

M/S Process and Offset Co. Vs. State of Orissa and Others

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Court : Orissa

Decided On : Mar-12-2001

Reported in : 92(2001)CLT225

Judge : P.K. Mohanty, J.

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

Appeal No. : O.J.C. 13304 of 2000

Appellant : M/S Process and Offset Co.

Respondent : State of Orissa and Others

Advocate for Def. : M/s K.N. Jena, ;D.K. Mohapatra, ;R. Rath, ;P.K. Parhi and ;P.B. Sinha, Advs.

Advocate for Pet/Ap. : M/s B. Bhuyan and ;B. Samal, Adv.

Disposition : Writ petition dismissed

Judgement :

P.K. Mohanty, J.

1. The petitioner calls in question the award of contract for printing of Primer-II in favour of opp. party No. 5 made by opp. parties 2 to 4 and has prayed for quashing the decision in finalising the contract in favour of opp. party No. 5 with

preference to the petitioner.

2. The fact of the case is that the petitioner is a Printing and Publishing concern and in response to the quotation call notice issued by the Secretary of Zilla Swakhyarata Samiti (opp. party No. 4), submitted its tender for printing of the book, Primer-II. Opp. party No. 5 also had submitted the quotation for printing of the said book. The quotation call notice has been annexed as Annexure-1 to the writ petition. The petitioner had quoted Rs. 10.06 paise per page as per its attached paper sample on 7-9-2000. A copy of which is Annexure-2 to the writ petition. Opp. party No. 5 similarly submitted its rate with paper samples. Opp. party No. 3 in its letter dated 16-9-2000, a copy of which is Annexure-3 called upon the petitioner as well as opp. party No. 5 for negotiation and the date of negotiation was fixed at 4.00 p. m. on 21-9-2000 in the official chamber of the Additional District Magistrate, Bhadrak. The Selection Committee (opp. party No. 3) on consideration of the quotations came to a conclusion that the sample papers submitted by the petitioner and opp. party No. 5 being not identical, they are unable to compare the rates and therefore, issued a corrigendum enabling both the parties to submit their respective rates for printing by using 60 GSM paper for inner page of Century Mills and 80 GSM paper for cover page of J. K. Mill vide their letters in Annexure-3/A, The petitioner as well as opp. party No. 5 revised their quotations and the rates quoted by each of them being Rs. 0.11 paise per page equally. It is stated that the revised quotations of the petitioner and opp. party No. 5 specifically mentioned that in case of non-availability of the papers in the corrigendum, they would use the papers of equivalent quality and price. The Selection Committee held its meeting on 26-9-2000 to consider the revised offer submitted by both the parties, but the Committee proposed acceptance of the quotation of opp. party No. 5 and opp. party No. 2 having accepted the recommendation awarded the contract in favour of opp. party No. 5.

3. The petitioner challenged the said decision of the opp. parties 2 to 4 in O. J. C. No. 10095 of 2000. This Court on consideration, set aside the decision of the President of the Committee to award the contract of printing in favour of opp. party No. 4 (opp. party No. 5 herein) and directed the Selection Committee to consider the offers received by it with reference to the quality of the sample papers

submitted by the respective parties, along with their quotations. It was further directed that if necessary, the Selection Committee may call the Presses which have submitted quotations in the meeting to be held and such exercise should be completed and finalised and recommendation should be made within a period of two weeks from the date of the order. It is alleged by the petitioner that it had submitted a letter dated 7-11-2000 giving his willingness to supply Primer-11 at a cheaper rate than the opp. party NO. 5 by using the same papers and requested for participation in the negotiation for finalisation of the paper quality and price. A copy of the said letter is annexed herewith as Annexure-5.

4. The Secretary of the Zilla Swakhyarata Samiti in its letter dated 10-11-2000 invited the petitioner as well as opp. party No. 5 to attend the Selection Committee, meeting scheduled to be held on 16-11-2000 at 3.00 p. m. in the official chamber of the Additional District Magistrate, Bhadrak. The petitioner asserts that he appeared before the Committee wherein he had got the opportunity to go through the paper samples submitted by opp. party No. 5 and on the said table the petitioner gave his willingness in writing to supply at a lower rate than the opp. party No. 5. A copy of the said letter is Annexure-7 to the writ petition. However, it is stated that though the letter was dated 16-11-2000, it was delivered to the P. A. of Collector on 17-11-2000 as the Collector was busy in some other meeting and similarly the copy of the said letter was also given to the Steno of the Additional District Magistrate and since the P. A. and the Steno did not hand over a receipt showing receipt of the same, a copy of the said letter was also sent through Speed Post to both of them and the same was received by their offices on 18-11-2000. Copies of the said letters dated 16-11-2000 and 18-11-2000 are Annexures 8 and 8/A respectively.

5. The petitioner alleges that the Selection Committee even though was directed to consider the matter with reference to the equality of the papers and if necessary by calling the respective parties to finalise the contract, they have acted illegally and exercised their powers in a colourable pretext since the Selection Committee had taken signature of the petitioner on 16-11-2000 in order to show that they had obeyed the direction of the Court, but in fact they have stuck to their previous decision without considering the offer made by the petitioner. It is further stated

that if they had considered the offer of the petitioner to supply the book at the rate of 7.8 paise per page using the same quality of paper as opp. party No. 5, the State Exchequer would have been benefited by more than Rs. 1,80,000/-, but only because of the clandestine move by opp. party No. 2 and its Selection Committee, they have taken such a decision accepting the offer of opp. party No. 5. The petitioner alleges that the opp. parties have intentionally violated the procedure to suit their purpose, so that the work can be awarded in favour of opp. party No. 5.

6. Opp. party No. 4, Secretary Zilla Swakhyarata Samiti has filed a comprehensive counter affidavit. It is their specific stand that pursuant to the direction of this Court in O.J.C. No. 10095 of 2000 dated 6-11-2000, M/s. Saraswati Offset (opp. party No. 5) and M/s. Process & Offset Company, the petitioner were requested to attend the Selection Committee meeting on 16-11-2000 at 3.00 p.m. in the official chamber of the Additional District Magistrate, Bhadrak vide letter No. 504 dated 10-11-2000, a copy of which is Annexure-B. Both the parties were present in the meeting. After due examination of the quality of sample papers submitted by the parties, in presence of both the parties, the Selection Committee found that the quality of sample papers on inner page submitted by the petitioner was inferior to the sample submitted by opp. party No. 5. The price quoted by the petitioner at 10.6 paise per page was also higher than the price quoted by opp. party No. 5 at 9.5 paise per page. On consideration of both the points, the Selection Committee recommended for acceptance of the quotation of opp. party No. 5 for printing of the Primer-II book. A copy of the minutes of the Selection Committee meeting is Annexure-C/4. It is stated that the special notes of the petitioner was not accepted by the Selection Committee since he had quoted higher price and the quotation of sample papers submitted by it was inferior in quality. It is further stated, since the petitioner did not submit his specific offer, regarding the price inasmuch as, it was submitted after 16-11-2000, the same could not be considered. The assertion of the petitioner that he gave his willingness in writing to supply the printed book as per the sample of opp. party No. 5 at a lower rate before the Selection Committee on 16-11-2000 has been stoutly denied. But however, it is stated that the petitioner had submitted application to the Chairman of the Selection Committee on 17-11-2000, a copy of which is Annexure-D. He had also submitted a copy of the same to the Collector- cum-Chairman of the Samiti. It is, therefore, submitted that the

letters as mentioned in the petition was received on 17-11-2000, whereas the Selection Committee finalised the quotation on 16-11-2000 in presence of the petitioner. The opp. parties reiterates the stand that in obedience to the direction of the Court in O.J.C. No. 10095 of 2000, the Committee finalised the printing of Primer-11 on 16-11-2000 and orders were placed with the opp. party No. 5, inasmuch as the opp. party No. 5 had already supplied the entire printed books by 30-12-2000 within the stipulated time and the part payment was made on 23-2-2000 out of a total sum of Rs. 10,33,600/- vide stamp receipt, Annexure-G, but pursuant to the direction of this Court, on 21-12-2000, which was received by them on 30-12-2000, the further payment has been withheld.

7. In view of the pleadings of the parties, the question for consideration is as to whether the direction of this Court passed in O. J. C. No. 10095 of 2000 has been scrupulously followed in its letter and spirit and whether the opp. parties 2 to 4 have acted fairly and bona fide in awarding the contract for printing of the book, Primer-II in favour of opp. party No. 5. For this purpose one need not go into the details of the stage prior to the order of this Court in O. J. C. No. 10095 of 2000.

8. Undisputedly, the petitioner had quoted its price at 10. 6 paise per page, whereas opp. party No. 5 had quoted 9.5 paise per page and as such, the petitioner's rate was higher than the rate offered by opp party No. 5. The Selection Committee found on due examination of the equality of sample papers submitted by the parties that the equality of sample paper for inner page submitted by the petitioner was inferior than opp, party No. 4's assertion in the counter affidavit with regard to the foregoing facts has not been disputed by the petitioner by filing any rejoinder affidavit. It is the contention of the petitioner that he found while in the Selection Committee that the paper samples submitted by opp. party No. 5 was inferior.

9. The petitioner alleges that it submitted a letter on 7-11-2000 giving his willingness to supply Primer-II at cheaper rate than the opp. parry No. 5 by using the same paper and requested for negotiation, a copy of which are Annexures-5 and 5/A, but the same having not been considered, the decision is erroneous and liable to be set aside.

10. The opp. parties on the other hand claim that the petitioner having not given his specific offer regarding price and having submitted the same after 6-11-2000, i.e. after the date of decision in the earlier writ petition, the same was not considered. This Court in the earlier O. J. C. No. 10095 of 2000 by order dated 6-11-2000 had directed the Selection Committee of the Samiti to consider the offers received by it with reference to the quality of the sample paper submitted by the respective parties along with their quotations and further directed that if necessary, the Selection Committee may call the press which have submitted quotations in the meeting to be held.

11. In view of the order of this Court, the offers which were already received and considered earlier was to be considered afresh with reference to the quality of the sample papers submitted by the respective parties, therefore, there was no scope for the Committee to consider a fresh offer inasmuch as the offer given by the petitioner has rightly been ascribed as non-specific by the opp. parties. No exception, therefore, can be taken to the action of the opp. parties in not considering the said alleged offer.

12. Now the next submission of the petitioner is that after return from the Committee which was held on 16-11-2000 the petitioner on discussion with the supplier regarding the price and availability of quality papers sent a letter on 17-11-2000 willing therein to supply the book at the rate of 7.8 paise per page. It is stated that the letter was dated 16-11-2000, but was delivered to the P. A. of Collector as well as the Steno of the Additional District Magistrate on 17-11-2000 and subsequently sent by Speed Post which was received on 18-11-2000.

13. The opp. party No. 4 in its reply has stated that the letter was received on 17-11-2000, but the Selection Committee having finalised the quotation on 16-11-2000 in presence of the petitioner as reflected from the minutes of the Committee, a copy of which is Annexure-C/4 purportedly sent this Court on the said date, the question of consideration of the said offer did not arise. The Selection Committee having been directed to reconsider the offers already made by the parties and pursuant to that order, the Committee having taken a decision on 16-11-2000, it rightly could not be considered the said offer admittedly made thereafter and,

therefore, no exception can be taken to that nor the action can be held to be illegal,

14. While considering the action of the authorities or the State in granting or awarding a contract the Court is expected to apply an objective standard which leaves the decision of the authority the full range of choice. Even in case where the case is left entirely to the discretion of the deciding authority, if the decision is taken fairly and objectively the Court will not interfere since a writ Court does not sit on appeal over the decision taken by the appropriate authorities in the matters of awarding contracts. It is the settled law that while considering the award of a contract made by the State or its functionaries, a writ Court will not and are not expected to interfere in the order or the action unless it finds that the petitioner was not afforded a reasonable opportunity and the decision was not fair and reasonable, It is the decision making process that matters before the Court for consideration and not the decision itself. If the Court finds that the parties have been given reasonable opportunity and the cases have been considered in a fair and reasonable manner such action calls for no interference.

15. In the case at hand, it appears that the authorities have considered the quotations submitted by the parties in accordance with the direction of this Court in the earlier writ petition, and in a free, fair and reasonable manner. The petitioner having quoted a higher price than the price offered by opp. party No. 5 and his sample paper offered to be used in the printing of the book having been found to be inferior in quality than of opp. party No. 5, no illegality has been committed by the opp. parties 1 to 4 in awarding the work/contract in favour of the opp. party No. 5. Thus, the action of the authorities granting the work in favour of the opp. party No. 5 cannot be faulted calling for the interference of this Court in its writ jurisdiction.

16. In that view of the matter, I find no merit in the writ petition calling for interference in the action of the opp. parties 2 to 4 in awarding the contract in favour of the opp. party No. 5, Accordingly, the writ application is dismissed, but however there shall be no order as to cost,

17. Writ petition dismissed.

