

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P (C) No. 30386 of 2022**

***M/s. Sai Vaishnavi Enterprises, .....***  
***Koraput***

***Petitioner***

*Mr. S.N. Dash, Advocate*

Vs.  
***Government of Odisha and .....***  
***others***

***Opposite Parties***

*Mr. P.K. Muduli, AGA*

**CORAM:**

**DR. JUSTICE B.R. SARANGI**

**MR. JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER**

**17.11.2022**

**Order No.**

01.

This matter is taken up through hybrid mode.

2. Heard Mr. S.N. Dash, learned counsel appearing for the petitioner and Mr. P.K. Muduli, learned Additional Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the tender process under Annexure-3 as well as the disqualification letter under Annexure-5. The petitioner has further prayed for a direction to the opposite parties to open the financial bid of the petitioner and to go for re-tender according to the amended Clause-29 of the OPWD Code.

4. Mr. S.N. Dash, learned counsel for the petitioner contended that the rejection of the technical bid of the petitioner as per clause 3.7 (b) and 4.6 (Note) of the DTCN cannot sustain in view of wrong appreciation of the fact by the tendering authority. Therefore, he contended that the price bid of the petitioner should have been opened so as to enable him to

contest with other similarly situated persons.

5. Mr. P.K. Muduli, learned Additional Government Advocate appearing for the State-Opposite parties contended that there is no pleading available in the record itself to indicate there is no violation of clause 3.7 (b) and 4.6 (Note) of the DTCN. It is further contended that the tendering authority is well justified in passing the order and, as such, the financial bid of the petitioner is not liable to be opened as there is non-compliance of the aforesaid provision. Thereby, the writ petition is liable to be dismissed.

6. Having heard learned counsel for the parties and after going through the record, it appears that opposite party no.2 issued Detailed Tender Call notice inviting bid from the intending bidder. Pursuant to such notice, the petitioner participated in the bid by submitting its bid document, but when the technical bid of the petitioner is opened, the petitioner was found disqualified by the Technical Evaluation Committee as per clause 3.7 (b) and 4.6 (Note) of the DTCN.

7. For a ready reference, Clause 3.7 and 4.6 of the DTCN is quoted herein below:-

*“3.7 (a) The bid of the bidders who have been penalized by any Government Organisation in the State of Odisha for non-completion of the work within the scheduled time as per the agreement, during last two financial year, will be rejected.*

*b. The bid of the bidders who are yet to complete the Execution of projects being executed under any **Central/ State Government, or any entity controlled by it** in India even though twice the original scheduled completion period (as mentioned in the agreement) has been expired (reasons being partly or fully attributed to contractor), will be rejected.*

*c. In case of Joint Venture if any of the party falls in the category of 3.7.a and/ or 3.7.b, the bid of the Joint Venture will also be rejected.*

**4.6 Calculation of Assessed Available Bid Capacity:**  
*These stipulations shall apply to all works above Rs.3.00 Crores.*

*Only those Bidders who meet the eligibility criteria as specified in Clause 3.1, test of responsiveness specified in Clause 4.1, evaluation criteria as per clause 4.4 (A) and if their available bid capacity is more than the total bid value shall be shortlisted for financial opening. The available bid capacity will be calculated as under,*

$$\text{Assessed Available Bid capacity} = (A \times N \times 2 - B)$$

*Where*

*A = Maximum value of works executed in any one financial year during the last five financial years (updated to financial year 2022-23 price level) taking into account the completed as well as works in progress.*

*N = Number of years prescribed for completion of the works for which bids are invited.*

*B = Value (updated to the price level of the year indicated in Appendix) of existing commitments and ongoing works to be completed during the next year(s) [Period of completion of the works for which bids are invited].*

*Note: The statements showing the value of existing commitments on-going works as well as stipulated period of completion remaining for each of works listed and to be furnished at Appendix, S No. 1.3 of this document countersigned by the Engineer-in-Charge, not below the rank of an Executive Engineer or equivalent or bidder's Chartered Accountant."*

8. On perusal of the pleading available on record, the petitioner has not substantiated as to how he has complied the clauses as mentioned above, rather it is contended on orally that the petitioner has completed the work and got the incentive, but nothing has been placed on record to that extent as to how he has satisfied the clauses clause 3.7 (b) and 4.6 (Note) of the DTCN. In absence of pleadings available on record, this

Court cannot accept the oral submission made by the learned counsel for the petitioner. Clause 4.6 also stipulates the calculation of assessed available Bid capacity, which has to be done in accordance with the procedure prescribed therein. The petitioner has not substantiated as to how he has complied the Clause 4.6. Since it is purely tender matter, the petitioner is bound by the conditions stipulated in the tender document. As such there is no document placed on record to substantiate that there is no adherence to the conditions stipulated in the DTCN while rejecting the technical bid by the competent authority. This court is not competent to modify any terms and conditions of the tender document.

9. Thus, the relief sought by the petitioner cannot be granted. Accordingly, the writ petition merits no consideration and the same stands dismissed.

**(DR. B.R. SARANGI)**  
**JUDGE**

**(B. P. SATAPATHY)**  
**JUDGE**

*Arun*