

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 28815 of 2022

Mukesh Kumar Agrawal

.....

Petitioner

Mr. A. Agarwal, Adv.

Vs.

State of Orissa and others

.....

Opposite Parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

01.11.2022

Order No.

01.

This matter is taken up through hybrid mode.

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

3. The petitioner has filed this writ petition seeking to quash Annexure-2 dated 17.09.2022, whereby bid of the petitioner has been rejected, as well as Annexure-9 dated 14.10.2022, whereby representation of the petitioner has been rejected, and to issue direction to opposite party no.3 to consider his case for the purpose of participation from the financial bid stage.

4. Mr. A. Agarwal, learned counsel appearing for the petitioner contended that pursuant to the notice for National Competitive Bidding through e-procurement vide Bid Identification No.BPT/Online-10/2022-23 issued by the Chief Construction Engineer, Rural Works Circle, Bhawanipatna under Annexure-1 dated 11.07.2022, the petitioner participated in the process of bid, which was of two bids system. Even though the petitioner supplied the relevant documents, but his bid was declared as disqualified in technical evaluation due to inadequate machineries as per Clause-9 of the DTCN, vide Annexure-2 dated

17.09.2022. It is contended that to that extent the petitioner had apprised the authority by filing a representation. Since no action was taken by the authority, the petitioner approached this Court by filing W.P.(C) No. 25727 of 2022, which was disposed of vide order dated 29.09.2022 with a direction to the opposite party-authority to consider the representation filed by the petitioner. In pursuance of the order passed by this Court, the order dated 14.10.2022 vide Annexure-9 has been passed by the authority rejecting the grievance of the petitioner. It is further contended that in compliance of Clause-9 of the DTCN, the petitioner has supplied all the relevant documents, but only one invoice was left out, for which the technical bid of the petitioner should not have been rejected. Even though the petitioner made request before the authority to take into consideration the same, but the same was not considered. Thereby, it is contended that the opposite parties have acted arbitrarily and unreasonably and, as such, this Court should interfere with the same.

5. Mr. P.P. Mohanty, learned Addl. Government Advocate appearing for the State-opposite parties vehemently contended that since there was non-compliance of the provisions contained in Clause-9 of the DTCN, the technical bid of the petitioner was rejected on 17.09.2022. It is further contended that the claim made by the petitioner that he has apprised the authority by filing representation which is pending, is not correct since in pursuance of the order passed by this Court in the earlier writ petition, the grievance of the petitioner has been considered and as because the petitioner has not complied the condition stipulated in Clause-9 of the DTCN, the same has been rejected. Thereby, no illegality or irregularity has been committed by the authority in passing the

order impugned.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that pursuant to notice inviting tender for road works in Odisha, National Competitive Bidding through e-procurement vide Bid Identification No.BPT/Online-10/2022-23 issued by the Chief Construction Engineer, Rural Works Circle, Bhawanipatna under Annexure-1 dated 11.07.2022, the petitioner participated in the process of bid. Clause-9 of the DTCN, reads as under:-

“(i) The contractors are required to furnish evidence of ownership of principal machineries/equipments in Schedule-C as per Annexure-1 failing which the tender shall be liable for rejection.

(ii) In case the contractor executing several works he is required to furnish a time schedule for movement of equipment/machinery from one site to work site of the tendered work in Annexure-IV of Schedule-C.

(iii) The contractor shall furnish ownership documents for those machineries which he is planning to deploy for the tendered work if these are not engaged and produce certificate from the Executive Engineer as per Annexure-III of Schedule-C under whom these are deployed at the time of tendering as to the period by which these machines are likely to be released from the present contract. Certificate from the Executive Engineer of Government of Odisha or Engineer-in-Charge of the project (in case of non-government projects) under whose jurisdiction the work is going on, shall not be more than 90 days old on the last date of receipt of tender.

(iv) In case the contractor fails to mobilize the machineries within a period as to be able to execute an item of work as per original programme which will be part of the agreement, he will be debarred from tendering for a period of 180 days.

(v) The contractor intending to hire/lease equipments/machineries are required to furnish proof of ownership from the company/person providing equipments/machineries on hire/lease along with contracts/agreements/lease deed and duration of such contract. The contracts/agreements/lease deed should be on long term basis for a minimum period equal to the

intended completion period/time period assigned for completion plus 30 days as mentioned in contract data from the last date of receipt of Bid document.”

7. As it reveals, the Contractors are required to furnish evidence of ownership of principal machineries/equipments in Schedule-C as per Annexure-1, failing which the tender shall be liable for rejection and that the contractor intending to hire/lease equipments/machineries are required to furnish proof of ownership from the company/person providing equipment/machineries on hire/lease along with contracts/agreements/lease deed and duration of such contract. Though the petitioner has referred to certain documents stated to have been filed along with the lease agreement, but the same was lack with one document, which is admitted by the petitioner. Due to non-production of the same, the petitioner apprised the authority by filing representation, but before opening of technical bid, his grievance could not be taken into consideration. Therefore, he approached this Court by filing W.P.(C) No.25727 of 2022, which was disposed of vide order dated 29.09.2022 with a direction to the opposite parties to consider the representation filed by the petitioner. In pursuance of the said order, the opposite parties came to a conclusion that the check list prepared by the staff, who have downloaded all documents uploaded in the Web-Portal, reflects that for vibrator Roller (8-10 tone) and Tandem Road Roller (6 to 8 tone), the petitioner has uploaded only lease document and, as such, neither invoice nor detailed particulars of the vehicle was provided. Furthermore, the petitioner has uploaded the lease deed with one Laxmi Chand Mittal to lease out six nos. of machineries with monthly rent basis as noted therein, but the

detailed particular of the vehicle like engine no., chasis no. etc has not been mentioned or clarified. Thereby, the bid submitted by the petitioner was found defective one and as a consequence thereof his technical bid was rejected. It is contended that since the petitioner inadvertently has not filed those documents, the same should have been taken into consideration. But this Court is of the considered view that this Court cannot act as the tendering authority to enlist any document when technical bids of the parties are opened. More so, the jurisdiction of the Court under Article 226 of the Constitution of India, so far as tender matter is concerned, is very limited and, as such, this Court is only examining the decision making process of the tendering authority.

8. In the above view of the matter, this Court does not find any illegality or irregularity committed by the authority in passing the order impugned so as to warrant interference with the same.

9. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(B.P. SATAPATHY)
JUDGE

Ashok/Sangita