

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 31891 of 2021

Neta Security Service Pvt. Ltd.

.....

Petitioner

Mr. B.P. Pradhan, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. P.P. Mohanty, AGA

Mr. B.P. Tripathy, Adv.[O.P. Nos.4 & 5]

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

26.09.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. B.P. Pradhan, learned counsel for the petitioner; Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties; and Mr. B.P. Tripathy, learned counsel for opposite parties no.4 and 5.

3. The petitioner has filed this writ petition seeking to quash the decision/order of blacklisting and forfeiture of EMD dated 11.01.2021 (Annexure-4) passed by opposite party no.6 and communication dated 05.04.2021 (Annexure-5) issued by opposite party no.5.

4. Mr. B.P. Pradhan, learned counsel for the petitioner contended that opposite parties no.4 and 5 passed order of blacklisting the petitioner for an indefinite period from 11.01.2021 and, as such, the said order has been passed without any application of mind. More so, no such condition is stipulated in the tender document for blacklisting the petitioner for not carrying out any part of the contract itself. It is further contended that though the opposite parties have blacklisted the petitioner-company as per the OPWD Code, but the same is not applicable to

the petitioner-company.

5. Mr. B.P. Tripathy, learned counsel for opposite parties no.4 and 5 contended that since there is non-compliance of the condition stipulated in the tender document, action has been taken against the petitioner and accordingly the petitioner-company has been blacklisted w.e.f. 11.01.2021. Thereby, no illegality or irregularity has been committed by the authority so as to warrant interference by this Court.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that opposite party no.4 issued a tender call notice on 17.12.2020 inviting sealed tenders from intending limited company/private limited company/NGO (registered with Section 8 of the Companies Act)/Societies for sanitation work of Malkangiri Municipality for a period of three years. Subsequently, corrigendum was issued on 23.12.2020 by the Executive Officer, Malkangiri Municipality enhancing the turnover limit from one crore to five crores. Pursuant to such tender call notice, the petitioner along with other bidders submitted their bid. On 06.01.2021, the bids were opened by the tender committee. After opening of bids, the tender committee found that seven numbers of bidders have participated in the tender process and have submitted their bids within the scheduled date and time fixed in the tender call notice. On the very same day, technical evaluation of bids was done. During technical evaluation, out of seven number of bidders, four number of bidders, namely, Neta Security Services Pvt. Ltd, the petitioner herein, Manju Services, Surendra Barik and Chandan Security Services were qualified and rest three bidders were disqualified.

Subsequently, on the very same day, the financial bid evaluation was conducted. After the financial bid evaluation, the petitioner was declared as L-1, Manju Services was declared as L-2, Chandan Security Service was declared as L-3 and Surendra Barik was declared as L-4. Thereafter, on the basis of the grievance petition filed by one Manoj Kumar Barik, Ex-Vice Chairman Malkangiri Municipality, tender committee meeting was held on 11.01.2021 under the Chairmanship of Administrator, Malkangiri Municipality. In the said grievance petition, Manoj Kumar Barik submitted a copy of audited financial statement for the financial year 2018-19 audited by S. Panda & Co. (Chartered Accountant), Bhubaneswar of the petitioner-company. After scrutiny of the tender submitted by the petitioner, the tender committee found that the financial statement submitted by the petitioner for the financial year 2018-19 has been audited by Chartered Accountant Sitaram Sahoo and Co. Due to mismatch of the name of Chartered Accountant, the tender committee issued a letter to one Company Secretary for obtaining such report along with audited financial statement of the petitioner-company from the MCA portal for the financial year 2017-18 and 2018-19. After obtaining such report along with audited financial statement for the financial year 2017-18 and 2018-19, the tender committee found that the petitioner-company has submitted false audited financial statement for the financial year 2017-18 and 2018-19. Accordingly, the tender committee blacklisted the petitioner-company and forfeited the EMD money and issued letter to Sitaram Sahoo and Co. (Chartered Accountant), Bhubaneswar regarding information about the false audited statement submitted by the petitioner-

company. Consequentially, the tender committee awarded the contract to L-2 bidder, namely, Manju Services for sanitation work of Malkangiri Municipality. But fact remains, on the basis of the decision taken by the tender committee, the petitioner-company was blacklisted w.e.f. 11.01.2021 and, as such, the blacklisting period is for an indefinite period. More so, on perusal of the tender document, it appears that there is no provision for blacklisting the contractor for non-compliance of any of the condition stipulated in the tender document itself.

7. In the above view of the matter, the order of blacklisting and forfeiture of EMD dated 11.01.2021 (Annexure-4) passed by opposite party no.6 and communication dated 05.04.2021 (Annexure-5) issued by opposite party no.5, cannot sustain in the eye of law and are liable to be quashed and are hereby quashed. The matter is remitted back to the tender committee of opposite party no.4 to take fresh steps and pass appropriate order in accordance with law by affording opportunity of hearing to all the parties.

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

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE