
(2003) 12 OHC CK 0002
In the Orissa High Court
Case No : Writ Petition (C) No. 6259 of 2003

Binu Industries

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 BC 146 : (2004) 1 OLR 65

Hon'ble Judges : C.J.MANUOR03452003.htm, J;A.S. Naidu, J

Bench : Division Bench

Advocate : Jagannath Patnaik and A.A. Das, B. Mohanty, T.K. Patnaik, S. Das and P.K. Nayak, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The petitioner, registered as a small scale industry (for short "SSI Unit") has filed this Writ Petition questioning the legality and propriety in issuing a Tender Call Notice inviting tenders from civil contractors classified under the Orissa Public Works Department Code (for short OPWD) for the combined work of both civil and mechanical gate work, thereby depriving the SSI units. According to the petitioner, SSI units are competent to execute the mechanical gate work required for hydraulic structures like Escapes, Cross Regulators (for short CR) and Head Regulators (for short HR) which are sophisticated in nature and are designed only on workshops well equipped for the purpose. The said work being highly technical is required to be executed with precision. The SSI units with full-fledged mechanical workshop and experienced personnel with all infrastructure were entrusted to execute such mechanical gate work in the past. The SSI units established and registered under the Government of Orissa for execution of specific mechanical works, according to the Industrial Policy Resolution of Government, are entitled to some preferential treatment while entrusting the works of Government and public sector undertakings. The Tender Call Notice, vide Ext. 1, was issued by the Government of Orissa inviting tenders from Super-

Class contractors for executing the work of "Construction of HR, CR, Escapes and Service Road". The said work was a composite package involving civil work and mechanical work and was to be executed at Rengali Irrigation Project. The work is funded by Overseas Economic Cooperation Fund. Government of India and the Government of Orissa. The petitioner seeks to quash the Tender Call Notice, Annexure-1, and prays for a direction to the Government of Orissa to bifurcate the civil work from mechanical work and entrust the mechanical gate work to SSI units.

2. On behalf of the State, a detailed counter affidavit has been filed inter alia taking the stand that the work in question is a composite package; and as per the guidelines of Japan Bank of International Cooperation (for short JBIC) which has provided funds for execution of the said gate work, the work is to be entrusted to a Super-Class contractor and cannot be segregated. While repudiating the assertions made by the petitioner, it is stated that nowhere in the OPWD Code it has been stipulated to separate the mechanical work and civil work and award civil portion of work to civil contractors and mechanical portion of work to mechanical contractors. In short, the stand taken by the State is that in consonance with the guidelines of JBIC as the work of construction of Cross Regulators, Head Regulators, Escapes and Service Road is a composite package, the same cannot be segregated from one another and there is absolutely no illegality or irregularity in issuing the Tender Call Notice inviting tenders from Super-Class contractors with expert experience in executing similar type of works. The allegation that in order to deprive the SSI units of submitting their tenders to show favour to some Super-Class contractors, conditions have been stipulated in the Tender Class Notice is stoutly denied in the counter-affidavit.

3. In course of hearing, learned counsel for the petitioner submitted that in the past civil work had been bifurcated from mechanical work and had been awarded to different contractors. In support of such submission, learned counsel for the petitioner referred to Annexure-3. On behalf of the petitioner it is further submitted that SSI units having expert knowledge in construction of shutters, entrustment of such work to Super-Class contractors is an arbitrary act and is not structured by any rational consideration. Perusal of Annexure-3 clearly reveals that the type of work covered under Annexure-3 was only gate work. The said annexure does not reveal that the work was a composite package consisting of both civil and mechanical works.

4. Learned counsel for the State, at the other hand, submitted that the entire work, as would be evident from the minutes of discussion between the Overseas Economic Cooperation Fund, Government of India and Government of Orissa, vide Annexure- A/1, is a composite package consisting of both civil and mechanical works and in order to maintain uniformity one part of the work cannot be segregated from the other. It was further submitted that if civil work and mechanical work are entrusted to two different contractors, it would create unnecessary hindrance and would also lead to unsurmountable hardship,

inasmuch as the work cannot be conducted in a synchronised manner. It would also be difficult to coordinate the works between the civil contractors and mechanical contractors and the quality of work would suffer considerably, creating adjustment problems. Failure of one contractor in a particular field or area would lead to chain reaction and disruption, thereby causing substandard work and also enormous difficulties. The State has also taken a stand that in consonance with the guidelines of JBIC, the funding bank, and in order to be assured of a full proof work, it was decided to call tenders for the entire work from expertised and experienced Super-Class contractors. The work of construction of HR, CR and Escapes of the canals of Rengali Irrigation Project is a very sensitive work and depends upon complete synchronization of civil and mechanical works. If the work is segregated and entrusted to two different contractors, it would not be possible to synchronize the same. Taking into consideration all these factors, the State Government decided to invite tenders only from Super-Class Contractors having expert experience in executing such type of sensitive works.

5. Law is no more *res Integra* that the right to choose experienced contractors vests upon the State. Of course, if the power is exercised for any collateral purpose, the same should be struck down. The same view was also expressed by this Court in the case of *Debendranath V. Commissioner-cum-Secretary* AIR 2002 Ori 142.

6. It is an accepted principle that the public authorities normally should invite tenders/offers from duly qualified contractors and after consideration of the offers received should select someone keeping the relevant factors and public interest in mind. System of inviting offers from qualified contractors is a safeguard against favouritism and arbitrariness. When offers are invited from qualified persons, there always remains the possibility of receiving competitive offers.

7. Considering the materials placed and disclosed before us, we do not find that inviting tenders from Super-Class contractors for construction of the work in question which is a composite package is in any way against the interest of the State or against any other public interest. Admittedly, petitioner is a small scale industrial unit. It is not a Super-Class contractor. It has absolutely no experience with regard to civil work and is otherwise not eligible to offer to execute the work. Thus, according to us, the petitioner does not suffer any loss or is in any way prejudiced.

8. A submission is raised on behalf of the petitioner that the Super-Class contractors whose tenders (s) would be accepted would only engage SSI units to manufacture the shutters. But then, the practice of engaging sub-contractors is also an accepted practice in execution of big projects. In such case, the principal contractor only remains solely responsible for satisfactory execution of the job and the authorities can hold the principal contractor liable for any error, default or delay.

9. In the facts and circumstances narrated above, we are satisfied that the work of construction of H.R., C.R., Escapes and Service Road in respect of Rengali Irrigation Project is a composite package consisting of civil and mechanical works which cannot be segregated from one another, in the interest of work and also in public interest the same has to be executed by a Super-Class contractor having expert experience in executing similar type of works. We are, therefore, not inclined to interfere with the decision of the State Government for calling for tenders from Super-Class contractors having expertised experience in executing such work.

10. With the aforesaid observation, the Writ Petition is dismissed. Parties to bear their own costs.