

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 38771 of 2021

Tusar Ranjan Acharya

.....

Petitioner

Mr. P.C. Nayak, Adv.

Vs.

State of Odisha and Ors.

.....

Opposite parties

Mr. T. Pattnaik, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

05.04.2022

Order No.

02.

This matter is taken up through hybrid mode.

2. Heard Mr. P.C. Nayak, learned counsel for the petitioner and Mr. T. Pattnaik, learned Additional Standing Counsel for the State-opposite parties.

3. The petitioner has filed this writ petition assailing the inaction of opposite party no.4 in not recommending the bid of the petitioner, who is the 1st lowest bidder in the 2nd tender, and seeks to issue direction to opposite party no.4 to proceed further in finalization of public tender in terms of the tender notice under Annexure-3, as well as guidelines dated 01.01.2015 under Annexure-6, by considering his representation dated 01.10.2021 under Annexure-7, within a stipulated time.

4. Mr. P.C. Nayak, learned counsel for the petitioner contended that the petitioner, being the only tenderer pursuant to second tender issued, his tender documents should have been recommended to the higher authority for approval. Instead of doing so, the authority is sitting tight over the matter and, as such, neither the tender has been cancelled nor any work order has been issued in favour of the petitioner. Therefore, the petitioner has approached this Court by filing this writ petition.

5. Mr. T. Pattnaik, learned Additional Standing Counsel contended that the petitioner was a bidder pursuant to 1st tender call notice issued on 18.03.2021 vide Annexure-1 in respect of the work "Construction of Udyamita Kendra at S.K.S. Pur". Though the petitioner participated in

the tender and on being qualified was called upon to deposit the Additional Performance Security (APS) amount, but he did not deposit the same. Therefore, due to non-depositing the APS amount, the contract was cancelled. Thereafter, fresh tender was issued vide Annexure-3 dated 16.07.2021, where he was the only bidder in respect of the same work. Referring to Annexure-6 it is further contended that if the first bid of the petitioner had been cancelled as single bidder, then his case would have been considered in pursuance of the second tender. But if because of lapses on the part of the petitioner, due to non-deposit of APS amount, the first tender has been cancelled, the petitioner cannot claim to be considered, even though he becomes the lowest tenderer, pursuant to fresh advertisement issued by the opposite parties and, as such, the same is contrary to Rule-29 of Appendix-IX contained in Annexure-6 dated 01.01.2005.

6. Having heard learned counsel for the parties and after going through the record, this Court finds that the petitioner was a tenderer pursuant to Annexure-1 in respect of the work “Construction of Udyamita Kendra at S.K.S. Pur” where he participated and he, having been selected, was called upon to deposit the APS amount. But he failed to deposit the same and because of the non-depositing the APS amount, the tender was cancelled. As a consequence thereof, the second tender was issued on 16.07.2021 vide Annexure-3, in which the petitioner participated and he was the only tenderer in respect of the very same work. Therefore, the petitioner claims that the work should be allotted in his favour, as has been contended by Mr. P.C. Nayak, learned counsel for the petitioner. But fact remains, the first tender was not cancelled because of the single tender, rather it was cancelled as the petitioner being the lowest tenderer, failed to deposit the APS amount. Thereby, in the subsequent tender even if the petitioner qualified as a single bidder, his case should not have been referred to the higher authority for approval in terms of the Rule-29 of Appendix-IX, the office memorandum dated 01.01.2015 vide Annexure-6. For just and

proper adjudication of the case, Rule-29 of Appendix-IX is quoted below:-

“Rule-29 of Appendix-IX- when in response to a notice calling for tenders, only a single tender is received in the first time, the tender shall be cancelled without opening of the bid and fresh tender be invited publicly. If single tender is received, even after retendering then the approval of the next higher authority should be obtained, if the tender is otherwise in order and acceptable.”

7. In the above view of the matter, this Court is of considered view that the first tender having been cancelled due to non-compliance of tender condition by the petitioner by depositing the APS amount, even if the petitioner qualified in the second tender invited for the self same work, he cannot be extended with the benefit of referring the matter to the higher authority for acceptance of his tender, as per the Rule-29 of Appendix-IX, the office memorandum dated 01.01.2015 vide Annexure-6.

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

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE