

**Scion Computers Vs. State of Orissa and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/531551](http://sooperkanoon.com/531551)

**Court :** Orissa

**Decided On :** Aug-31-2004

**Reported in :** AIR2005Ori1; II(2005)BC46; 98(2004)CLT522

**Judge :** Sujit Barman Roy, C.J. and ;L. Mohapatra, JJ.

**Appeal No. :** W.P.(C) No. 10634 of 2003

**Appellant :** Scion Computers

**Respondent :** State of Orissa and anr.

**Advocate for Def. :** Addl. Govt. Adv.

**Advocate for Pet/Ap. :** Jaganath Patnaik, ;Srimanta Das, ;S. Rath, ;A. Mohanty, ;P.R. Behera and ;B.R. Mohanty

**Disposition :** Writ application allowed

**Judgement :**

**L. Mohapatra, J.**

1. The aforesaid two writ applications involve same fact and law and, therefore, both the writ applications were heard together.
2. The petitioners in both the writ applications have challenged the tender call notice in Annexure 1 to W.P.(C) No. 10634 of 2003 on the ground that without

allowing them to complete the work entrusted to them pursuant to an earlier tender, the balance work could not be put to fresh tender.

The case of the petitioners in both the writ applications is that in an open advertisement issued by the Director, Land Records and Surveys, Board of Revenue, Orissa, Cuttack tenders were invited for the work 'Data Entry for Computerisation of Land Records' for all the Tahasils of the State and the petitioners had submitted their tenders. The petitioner in W.P.(C) No. 10463 of 2003 was awarded the work for two districts i.e. Balasore and Jajpur and entered into an agreement so far as Balasore district is concerned, on 18.9.1998. So far as Jajpur district is concerned, execution of the agreement was delayed and the same was finalized and signed on 26th October, 1999. So far as petitioner in W.P.(C) No. 10634 of 2003 is concerned, it was awarded the work for the district of Ganjam and an agreement was executed on 16.6.1998. The further case of the petitioners is that before start of the work of Data Entry for a district they were required to provide necessary infrastructure like room, hardware, furniture and sufficient space so that the computers, printers and other equipments could be installed along with system software. The petitioners were also required to sign a software supports/ maintenance contract with a provider of the data entry software. The work was to be undertaken Tahasil wise and the every Tahsil was to be completed within 90 days from the date of issue of the work order for that particular Tahasil. The progress of work was also to be verified from time to time and after completion of the Data Entry, the petitioners were to generate print-out to be submitted to the validation team for the purpose of comparison and validation. The grievance of the petitioner in W.P.(C) No. 10463 of 2003 is that in the district of Balasore as well as in the district of Jajpur the petitioner had completed the Data Entry work in respect of all the Tahasils except one for each district. According to the petitioner, the work in the said Tahasils could not be done as no work order was issued in favour of the petitioner, Similarly, in W.P.(C) No. 10634 of 2003 it is alleged by the petitioner that it was not issued with the work orders in respect of five Tahasils in the district as a result of which it could not complete the work though it had executed the work in respect of other Tahasils of the district.

3. The grievance of both the petitioners before this Court is that even though they have been selected and their tenders have been accepted for the aforesaid work for all the Tahasils in respect of the districts, work order was not issued in respect of certain Tahasils but the same have been included in the advertisement issued by the Director, Land Records and Surveys calling for fresh tenders.

4. A counter affidavit has been filed by the opposite parties and the reason for not issuing work order in respect of the Tahasils in question is that though the State Level Tender in the year 1997-98 the rate per 100 characters for Jajpur and Balasore was fixed at Rs. 2.38 Paise respectively basing on the localized factors, after lapse of 6 to 7 years due the advancement of technology and availability of skilled manpower, the rate per 100 characters has become less in comparison to the rate fixed earlier and that is the reason why the High Level Committee in their meeting decided to invite fresh tenders in respect of the said Tahasils. So far as delay in completion of work is concerned, it is also stated in the counter affidavit that the work could not be completed due to several contributory factors such as supply of ROR, delay in data entry by the firm as well as delay in validation by the Amins. Similar is the stand taken by the opposite parties in both the writ applications.

5. The learned counsel appearing for the petitioners in both the writ applications submitted that the delay in execution of the work having been admitted to be contributory and the opposite parties having admitted in the counter affidavit that they have also contributed to the delay in execution of the work, the same could not be a ground for not issuing work order in respect of the balance work in the aforesaid districts. The learned counsel for the State on the other hand, submitted that though it is admitted that the opposite parties have also contributed to delay in execution of the work, the reason for the High Level Committee to stop the work and retender the same is that with passage of time and development of technology, the rates at which the petitioners had been given the contract have come down and had the petitioners been allowed to work at that rate, the State would have sustained a huge loss. It was further contended by the learned counsel for the opposite parties that in view of the aforesaid reason, the High Level Committee decided to retender the balance work in the above three districts.

6. There is no dispute that the tender submitted by both the petitioners were accepted at a particular rate and agreements had been executed for execution of the work in all the Tahasils for the aforesaid three districts. There is no dispute that the delay in execution of the work is not only at the instance of the petitioners alone and it is admitted in the counter affidavit that the opposite parties have also contributed to the delay in execution of the work. Therefore, it appears that the only ground on which the work order was not issued in favour of the petitioners in respect of the balance Tahasils is that with passage of time and development in technology, the rates' had come down and, therefore, had the petitioners been allowed to work, the State Government would have sustained a financial loss. Since the opposite parties had already entered into agreement with the petitioners after accepting their tenders, they could not have backed out on the ground that the rates had been reduced with passage of time. The parties are bound by the agreement and, therefore, the petitioners could not have been deprived of execution of the balance work merely on the ground that with passage of time the rate for the work has come down. We, therefore, hold that the decision taken by the High Level Committee in respect of the aforesaid three districts was unjustified and not in accordance with law.

7. Accordingly, we allow both the writ applications and direct that the advertisement calling for fresh tender published in daily 'The Dharitri' dated 3.10.2003 in Annexure 1 to the W.P.(C) No. 10634 of 2003 shall exclude the Tahasils in respect of which work order had not been issued in favour of the petitioners in the districts of Balasore, Jajpur and Ganjam and in respect of the said Tahasils in the aforesaid three districts, the petitioners shall be allowed to continue and complete the work.