(2003) 08 OHC CK 0005

In the Orissa High Court

Case No : Writ Petition (C) No. 3592 of 2003

Balangir Trading Co. APPELLANT

Vs

Bharat Sanchar Nigam Limited and Others RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 08 OHC CK 0005

Hon'ble Judges : P.K. Misra, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Bijoy Anand Mohanty and Chittaranjan Pattnaik, for the Appellant; P.N. Mohapatra, for O.Ps. 1 and 2, S.C. Lal, S. Lal, S. Panda and S. Lal for O.P. No. 3, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—By an advertisement published in the Oriya daily newspaper in August, 2002, Bharat Sanchar Nigam Limited (for short, ''the B.S.N.L.) invited sealed tenders from reputed organizations having at least two years experience in the sale of fast moving consumer goods (F.M.C.G.) items, electrical goods, I.T. products, computer hardware for appointment of dealers (for post-paid service) on Telecom District basis and distributors (for Pre-paid service) on Telephone connection basis of B.S.N.L.''s Cellular Mobile Service. In response to the said advertisement, sixteen organizations including the Petitioner submitted tenders for Bolangir - Bhawanipatna territory. The tenders of fifteen organizations including that of the Petitioner were rejected by the Tender Evaluation Committee nominated by the B.S.N.L. on the ground that they did not satisfy the eligibility conditions laid in the advertisement. The opposite party No. 3 was the only tenderer found to be eligible by the Tender Evaluation Committee but the rate of Rs. 150/- for first activation and 8 per cent as recharge rate quoted by the opposite party No. 3 in its tender were not accepted and instead, after negotiation with the opposite party No. 3, the first activation charge at Rs. 95/-

and re-charge at 6.5 per cent were accepted and the opposite Party No. 3 was selected and appointed and the agreement has been executed in favour of the opposite party No. 3 Bolangir - Bhawanipatna Telephone District. Aggrieved, the Petitioner has filed this writ petition under Article 226 of the Constitution with prayers to the Court to quash the entire tender process held for the Bolangir - Bhawanipatna territory and cancel the agreement/contract in favour of the opposite party No. 3 and to direct for fresh tenders in accordance with law.

2. This writ petition was heard along with W.P. (C) No. 2526 of 2003, and at the hearing Mr. Bijay Anand Mohanty, learned Counsel, appearing for the Petitioner, submitted that the advertisement by which tenders were invited stipulated that for the dealership/distributorship for Bolangir - Bhawanipatna territory, the tender must have a turnover of rupees twenty-five lakhs and the Petitioner who had turnover of more than rupees twenty-five lakhs submitted tender and had furnished all documents in support of the said turnover the yet the authority rejected his tender with the observation that "T/o is not authentic". He submitted that if for some reason the authorities were of the view that the document in support of the turnover furnished by the Petitioner along with his application was not authentic, the Petitioner should have been afforded an opportunity to explain before the authority decided to reject tender of the Petitioner. According to Mr. Mohanty, the conclusion of the authority that the turnover of the Petitioner was not authentic was arbitrary and was liable to be quashed. Mr. Mohanty next submitted that in this case all the tenders except that of the opposite party No. 3 have been rejected by the Tender Evaluation Committee and the opposite party No. 3 has been selected by the Tender Evaluation Committee contrary to the selection criteria laid down in the advertisement. He submitted that as per the selection criteria in the advertisement inviting tenders, weightage was to be given in the following manner:

Commission - 75 per cent

Commercial location - 5 per cent

Experience - 20 per cent

Space (ground floor)/ Commercial location - 5 per cent

Mr. Mohanty submitted that the Tender Evaluation Committee was obliged to award marks as per the aforesaid weightage and select the tender who secured highest marks, they have selected the opposite party No. 3 who had quoted one of the height commissions much higher than most other tenderers including the Petitioner. The Selection of the opposite party No. 3 by the Tender Evaluation Committee, Mr. Mohanty argued, was thus arbitrary, illegal and contrary to the rules and the procedure as advertised by the B.S.N.L. Mr. Mohanty cited the decision of the Supreme Court in the case West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. and Others, , in which it has been held that adherence to instructions cannot be given a go-by branding it was a pendancic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and constitutional values. According to Mr. Mohanty, this is a clear case of favouritism shown by the Tender Evaluation Committee and the B.S.N.L. to the opposite party No. 3 in as much as all tenders except that of the opposite party No. 3 were rejected on flimsy grounds and the tender was finalised in favour of the opposite party No. 3 contrary to the Selection criteria laid down in the advertisement of the B.S.N.L. inviting the tenders causing financial loss to the B.S.N.L. He argued that as the whole approach of the authorities has been unfair, unjust, inequitable and discriminatory, the High Court should set aside the entire tender process and direct the B.S.N.L. to invite fresh tenders within a time limit stipulated by the High Court in a manner which will ensure a healthy competition and better collection of revenue by the authorities.

3. Mr. P.N. Mohapatra, learned Counsel appearing for opposite parties 1 and 2, on the other hand, submitted relying on the counter-affidavit filed by opposite parties 1 and 2 that the Tender Evaluation Committee which included two experts from I.I.M. Calcutta and XLRI, Jamshedpur, themselves examined the tender papers of the tenders including that of the Petitioner and mentioned the results of their examination in the proforma prescribed for selection procedure and marks. He submitted that the tender of the Petitioner was rejected by the Tender Evaluation Committee for non-submission of complete P. & L. Account for 2001-2002 showing the sale proceeds figures (turnover) as mentioned in Appendix C of the tender papers. In the counter-affidavit filed by opposite parties 1 and 2, it is stated that the Petitioner only filed a certificate of the author M/s. Romesh Kumar and Co, Chartered Accountant to the effect that the Petitioner had an annual transaction to the tune of rupees thirty-seven lakhs as on 31st of March, 2002. The further statement in the counter-affidavit is that along with the tender form a sales tax return was also filed showing a turnover of Rs. 24,78,104.70/-. Thus, the figures of turnover again in the certificate of the Chartered Accountant and the sales tax return were inconsistent. Copies of the said certificate of the Chartered Accountant and the sales tax return submitted by the Petitioner along with the tender documents have been annexed to the counter affidavit of opposite parties 1 and 2 as Annexures-A and B, respectively Mr. Mohapatra argued that since the Petitioner did not satisfy the eligibility criteria of a turnover of rupees twenty-five described in the advertisement for Balangir-Bhawanipatna territory, the Petitioner was not eligible to be considered and for this reason, the tender of the Petitioner was rejected by the Tender Evaluation Committee. He submitted that the opposite party No. 3, on the other hand, was the only tenderer which had fulfilled the eligibility criteria and for this reason, negotiation was made with the opposite party No. 3 and after such negotiation, agreement was executed in favour of the opposite party No. 3 at the negotiated rated of Rs. 95/- for first activation charge and at 6.5 per cent towards re-charge. Mr. Mohapatra submitted that since the aforesaid rates at which negotiation was made with the opposite party No. 3 were less than the maximum rate of Rs. 150/- for first activation charge and 15 per cent towards re-

charge prescribed in the tender papers, no illegality had been committed by the B.S.N.L. authorities and no loss was suffered by the B.S.N.L. in finalizing the agreement in favour of the opposite party No. 3 Mr. Mohapatra further submitted that Anr. unsuccessful tenderer for the Balangir-Bhawanipatna territory had filed a writ petition W.P.(C) No. 5773 of 2002 before this Court and by judgment and order dated 11.2.2003 this Court had dismissed the said writ petition after perusal of the tender papers. He submitted that in this case also the writ petition should be dismissed as the Petitioner was found not to have satisfied the eligibility condition in the advertisement and the tender papers. Mr. Mohapatra cited the decision of the Supreme Court in Tata Cellular Vs. Union of India, in which the Supreme Court has laid down on the scope of judicial review in contractual matters and submitted that considering the limits of judicial review laid down by the Supreme Court in the said decision, this Court should not interfere in the decision of the B.S.N.L. authorities toward the contract to the opposite party No. 3.

4. Mr. S.C. Lal, learned Counsel appearing for the opposite party No. 3, while adopting the aforesaid arguments of Mr. Mohapatra contended that out of the sixteen tenders, fifteen were rejected by the Tender Evaluation Committee on the ground that they did not satisfy the eligibility conditions and the opposite party No. 3 was the only valid tenderer and even though the opposite party No. 3 had quoted Rs. 150/- for first activation which was the maximum rate prescribed in the tender papers and 8 per cent towards recharge rate, the B.S.N.L. authorities further negotiated with the opposite party No. 3 and of Rs. 95/- as first activation charge and 6.5 per cent as recharge rate were finalized. Mr. Lal submitted that such negotiated rates which were finally agreed were less than the rates prescribed in the tender documents and there was absolutely no illegality committed in awarding the distributorship in favour of the opposite party No. 3 is already operating in the territory. Mr. Lal also relied on the judgment and order dated 11.2.2003 in W.P. (C) No. 5773 of 2002 by which the writ petition filed by Anr. tenderer for Balangir-Bhawanipatna territory was dismissed. He vehemently argued that since the Petitioner did not satisfy the eligibility criteria, he was eliminated at the threshold and this will be borne out from the official records maintained by the Tender Evaluation Committee and the counter-affidavit filed on behalf of opposite parties 1 and 2. Hence, the writ petition of the Petitioner should be dismissed.

5. The records have been produced before us Mr. P.N. Mohapatra, learned Counsel appearing for opposite parties 1 and 2 and from the said records we find that the reasons given from rejecting the tender of the Petitioner are that the turnover of the Petitioner is not authentic as only a certificate of turnover of the Petitioner has been furnished and completed P & L A/c for 2001-2002 in proper format and duly audited has not been furnished by the Petitioner along with his tender documents. The said certificate of turnover of the Chartered Account M/s. Romesh Kumar and Co. furnished along with the tender of the Petitioner, a copy of which has been annexed to the counter-affidavit of opposite party 1 and 2 as

Annexure-A, is extracted herein below:

BOLANGIR TRADING CO. AT-NEAR SP RESIDENT, PO-RUDUDIPARA, DIST-BOLANGIR (ORISSA)

AUDITOR''S REPORT

We verified the Profit and loss A/C and Balance Sheet of "BOLANGIR TRADING CO" At- NEAR SP RESIDENT, Po-RUGUDIPARA, Dist-BOLANGIR (ORISSA) as on 31st March 2002 as per the cash book produced before us and report that it is correct and true.

Therefore I certified that the above firm has done an annual transaction tune of Rs. 37,00,000,00 lakhs with the profit of Rs. 2,50,000,00.

Place : Bolangir

Date : 10/07/02

M/s. Romesh Kumar and Co. Chartered Accountant Sd/ - Illegible 10/07/02 B. Tripathi Partner

The aforesaid auditor''s report is a certificate of a Chartered Accountant who has certified that the Profit and Loss Account and Balance-Sheet of the Petitioner firm as on 31st of March, 2002 as per the Cash Book produced before him are correct and true. In the aforesaid certificate, the Chartered Accountant has also certified that the Petitioner firm had done an annual transaction to the tune of Rs. 37,00,000,00 lakhs with the profit of Rs. 2,50,000,00. The records also indicate that besides the aforesaid certificate of the Chartered Accountant/Auditor''s report for the year 2001-2002, the Petitioner had also filed a statement of his annual turnovers of different products for the years 1998-99 and 1999-2000 along with his tender papers before opposite parties 1 and 2. The said statement is extracted herein below:

Bolangir Trading Co.

Opp. Telecom Bhawan Rugudipara, Bolangir, Ph. No. 31647 (O)

Bishnudutta Hota Proprietor Bolangir Trading Co. Bolangir Trading Co. Estd. 1998-1999

Distributor of H.L.L. (Foods), Henkel SPIL India Ltd., Rotomac pens Ltd., Ajay Home Products Ltd.

Name of Company Year of Estd. Annual Turnover Area covers

Henkel SPL India Ltd., 98-99 45 lakhs Bolangir Town

Titilagarh, Badmal,Saintala, Tusura,Deogaon, Loisingha,Dungripali, Binka,Tarva, galpur, Chudapali,Chandanbhati,Bhainsa.

H.L.L. (FOODS) 99-2000 35 lakhs Bolangir Town, Tarva, Loisingha

ROTOMAC PENS 98-99 2 lakhs Bolangir Town,

Titilagarh, Sonepur

AJAY HOME PRODUCTS 98-99 3 lakhs Bolangir, Patnagarh,Kantabanji, Padampur, Gaisilet, Belpara

The Petitioner had also furnished invoices of Hankel SPIC India Ltd. showing supply of different brands of soap and invoice of Hindustan Lever Limited showing supply of Dalda, etc. from time to time. Thus the aforesaid documents, as furnished by the Petitioner, indicate that the Petitioner had a turnover of more than rupees twenty-five lakhs, which was the eligibility condition in the advertisement for a tenderer submitting tender for Bolangir-Bhawanipatna territory.

6. The question for decision in this writ petition is whether the Tender Evaluation Committee could have rejected the tender of the Petitioner only on the ground that the Petitioner did not furnish the audited profit and loss account for the year ending 31st March, 2002 in support of his turnover of more than Rs. 25 lakhs. The advertisement in Annexure-1 to the writ petition only states that for Bolangir-Bhawanipatna, a tenderer must have a turnover of Rs. 25 lakhs, but it does not any where state that audited profit and loss account has to be submitted by a tenderer showing a turnover of rupees twenty-five lakhs. Appendix C of the tender papers, which is titled as "Definition/Clarification as per Dealership/ Distributorship Concept of Cellular Services" contains the definition of ''turnover''. The relevant portion of Appendix C is quoted herein below:

Definitions/Clarifications as per Dealership/Distributorship Concept of Cellular Services

1. Turnover; Sale proceeds figure of year 2001-02 as per Profit and Loss statement.

This is only a definition of ''turnover'' and it is defined as the sale proceeds figure of 2001-2002 as per the profit and loss statement, but it is not stipulate that audited profit and loss statement itself has to be furnished along with the tender documents. The tender paper also contains a set of Instructions to the tenderers and para 4 of the said Instruction is to the following effect:

4. All supporting documents wherever applicable in Annexures I and J should be furnished.

The aforesaid Instruction stipulated that all supporting documents wherever applicable in Annexures-I and J should be furnished Annexure-I does not require audited profit and loss account to be enclosed, but it requires Annexure-J duly completed to be enclosed along with Annexure-I. It is in Annexure-J which is titled as "Particulars of the Organisation seeking Dealership/Distributorship" that turnover of the firm/organization has to be indicated against column No. 7.

Column No. 7 of Annexure-J is extracted herein below:

7. Turnover of the firm/organisation over the last two years (with supporting documents).

In the aforesaid column No. 7, it is stated that turnover of the firm/organisation over the last two years (with supporting documents) is to be indicated. Here also it is not mentioned that the audited profit and loss statement in support of the turnover has to be furnished. Column No. 7 in Annexure-J as filled up and submitted by the Petitioner along with his tender papers reads as follows:

7. Turnover of the firm/organisation over the last two years (with supporting documents) Rs. 37,00,000.00/-

Enclosed audit Report.

If the said column No. 7 of Annexure-J was to be red with the definition of ''turnover'' as given in Appendix-C quoted above, turnover of the firm/organisation for the year 2001-2002 with supporting documents is to be furnished and the Petitioner had indicated his turnover for the year 2001-2002 as rupees thirty-seven lakhs and had furnished audit report/certificate of the Chartered Accountant as the supporting document. The said report/certificate of the Chartered Accountant indicates that the Chartered Accountant had verified the profit and loss account of the Petitioner for the year ending 31st of March, 2002 and thereafter certified that the annual transaction of the Petitioner was of rupees thirty-seven lakhs. Thus, the tender of the Petitioner with supporting documents indicated that the Petitioner had a turnover of Rs. 25 lakhs for the year 2001-2002 and the Petitioner satisfied the eligibility condition and the rejection of the tender of the Petitioner on the ground that he had not furnished the completed profit and loss account in proper format and duly audited and the turnover of the Petitioner was not authentic was arbitrary and unfair.

7. The stand taken by opposite parties 1 and 2 in the affidavit that along with the tender papers, the Petitioner had also filed a copy of the part I of the return of tax payable by a dealer under the Orissa Sales Tax Act which indicated sales turnover of Rs. 24,78,104.70 and which was inconsistent with the figures of Rs. 37,00,000.00 in the aforesaid certificate of the Chartered Accountant in an after-thought introduced in the counter-affidavit of opposite parties 1 and 2 for the first time. In the counter affidavit, opposite parties 1 and 2 have clearly stated that the results of the examination of the tender papers by the Tender Evaluation Committee were mentioned in the proforma prescribed for selection procedure and marks, but in the said proforma prescribed for selection procedure and marks relating to the Petitioner there is no mention whatsoever that there is discrepancy in the figures of turnover as certified in the auditor''s report/Chartered Accountant''s certificate and the sales tax return of the Petitioner furnished alongwith the tender papers of the Petitioner. In any case, if there was some doubt entertained by the authorities of the B.S.N.L. of the Tender Evaluation Committee, they could have asked the Petitioner to explain the

discrepancy in the two figures and should not have rejected the tender of the Petitioner straightway.

8. In Tata Cellular v. Union of India (supra) cited by Mr. P.N. Mohapatra, learned Counsel for opposite parties 1 and 2, the Supreme Court summed up the principles of judicial review in paragraph 113 at page 32 of the decision as reported in the AIR as follows:

(1) The modern trend points to judicial restraint in administrative action.

(2) the Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decision are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free form arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

It will be clear from the principles laid down by the Supreme Court in the aforesaid case of Tata Cellular that even though freedom is to be given to the administrative authority in a matter relating to contract, the decision of the administrative authority must be free from arbitrariness and unreasonableness and should not be affected by bias or actuated by mala fide.

9. The aforesaid principles laid down by the Supreme Court in the case of Tata Cellular have been quoted in the decision of the Supreme Court in West Bengal State Electricity Board. v. Patel Engineering Co. Ltd. (supra) cited by Mr. Mohanty, learned Counsel for the Petitioner. In this later decision in West Bengal State Electricity Board v. Patel Engineering Co. Ltd. in paragraph 31 at pages 470-471 of the decision as reported in the S.C.C., the Supreme Court has held:

... Tender are invited on the basis of competitive bidding for execution of the work of the Project as it serves dual purposes. On the one hand it offers a fair opportunity to all those who are interested in competing for the contract relating to execution of the work and, on the other hand it affords the Appellant a choice to select the best of the competitors on a competitive price without prejudice to the quality of the work. Above all, it eliminates favourtism and discrimination in awarding public works to contractors. The contract is, therefore, awarded normally to the lowest tenderer which is in public interest. The principle of awarding contract to the lowest tenderer applies when all things are equal. It is equally in public interest to adhere to the rules and conditions subject to which bids are invited. Merely because a bid is the lowest the requirements of compliance with the rules and conditions cannot be ignored....

Thus in the aforesaid decision, the Supreme Court has held that the purposes for inviting tenders by a public authority are two. First it offers a fair opportunity to all those concerned who are interested in a bidding for the contract and second, it affords the public authority a choice to select the best of the competitors on a competitive price without prejudice to the quality of the work. The Supreme Court further observed that by inviting tenders, favourtism and discrimination in awarding public works to contractors are eliminated and in the public interest the authorities must adhere to the rules and conditions under which the bids are invited.

10. Applying the aforesaid tests laid down by the Supreme Court to the present case, we find that neither the advertisement nor the tender documents provide anywhere that a tender must furnish audited profit and loss accounts for the year 2001-2002 in support of the eligible turnover of rupees twenty-five lakhs in respect of a tender for Bolangir-Bhawanipatna territory. Thus, the rules and conditions subject to which the bids were invited did not anywhere stipulate that a tender would be rejected if audited profit and loss accounts in support of the eligible turnover of rupees twenty-five lakhs was not furnished by the Petitioner. It only stipulates in support of the eligible turnover of rupees twenty-five lakhs or the turnover as indicated in column No. 7 of Annexure-J supporting documents must be enclosed along with the tender papers by the tenderers. As discussed above, in this case the Petitioner had furnished the audit report/certificate of the Chartered Accountant that the annual transaction of the Petitioner for the year ending 31.03.2003 was rupees thirty-seven lakhs and thus the Petitioner satisfied the eligibility condition of a turnover of rupees twenty-five lakhs for Bolangir-Bhawanipatna territory. The authorities have acted in an arbitrary and unfair manner by rejecting the tender of the Petitioner only on the ground that he had not furnished the audited profit and loss account for the year 2001-2002 and deprived him of the opportunity in competing for the distributorship/ dealership of the B.S.N.L. Mobile Service for the Bolangir-Bhawanipatna territory.

11. In W.P.(C) No. 5773 of 2002 (Kishan Prasad Agrawal v. Bharat Sanchar Nigam Limited and Anr.), we have held in our judgment and order dated 11.2.2003 that the Petitioner in that case namely Kishan Prasad Agrawal did not indicate against column 16 of Form-J that he had work experience of at least two years in distribution of F.M.C.G. items/Electronic goods/I.T. products/Computer hardware nor did he indicate such work experience and also did not enclose

documents in support of such work experience although he had mentioned that supporting documents were enclosed. In the said judgment and order we have held that since one of the eligibility criteria indicated in the advertisement and the tender documents was that the tenderer must have at least two years experience in the distribution of the aforesaid items, the Tender Evaluation Committee was entitled to reject the tender of the aforesaid Petitioner. In the said judgment and order dated 11.2.2003 in W.P. (C) No. 5773 of 2002 a contention was raised on behalf of the aforesaid Petitioner that his tender could not have been rejected on the ground that he did not furnish the profit and loss account for the year 2001-2002 along with his tender paper, but we did not go into the aforesaid question as the tender of the said Petitioner was liable to be rejected on the ground that he did not have two years work experience in F.M.C.G. items/Electronic goods/IT products/Computer hardware which was also an eligibility condition in the advertisement and in the tender documents.

12. IN W.P. (C) No. 5773 of 2002 the learned Counsel for the aforesaid Petitioner cited the decision of the Supreme Court in Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others, , in which the Supreme Court inter alias held in paragraph 7 at page 58 of the judgment as reported in the S.C.C.:

... We retirate that whatever procedure the Government proposes to follow in accepting the tender must be clearly stated in the tender notice. The consideration of the tenders received and the procedure to be followed in the matter of acceptance of a tender should be transparent, and open....

In the aforesaid decision, the Supreme Court clearly held that whatever procedure to be followed by the authorities for considering the tenders should be clearly stated in the tender notice so that the consideration of the tenders in accordance with such procedure is transparent, fair and open. In the present case, if the authorities of the B.S.N.L. were of the view that the profit and loss account for the year 2001-2002 in proper format and duly audited should be furnished by the tenderers, the authorities of the B.S.N.L. should have clearly stated so in the advertisement or in the tender notice or in the tender papers and there would have been no scope for a complaint that the tenders have been rejected on a flimsy ground by the Tender Evaluation Committee only with a view to favour the opposite party No. 3. In the absence of such clear stipulation in the advertisement or notice inviting tenders or the tender papers requiring a tenderer to furnish completed profit and loss accounts for the year 2001-2002 in proper format and duly audited, it appears from the records that besides the Petitioner, nine other tenderers have not furnished completed profit and loss accounts for the year 2001-2002 in proper format and duly audited and the Tender Evaluation Committee has given this as one of the reasons for rejecting the tender of such nine other tenderers. These nine tenderers are: (1) Utkal Sales, Kailash Chandra Bal, Kesinga, (2) Binod Kumar Marodia, Sree Ganesh Rice Mills, Khariar Road (3) Gajendra Tribhuban Das, Thikdarpada, Bolangir, (4) Rajendra Kumar Pansari, Pansari Steel Radharanipada, Bolangir (5) Toshiba

Electronics, Micky Med. Company Patnagarh, Bolangir (6) Pawan Distributors DD Builders Ltd. (JV) Bhubaneswar, (7) Santosh Sharma, Sharma Medical Store, Khariar Road, Nuapada (8) Anand Trading House, Bolangir (9) K.P. Agarwal, Bhawanipatna (writ Petitioner in W.P. (C) No. 5773 of 2003). In our considered opinion the entire tender process has been vitiated on account of absence of clear stipulation in the advertisement or the notice inviting tenders or the tender papers requiring the tenderer to submit the completed profit and loss account for the year 2001-2002 in proper format and duly audited and on account of the rejection of the tenders wherever the tenders has not furnished completed profit and loss account for the year 2001-2002 in proper format and duly audited by the Tender Evaluation Committee.

13. For the aforesaid reasons, we set aside the entire tender process for the Bolangir-Bhawanipatna territory only and as directed by the Supreme Court in the case of Dutta Associates Pvt. Ltd. v. Indo Merchantiles Pvt. Ltd. and Ors. (supra) direct the opposite parties 1 and 2 to invite fresh tenders for distributorship/dealership of the B.S.N.L. Mobile Service for the Bolangir-Bhawanipatna territory clearly stipulating the documents required to be furnished by the tenderer in the advertisement or notice inviting tenders failing which the tenders would be rejected and to complete the tender process within a period of three months from today and we further direct that till appointment of distributor pursuant to such fresh tender process, the opposite party No. 3 will continue to operate as the distributor for Bolangir-Bhawanipatna territory in accordance with the terms and conditions of the agreement executed by the B.S.N.L. in favour of the opposite party No. 3.

14. The writ petition is allowed to the extent indicated above, but considering the facts and circumstances of the case, there shall be no order as to costs.

P.K. Misra, J.

15. I agree.

