

(2003) 06 OHC CK 0072

In the Orissa High Court

Case No : O.J.C. No"s. 7386 and 11110 of 2001

Bishal Enterprises and etc.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-06-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2003 Ori 207 : (2005) 1 CTLJ 111 : (2003) OLR 535 Supp

Hon'ble Judges : R.K. Patra, J;P.K. Misra, J

Bench : Division Bench

Advocate : S.S. Das, B.R. Das, R.R. Mohanty and K. Behera, in OJC No. 7386/01 and J.N. Patnaik, P.K. Nayak and S. Pattanayak, in OJC No. 11110/01, for the Appellant; Additional Government Advocate, B.B. Ratho, B. Rath, J.N. Rath, M.K. Panda, S.K. Jethy, S. Samantara, S.B. Mohanty, M.K. Singhdeo, R.R. Sahoo, S. Patnaik, B.M. Patnaik, R. Sharma, S. Singhsamant and A. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—Validity of acceptance of tenders submitted by M/s. Logatag India (opposite party No. 5) and M/s. Mediaids, Cuttack (opposite party No. 4) on behalf of Nicholas Piramal India Ltd. (opposite party No. 6) for supply of Auto Analyser and accessories of Auto Analyser i.e. Elocsys (Fully Automatic Elisa Reader) is the subject-matter of challenge in both the writ petitions.

2. The common case of the petitioners is that Superintendent, S. C. B. Medical College and Hospital, Cuttack invited scaled tenders for supply of Auto Analyser and its accessories which was published in the daily Samay dated 7-1-2001. The allegation is that the tenders have been accepted on certain considerations which were not spelt out in the tender call notice. Their further case is that a party which had not purchased the tender paper has been favoured with the largess.

3. Counter-affidavits have been filed by the Superintendent, S. C. B. Medical College and Hospital in both the cases. The contesting opposite parties have also

filed separate counter-affidavits. Their common case is that pursuant to the advertisement published in the daily Samay dated 7-1-2001, four firms submitted sealed tenders by the scheduled date and time. As per the tender call notice, the tenders were to be opened on 5-2-2001 at 4 p.m. but it could not be done on the scheduled time due to pre-engagement of the Superintendent, S. C. B. Medical College and Hospital, Cuttack. Accordingly, the concerned tenderers were informed to attend the opening of the tenders on the next day, i.e. 6-2-2001 at 11 a.m. At the time of opening of the tenders, representatives of the four tenders were present. On verification it was found that M/s. Mediaids (opposite party No. 4) had submitted tenders on behalf of Nicholas Piramal India Ltd. (opposite party No. 6) as its authorised dealer. Objection was raised that M/s. Mediaids (opposite party No. 4) had not purchased tender paper for which its tender may not be entertained. One of the terms and conditions of the tender notice provided that companies/firms who have their authorised dealer/agents/servicing centre in Orissa would be eligible for participating in the tender. In view of this, opposite party No. 4 M/s. Mediaids being the authorised agent of Nicholas Piramal India Ltd. (opposite party No. 6) was considered eligible to participate in the tender programme on behalf of the principal firm which had purchased the tender paper. According the sealed tenders were opened and the Internal Purchase committee consisting of--

(1) Prof L. K. Sahoo, Principal. - Chairman SCB Medical College. Cuttack and Vice-Chair- man of the SCB Medical College and Hospital Soci- ety. - (2) Prof. Ch. N. R. Nanda, Su- - Member perintendent, SCB Medi- cal College and Hospital, Cuttack. (3) Prof. A. Patra, HOD, Pathol- - Member ogy, SCB Member Medical College, Cuttack. (4) Dr. A. K. Mohanty, Assoc . - Member Prof., Pathology, SCBMCH, CTC. (5) Dr. P. C. Mohapatra, Assoc. - Member Professor, Biochemistry. SCBMCH, CTC. (6) Dr. A, K. Patra. Store Medi- - Member cal Officer and I/C Admin- istrative Officer, SCBMCH, Cuttack. (7) Shri Debabrata Das, Ac- - Member counts Officer, SCBMCH, CTC.

authorised in its proceeding dated 8-2-2001 (Annexure-B/2 in O. J. C. No. 11110 of 2001) the Superintendent, S. C. B. Medical College and Hospital, Cuttack to prepare comparative statement and scrutinise the same with reference to the terms and conditions and make the techno-economical evaluation with the assistance of technical experts. In order to examine the technological aspect of the tenders, a Technical Committee consisting of : (1) Dr. A. K. Patra, Prof. and HOD, Pathology; (2) Dr. A. K. Mohanty, Associate Professor, Pathology; and (3) Dr. P. C. Mohapatra, Associate Professor of Biochemistry of S. C. B. Medical College. Cuttack was constituted. The said Committee examined the tender documents as well as comparative statement prepared for the purpose on 26-5-2001 and recommended to the Superintendent to have negotiation with the following three firms before finalisation of the purchase of the equipments.

1. M/s. Logatag India.

2. M/s. International Diagnostic petitioner in OJC No. 11110/2001; and

3. M/s. Mediaids.

Accordingly, the Superintendent, S. C. B, Medical College and Hospital, Cuttack and the Secretary to the Medical College and Hospital Society issued intimation to the above firms to attend the meeting at Bhubaneswar on 8-6-2001. The above three bidders participated in the negotiation meeting. A questionnaire was prepared by the Technical Committee and the same was supplied to the participating bidders to give in writing their price already offered and negotiable price. After written answers from the parties concerned were received the Store Medical Officer prepared a comparative statement showing details of the offer made in respect of each of the required items. After preparation of the comparative statement, the same was placed before the Purchase Committee along with the original tender documents and technical specification for consideration, After going through the relevant documents, the Committee recommended as follows:

"(1) Regarding purchase of Auto Analyser, M/s. Logotag India, New Delhi have offered the lowest price of Rs. 17,82,000/- for two machines with CST at the rate of 4% of Rs. 71.280/- the total cost of which comes to Rs. 13,53,280/-. This being the lowest, the Committee unanimously recommended to approve the price.

(2) As regards ELECSYS 1010/ELISA, the Committee unanimously accepted the offer of M/s. Mediaids, Cuttack at a total cost of Rs. 14,04,288/- inclusive of all taxes."

The above recommendation was approved by the Chairman of the Hospital Society and the E. M. E. T., Orissa and accordingly supply orders were placed with M/s Logotag India (opposite party No. 5) and Nicholas Piramal India Ltd. (opp. party No. 6) (vide Annexures-9 and 10 in O. J. C. No. 11110/ 2001).

4. Law is now well settled that power of judicial review extends to the exercise of contractual power by Government bodies in order to prevent arbitrariness or favouritism. While undertaking the exercise of judicial review, the Court has to do it within its inherent limitations. Since the Government is the guardian of the finances in the State, it is expected that it would protect its financial interest. If the Government body accepts the best quotation, it cannot be considered to be an exercise of arbitrary power.

5. From the proceedings of the Expert Committee, it would appear that the offers were considered openly and specific reasons have been assigned for acceptance of tenders submitted by M/s. Logotag India and M/s. Mediaids on behalf of Nicholas Piramal India Ltd. The dealing is transparent and no exception can be taken to the same. The Committee was fair is further evident from the fact that it also accepted the offer of M/s. International Diagnostics (Petitioner in O. J. C. No. 11110 of 2001) for purchase of Blood Gas Analyser and Electrolyte Analyser. This Court in exercise of writ jurisdiction cannot sit in appeal and reverse the decision which is fair and reasonable.

6. For the reasons aforesaid, the impugned decision taken in the matter cannot be found fault with. There is no merit in either of the writ petitions. Both the writ petitions are hereby dismissed.

With the dismissal of the writ petitions, the interim orders stand vacated.