, which is under challenge in this writ petition. In support of his contentions, he has relied upon *M/s. Sical Logistics Ltd. V. Mahanadi Coalfields Ltd*, 2017 (II) ILR-CUT-1035.

5. Mr. T. Patnaik, learned Additional Standing Counsel for the State, referring to counter affidavit, contended that the cancellation was made on the basis of enquiry report submitted by the Additional District Magistrate, Bhadrak to the Collector & District Magistrate, Bhadrak. Thereby, no illegality or irregularity

has been committed by opposite party no.2 in cancelling the tender, so as to cause interference by this Court.

6. Having heard learned counsel for the parties and after going through the records, it appears that the petitioner was the second highest bidder, pursuant to the request for proposal under Annexure-1 for engagement of security personnel. As L1 bidder declined, the petitioner on being called upon deposited performance security amount of Rs.8,65,991/- which was accepted by opposite party no.2. But all on a sudden, opposite party no.2 cancelled the advertisement by issuing notice on 18.08.2021. Before issuing such notice, no opportunity of hearing was given to the petitioner and no enquiry was also conducted to that effect. For the first time, in the counter affidavit, a plea has been taken that the tender advertisement was cancelled on the basis of enquiry report submitted by the Additional District Magistrate, Bhadrak to the Collector, Bhadrak. Therefore, it is contended that such action of opposite party no.2 is not acceptable, in view of law laid down in ***Gangadhar Jena v. State of Odisha*** (W.P.(C) No.19914 of 2016). The reason for cancellation of tender advertisement has been shown as “due to unavoidable circumstances”. Such a reason cannot sustain in the eye of law, in view of the judgment of this Court in ***M/s. Sical Logistics Ltd.*** (supra), wherein this Court, by referring to various judgments of the apex Court, as noted in paragraph-10 of the said judgment, came to a conclusion that since the order of cancellation suffers from non-providing of reasons, the same cannot sustain in the eye of law.

7. In view of such position, this Court is of the considered view that the issuance of impugned tender cancellation notice

under Annexure-10 dated 18.08.2021 cannot sustain in the eye of law. Thereby, the same is liable to be quashed and hereby quashed. It is open to opposite party no.2-Chief District Medical & Public Health Officer, Bhadrak to take necessary steps in accordance with law.

8. With the above observation and direction, the writ petition stands disposed of.

9. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Alok/Sukanta

(SAVITRI RATHO)
JUDGE

