

Subas Chandra Panda Vs. Superintending Engineer, Rural Works and ors.

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Court : Orissa

Decided On : Feb-10-2004

Reported in : AIR2004Ori124; I(2005)BC70; 97(2004)CLT734; 2005(1)CTLJ75(Ori)

Judge : Sujit Barman Roy, C.J. and ;A.S. Naidu, J.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : W.P. (C) No. 13329 of 2003

Appellant : Subas Chandra Panda

Respondent : Superintending Engineer, Rural Works and ors.

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : B.K. Mohanti, Adv.

Disposition : Petition dismissed

Judgement :

A.S. Naidu, J.

1. Being aggrieved by the action of the opposite parties in rejecting his technical bid, the petitioner has approached the portals of this Court. Admittedly, Tender Call Notice, vide Annexure - 3 to the Writ petition, was published in the Samaj, an

Oriya daily, on 30th October, 2003 by the Chief Engineer, Rural Works - II, Orissa, Bhubaneswar, opposite party No. 2 inviting tenders from experienced and qualified contractors for construction of road and CD works under Pradhan Mantri Gram Sadak Yojna including maintenance for five years after construction. The Tender Call Notice specifically stipulated the eligibility criteria and provided that the intending contractors should submit two bids in two separate envelopes, one being technical bid and the other being price bid. It was also stipulated in the Tender Call Notice that if a tenderer would be found eligible and his technical bid would be accepted after scrutiny, his price bid would be considered. Clause 4.4.A of the Instructions to Bidders contained in the Bidding Document/Tender Paper Annexure-4 stipulated as follows :

'4.4.A To qualify for award of the Contract, each bidder should have in the last five years;

(a) Achieved in any one year a minimum financial turnover (in all cases of civil engineering construction works only) volume of construction work of at least the amount equal to the estimated cost of works (excluding maintenance cost for five years) for which bid has been invited. The turnover will be indexed at the rate of 8 per cent for a year,

(b) Satisfactorily completed, as prime Contractor, at least one similar work in a year equal in value to one-third of the estimated cost of work (excluding maintenance cost for five years) for which the bid is invited, or such higher amount as may be specified in the Appendix to ITB.'

According to the petitioner it satisfied the criteria stipulated in aforesaid Clause 4.4.A(b) and in support of the same he had furnished the necessary information and certificates from the concerned authorities. In spite of the fact that the petitioner satisfied all the criteria and he being an experienced contractor having executed similar type of works, as would be evident from the information and certificates furnished by him along with the Tender Forms, the opposite parties illegally rejected his technical bid. It is alleged that such action of the opposite parties amounts to not only colourable exercise of power, but also otherwise unjust, illegal and liable to be quashed.

2. After receiving notice, a detailed counter-affidavit has been filed by the opposite parties. In the counter-affidavit it has been specifically stated that the petitioner did not possess the requisite experience and he also did not satisfy the mandatory requirements of Clause 4.4.A. It has also been averred in the counter- affidavit that the petitioner had left certain columns in the pro forma attached to the Tender Paper blank. In view of the fact that the petitioner had not fulfilled all the required eligibility criteria and had not satisfied the basic ingredients of Clause 4.4.A, the authorities have rightly rejected his technical bid. In response to the Tender Call Notice, only two tenders were received and as both the tenderers did not possess the required eligibility and did not satisfy the requirements of Clause 4.4.A, the authorities rejected both the tenders and have published a fresh Tender Call Notice. A submission has also been made contending that as the petitioner has already submitted his tender in response to the fresh Tender Call Notice, the Writ Petition has become infructuous and is liable to be dismissed on that ground alone.

3. In course of hearing, Mr. Mohanti, learned Senior Advocate appearing for the petitioner, forcefully submitted that the petitioner has submitted his tender in response to the fresh Tender Call Notice in consonance with the order passed by this Court in the present case giving him liberty to submit his tender without prejudice to the rights and contentions raised in this Writ petition and as such the submission that the Writ petition has become infructuous is unsustainable.

4. In reply to the other contentions it is submitted by Mr. Mohanty that the petitioner has enclosed the certificate granted by the Executive Engineer of the Department to the effect that the petitioner has the requisite experience in executing similar type of works as stipulated under Clause 4.4.A(b) of the Bidding Documents mentioned above. Rejection of the technical bid of the petitioner only on the ground that he had not filled up the columns in the formats enclosed to the Tender Paper was too technical. In view of the fact that the tender documents submitted by the petitioner contained the certificate of the Executive Engineer; and all the required information were otherwise furnished and available, the authorities ought to have treated the same as substantive compliance with the requirements and accepted the technical bid of the petitioner without rejecting the same on

flimsy ground. According to Mr. Mohanti, the action of the authorities reveals complete non-application of mind.

5. According to learned counsel for the State, what Clause 4.4.A(b) required was that a tenderer must have satisfactorily completed, as prime contractor, at least one similar work in a year equal in value to one-third of the estimated cost of work (excluding maintenance cost for five years) for which the bid was invited and the petitioner did not satisfy the said requirement.

6. This Court in order to appreciate the arguments advanced by both sides had directed the State Counsel to produce the original file relating to tender along with the original tender documents submitted by the petitioner. The documents were made available before us in course of hearing. A perusal of the said documents reveals that there is no dispute that a tenderer had to satisfy the requirements of Clause 4.4.A for acceptance of his technical bid. Admittedly the petitioner, within last five years had executed similar type of work as required under the said Clause. But then the real dispute arises with regard to the stipulation made under Clause 4.4.A(b) which stipulates that a tenderer should have completed similar type of work worth one-third of the estimated cost of work for which the bid was invited within one year, that too within a span of five years. Admittedly the cost of the present tender work was Rs. 3,91,62,000.00 and one-third of the said cost comes to Rs. 1,30,54,000.00. Mr. Mohanti, relying on Annexure- 2 submitted that the petitioner had, in fact, executed work of similar nature, the cost of which was Rs. 1,41 crores and as such he had satisfied the requirements of Clause 4.4.A(b) of the Bidding Documents.

7. A perusal of Annexure - 2 clearly reveals that in fact a contract for Rs. 1,70,74,032.00 was awarded to the petitioner and he was required to complete the said work during the period from 25.4.2002 to 24.3.2003. Annexure - 2 clearly reveals that by July, 2003 the petitioner had executed work the cost of which was Rs. 1,45,28,340.00. Thus it is clear that the petitioner had not completed the said work and had only executed a portion of the same within one year. Clause 4.4.A(b) clearly stipulated that a tenderer should not only have completed a work of similar nature within one year, but also the value of such work should have been

one-third of the work tendered. A close scrutiny of the aforesaid Clause vis-a-vis Annexure-2 makes it abundantly clear that the petitioner had neither completed the work, nor executed the same within one year. Thus, according to us, the petitioner did not satisfy the basic requirements as stipulated under Clause 4.4.A(b) of the Bidding Documents. In view of the aforesaid conclusions, we are constrained to hold that the opposite party-authorities committed no illegality or irregularity in rejecting the technical bid of the petitioner. The decision of the opposite party- authorities does not suffer from unreasonableness, much less Wednesbury's principle of unreasonableness. The said decision, according to us, is not actuated with mala fide or bias and we do not find any justifiable reason to interfere with the same in exercise of our extraordinary jurisdiction under Articles 226 and 227 of the [Constitution of India](#). We are therefore not inclined to interfere in the matter. We dismiss the Writ petition.

Sujit Barman Roy, C. J.

8. I agree.

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