

Ajoya Kumar Pradhan Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Jan-08-1998

Reported in : AIR1998Ori116; 85(1998)CLT504

Judge : S.N. Phukan, C.J. and ;P.K. Tripathy, J.

Acts : [Constitution of India](#) - Article 14

Appeal No. : O.J.C. No. 17137 of 1997

Appellant : Ajoya Kumar Pradhan

Respondent : State of Orissa and ors.

Advocate for Def. : Das, Addl. Govt. Adv.

Advocate for Pet/Ap. : A.R. Dash, Adv.

Disposition : Petition dismissed

Judgement :

S.N. Phukan, J.

1. The petitioner is an unemployed civil engineering graduate and is a registered Class-A contractor. A notice inviting tenders was issued on 16-9-1997, vide Annexure-1 for construction of vented causeway over Sialjore Nallah at 8th km. on M. R. D.-31 to Jarabaga Road in Sambalpur District. In the tender notice, it was

indicated that the tenderers should possess/procure the machineries required for the work as the department would not supply the machineries. The case of the petitioner is that though he was the lowest tenderer, the contract was not awarded to him.

2. In the counter affidavit, it is not disputed that sealed tenders were invited for the above work. It has been stated that there were eleven tenderers and nine were found valid. It is also not disputed that the tender of the petitioner was the lowest. It has, however, been stated that it was found that the petitioner does not possess the machineries required for the work and the machineries which the petitioner was to obtain were on hire basis. A categorical statement has been made that the petitioner does not even have a truck. According to the opposite parties, the petitioner does not have adequate experience in the present type of construction. Therefore, it was decided to give the contract to the second lowest tenderer, who also reduced the amount.

3. We have heard the learned counsel for the parties.

4. From the letter dated 2-12-1997 (Annexure-1/3) We extract the following :--

'As reported by B.S.R. W. Divn., Deogarh that the 1st lowest tenderer being a graduate Engineer, he has not executed any bridge works earlier. Also does not have his own machineries with him and propose to bring it on hire basis which is uncertain and may not be available during the time of execution. Also the 1st lowest tender quoted 232.89% excess rate for the item No. 18 i.e. ordinary compaction also he has quoted more than 25% less rates in some other items. Hence B.S.R. W. Division, Deogarh has recommended to accept the 2nd lowest tender Sri Bijay Kumar Agrawal. Accordingly Sri Bijay Kumar Agrawal was called for negotiation vide this office letter No. 6459 D/- 2-12-97. The contractor has submitted the negotiation to this office vide his letter No. Nil D/-5-12-97.'

The above would show that the authority applied its mind while awarding the contract to the second lowest tenderer and it cannot be faulted.

5. It has been urged that in view of the provisions contained in rule 3-5-18 (ii) of the (sic) Code, Vol. I. the lowest tenderer should be called for negotiation first. Though the petitioner was the lowest tenderer, he being not qualified, the question of negotiation does not arise.

6. In the additional affidavit filed after hearing, it has been stated that the authorities had not outright rejected the tender of the petitioner and that there was absolutely no precondition regarding owning the machineries, etc. We may state here that the tender of the petitioner was rejected not only on the ground of not owning machineries but also on the ground of lack of experience. Regarding experience in bridge construction, it has been urged that the petitioner had gained some experience in such construction while a student. In our opinion, that is not sufficient inasuch as practical experience is necessary.

7. In *Tata Collular v. Union of India*, AIR 1996 SC 11, principles were laid down by the apex Court, which are as follows :--

(i) The State or any public authority under the control, management or supervision of the State is subjected to the writ jurisdiction relating to any executive decision taken.

(ii) While exercising the writ power, the Court is to find out whether the decision making process has proceeded on the basis of principle of law and reasonableness and the principle of natural justice was duly complied with.

(iii) Whether the action of the State or the public authority was done in safeguarding and due regard to the public interest.

(iv) Whether the State or the public Authority granted equal treatment and made a fair play in the whole of the transaction.

(v) Whether the State or the public Authority acted mala fide in dealing with the subject.

(vi) deviation, if any, made is whether illegal or irregular and in that connection whether allowances can be made in favour of executive discretion.'

8. To sum up, we hold that the State or the public Authority, though subjected to writ jurisdiction while exercising executive powers. the Court should find out whether the decision making process has proceeded on the basis of principles of law and reasonableness; whether principles of natural justice were duly complied with; whether the State or the public authority acted'in safeguarding and with due regard to the public interest; whether it granted equal Treatment and made a fair play in the whole transaction; whether it acted mala fide in dealing with the subject; and whether deviation, if any. made was illegal or irregular and in that connection whether allowances can be made in favour of executive discretion. We have also taken the same view in Parsman Pharmaceutical v. State of Orissa, (1998) 85 Cut LT 21.

9. Coming to the case in hand, the authority decided not to grant the contract in favour of the petitioner as he has no practical experience in construction of bridge. Though it has been urged that construction of ventage causeway over Sialjore Nallah is not the same as construction of a bridge, we are unable to accept the same. Therefore, we hold that there was no arbitrariness. Secondly, the lender of the petitioner was not accepted as he did not have the machineries and the agreement to supply the machineries was uncertain. This is purely an executive decision and we are not inclined to interfere in lite matter.

10. For the reasons stated above, the writ petition has no merit and the same is dismissed. The interim order stands vacated. No costs.

P.K. Tripathy.J.

11. I agree.