(2009) 04 OHC CK 0086

In the Orissa High Court

Case No : Writ Petition (C) . No. 2319 of 2009

A.P. Nirman Ltd. APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Citation : (2009) 04 OHC CK 0086

Hon'ble Judges : B.P. Ray, J;B.P. Das, J

Bench : Division Bench

Advocate : M. Kanungo, D.K. Pradhan, B.P. Pattnaik, B.B. Panda, S.N. Das and S. Das, for the Appellant; R.N. Acharya, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—The Petitioner, who is a Special Class Contractor, has filed this writ petition challenging the action of the rejection of the bids submitted by him pursuant to the online Tender Call Notice in Annexure-2 for the work "Construction of Malgaon Distributary and its Sub-Minors including Structures, Lining and Service Road from RD 6840 Mtr. to Tail" on the ground of furnishing incorrect Sales Tax clearance certificate.

2. According to the Petitioner, he belongs to Chhatisgarh. He had initially produced his Super Class Contractor Licence and the Sales Tax clearance certificate of Chhatisgarh along with the documents for the aforesaid work before the O. Ps. As he had also a valid VAT registration number in Orissa, he had obtained a Sales Tax clearance certificate from the Sales Tax Officer, Kalahandi Circle, Kalahandi issued on 5.6.2008. According to him, he has also given an affidavit with undertaking to furnish any further qualifying information at the request of the Department/Project Implementing Agency. So according to him, his bid should not have been rejected due to non-availability of VAT clearance certificate on the date of filing of the tender paper.

3. A counter affidavit has been filed by O. Ps.1 to 4 through the Executive

Engineer, Right Canal Division. III, Junagarh in the district of Kalahandi, wherein it is stated that the tender documents of the Petitioner were not in consonance with Clauses 2.2(a) & 2.4(b) of the Technical Bid. In the Tender Call Notice, it was mentioned that the pre-bid would be held on 26.12.2008 at 11 a.m. in the Office of Chief Engineer, Upper Indravati Irrigation Project-O.P.2 and the intending bidders were required to attend the said conference. It was further indicated in the said Notice that the bidders could seek clarification online from 10 a.m. of 22.12.2008 to 5 p.m. of 24.12.2008, in the event of any doubt.

4. Clause 2.2(a) of the Technical Bid provides as follows:-

Copy of valid contractor''s registration certificate, PAN card, VAT clearance certificate in form VAT-612 if (i) the contractor or firm is already doing business in the State or (ii) undertaking in the form of an affidavit indicating their in that he/they is/are not registered under VAT act as he/they has/have not started any business in the State of Orissa and as such may have no liability under the act and also undertake that the VA clearance certificate will be produced before award of final contract (Which ever is applicable). Undertaking in the form of an affidavit to produce Labour Licence before award of final contract.

It is argued by the Learned Counsel for the State that if the Petitioner had any doubt regarding production of VAT clearance certificate from Orissa, he could have sought clarification in the manner, as indicated above.

5. According to the State, the contractor had to produce VAT clearance certificate, if he or his firm was doing business in the State of Orissa or at least an undertaking in the form of an affidavit indicating therein that his firm was not registered under VAT Act as he had not started any business in the State of Orissa and as such, he had no liability under the Act. He could have also undertaken that the VAT clearance certificate would be produced before award of final contract, of so required. It is further indicated in the counter affidavit that the Finance Department, Government of Orissa in their circular No. 34145 dated 17.8.2007 had clarified that no bidder would be entitled to undertake any contract unless he obtained a VAT clearance certificate in Form-612 from the Assessing Authority under whose jurisdiction he (bidder) was doing business or an undertaking by way of affidavit indicating therein that he (bidder) was not listed under the VAT Act as he had not started any business in the State (Annexure-A).

Admittedly, the Petitioner was doing some work in Orissa and was exigible to VAT under the State of Orissa. His stand is that he having submitted the VAT clearance certificate issued by the Chhatisgarh Government on the last date of filing of the tender paper, and had submitted a VAT clearance certificate from the Government of Orissa after 4.1.2009, his tender could not be rejected.

6. The VAT clearance certificate issued by the Government of Orissa was filed by the Petitioner before the authority after the last date of filing of the Technical Bid was over.

7. Learned Counsel for the Petitioner referring to the decision of this Court in Akbar Mohammed Vs. State of Orissa and Others, , submits that the condition of the tender with regard to filing of a sales tax clearance certificate along with the tender cannot be construed to be an essential condition of eligibility but it is merely an ancillary or subsidiary condition for the purpose of achieving the main object that is to show that he is not a defaulter in paying the dues of the State and production of the VAT Clearance Certificate of Orissa shows that the Petitioner has no Government dues whatsoever will clearly indicate that the Petitioner is not a defaulter in paying the dues of the State.

8. But the decision of that case cannot apply to the case at hand because of the reason that the Petitioner had not filed the required documents along with the tender paper and in absence of any condition to allow a tenderer to give his VAT clearance certificate at a subsequent date, the tender paper of the Petitioner could not be treated to be complete on the date of filing of the same. Therefore, the Petitioner''s tender paper being not in accordance with the Tender Call Notice and was incomplete, the decision of the authority rejecting the same cannot be found faulted with.

9. The writ petition is dismissed accordingly.

B.P. Ray, J.

10. I agree.

