

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 26684 of 2022

Maa Biraja Traders, Jajpur

.....

Petitioner

Mr. A. Sanganeria, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

12.10.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. A. Sanganeria, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the notice no.3663 dated 15.09.2022 under Annexure-12, by which opposite party no.2 has cancelled the tender awarded to the petitioner, and further to issue direction to the opposite parties no.2 & 3 to consider its tender.

4. Mr. A. Sanganeria, learned counsel for the petitioner contended that the Tender Inviting Committee, having found the petitioner as L1 bidder, had decided to award the contract for housekeeping and cleaning services as per RFP after due approval of the Collector & District Magistrate, Jajpur. But what had weighed in the mind of the authority that was not known to the petitioner and it was not called upon for negotiation and ultimately the tender was cancelled. Aggrieved by such action, the petitioner

has approached this Court by filing this writ petition.

5. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties vehemently contended that as per the request for proposal, Form-F-4 and Form-F-5 are to be complied with by the petitioner. But the petitioner submitted a letter dated 25.08.2022 under Annexure-9 contending that it will not ensure availability of equipment, instrument & consumable as per F4 & F5 of new tender. Though the petitioner was agreeable to perform the work as per conditions of 2018, but due to non-compliance of the conditions, the tender committee unilaterally cancelled the tender and went for a fresh tender. Therefore, no illegality or irregularity has been committed by the authority in cancelling the tender.

6. Having heard learned counsel for the parties and after going through the records, it appears that the petitioner was L1 bidder and, as such, the tender committee decided to award the work in favour of the petitioner. But as is evident from record, since the petitioner was not willing to ensure availability of equipment, instrument and consumable as per Form F4 and F5 of new tender, decision was taken to cancel the tender. Needless to say, the petitioner is agreeable to perform the contract work, pursuant to rate fixed in 2018. But by incorporating certain clauses, which are detrimental to the interest of the petitioner, rejection of the bid of the petitioner is absolutely contrary to the provisions of law. More so, while cancelling the tender, the petitioner was not called upon by opposite party no.3 to advance its defence. If that be so, behind the back of the petitioner, the order of cancellation should not have been passed by the authority. Even though the petitioner made

correspondence, vide Annexure-9 dated 25.08.2022, it was not called upon for negotiation, for which there was no occasion for the petitioner to know about the requirement of the authority. If the petitioner had been called upon, it could have known conclusion with regard to terms and conditions to be performed by it. Without disclosing the mind of the authority in the process of negotiation, if the authority proceeded to cancel the tender assuming that the petitioner is not able to do the work as per the new tender Form F4 and F5, that itself cannot sustain in the eye of law.

7. In that view of the matter, in the interest of justice, equity and fair play, this Court directs opposite parties no.2 & 3 to call upon the petitioner for negotiation so as to perform the work in question. Since there is already delay in allotment of work, this Court thinks it proper to direct that the petitioner shall appear on 27.10.2022 at 10.30 AM before opposite parties no.2 & 3 at Collectorate, Jajpur so that they can take decision by passing appropriate order by giving opportunity of hearing to the petitioner.

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

9. A copy of the order be handed over to Mr. P.P. Mohanty, learned Additional Government Advocate for compliance.

(DR. B.R. SARANGI)
JUDGE

Alok/Subhasmita

(G. SATAPATHY)
JUDGE