
(2010) 04 OHC CK 0049
In the Orissa High Court

Dandapani Padhi

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Citation : (2010) 110 CLT 114

Hon'ble Judges : V. Gopalagowoa, C.J;B.K. Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.K. Patel, J.—In this writ application, the Petitioner has made prayer to quash the award of tender of transport contract under MDM & SNP of Nuagada Block & ICDS in favour of Opp. Party No. 7. Petitioner was one of the unsuccessful bidders.

2. By Tender Call Notice dated 27.8.2009 under Annexure-1 sealed tenders were invited from intending transport contractors under MDM & SNP of Nuagada Block & ICDS respectively on the terms & conditions contained therein. Clause-9 of the Tender Call Notice contained the term "Schedule of Vehicle" stipulating, inter alia, that the person wishing to tender for the work should furnish a schedule containing the registration number of the vehicle under his ownership & shall produce proof of ownership such as attested copies of the registration certificate. In response to Tender Call Notice, the Petitioner as well as three others including Opp. Party No. 7 submitted their sealed tenders. It is averred by the Petitioner that while considering award of tenders in respect of MDM & SNP, the Tender Committee of the Gajapati District had decided under Annexure-3 on 18.10.2004 that Nuagada is one of the most difficult areas so far as motorable roads are concerned, & transportation cannot be made if there is no negotiation resulting in dislocation in the , functioning of Anganwadi Centres for SNP & MDM. It was decided to negotiate with the single tenderer who had agreed to transport @ Rs. 18.00 per quintal. Despite such earlier decision the Tender Committee illegally accepted the offer of Opp. Party No. 7 for transportation @ Rs. 12.80 per quintal

& rejected the Petitioner's offer to transport @ Rs. 18.00 per quintal. It is further contended on be half of the Petitioner that the proceeding of the Tender Committee reveals that the Petitioner failed to produce any document in support of ownership of vehicle.

3. Official Opp. Party Nos. 3 to 5 have filed counter denying the allegations made by the Petitioner. It is averred therein that, in accordance with the notice, tender papers submitted by the four bidders including the Petitioner & Opp. Party No. 7 were opened by the Tender Committee on 17.9.2009 in presence of Petitioner, Opp. Party No. 7's representative & another bidder Laxmipriya Padhy. All the four tenderers had submitted the requisite documents. Opp. Party No. 7 had quoted Rs. 12.80 per quintal whereas Petitioner had quoted Rs. 18.00 per quintal . Smt. Laxmipriya Padhy had quoted Rs. 70.00 per quintal whereas Sri Birendra Raita had quoted Rs. 16.00 per quintal. Comparative statement prepared by the Committee was signed by the tenderers & the representative of Opp. Party No. 7. After the tender process was over, the Petitioner submitted a representation to the Collector, Gajapati for consideration of his grievance & requested to accept his tender @ Rs. 18.00 per quintal. The Collector caused an enquiry in respect of the allegation made by the Petitioner by the Sub-Collector, Parlakhemundi & thereafter, directed award of the Tender to Opp. Party No. 7, the lowest bidder. At the time of finalization of tender, Opp. Party No. 7's representative was very much present & the Petitioner did not object to his representation. In the year 2004-2005, rate of transportation was negotiated @ Rs. 18.00 per quintal as the Petitioner's brother, the only tenderer, had quoted the rate at Rs. 25.00 per quintal. There is no relationship between the disputed tender & the tender for the year 2004-05. The Petitioner cannot expect perpetuation of his contract with Government for transportation of food-stuff under MDM & SNP.

4. In his rejoinder affidavit, the Petitioner has reiterated that in the year 2004-05 the Tender Committee had come to a conclusion in Annexure-3 that, considering the road condition & other factors, any rate less than Rs. 18.00 per quintal would be unworkable & unviable. Therefore, acceptance of Opp. Party No. 7's bid for Rs. 12.80 per quintal is not acceptable. Since 2004 upto 2009, the Petitioner was awarded the tender for Nuagada Block @ 18.00 per quintal which shows that the decision taken under Annexure-3 was all along adhered to. That apart, the Petitioner having not furnished any document to show his ownership over any transport vehicle, award of tender in his favour is vitiated by unfairness, unreasonableness & malafide.

5. Learned Counsel for the Petitioner contended that in Annexure-3 a conscious decision having been taken by the Tender Committee while finalizing the tender for transport in the year 2004-05 that due to bad road conditions of Nuagada Block rate for transportation had to be negotiated @ Rs. 18.00 per quintal & the Petitioner having been awarded tender for Nuagada Block at the same rate till 2009, Opp. Party No. 7's bid @ Rs. 12.80 per quintal should not have been

accepted. It was further contended that the comparative table prepared at the time of finalization of tender shows that the Petitioner failed to produce any document to show his ownership over any transport vehicle & thereby violated the stipulation in the Tender Call Notice at Annexure-1 to produce proof of ownership of vehicle.

6. Learned Government Advocate appearing for Opp. Party Nos. 3 to 5 contended that the Petitioner having participated in the entire tender process is not entitled to assail the proceeding as well as the decision of the Tender Committee. It was further contended that there is no scope for the Petitioner to fall upon the decision of the Tender Committee taken in the year 2004-05 to urge that the award of tender at a rate which is less than Rs. 18.00 would not be workable for Nuagada Block. Road condition & other factors prevalent during the year 2004-05 have changed in the meanwhile. Opp. Party No. 7 was the lowest bidder. In course of finalization of tender, his representative appeared & filed documents including registration certificate of vehicle registered in the name of Opp. Party No. 7's father. Also, Petitioner's objection against Opp. Party No. 7 on the ground that he did not own any vehicle was inquired into & it was found that he was having a vehicle registered in the name of his father. The tender proceeding & the comparative table were signed by the Petitioner himself. Therefore, the Petitioner should not raise any grievance after his participation in the entire tender process.

7. Learned Counsel appearing for the Opp. Party No. 7 supported the stand taken by the Learned Government Advocate.

8. Decision of the Tender Committee under Annexure-3 taken on 18.10.2004 while considering the tender for the year 2004-05 cannot have any relevance in deciding the disputed tender in response to Tender Call Notice dated 27.8.2009 under Annexure-1. It appears that only one tender was received in the year 2004-05 with an offer of Rs. 25.00 per quintal. That being the highest offer, it was decided to negotiate with the single tenderer. As Nuagada used to be one of the most difficult areas so far as motorable roads are concerned, it was apprehended that if there was no negotiation, transportation cannot be made which will create dislocation in the functioning of Anganwadi Centres for SNP & MDM. Nor the tenders for subsequent years are relevant for the purpose of deciding the validity of disputed tender. Comparative statement of the tender papers prepared by the Committee on 17.9.2009 reveals that Opp. Party No. 7 quoted Rs. 12.80 per quintal which was the lowest. Said comparative table also reveals that R.C. Book in respect of vehicle No. OR07H 6228 standing in the name of father of Opp. Party No. 7 was produced in support of ownership of the vehicle. In the proceeding it has been mentioned that in response to Petitioner's objection to Opp. Party No. 7's tender on the ground that Opp. Party No. 7 does not have any vehicle, an enquiry was made & his ownership over the above said vehicle was ascertained. Petitioner is a signatory to the comparative table as well as the proceeding. Admittedly, the Petitioner was not the lowest bidder. In the

meanwhile, Opp. Party No. 7 appears to have entered into agreement with the Government in terms of the tender. Opp. Party No. 7 having consciously quoted the rate @ Rs. 12.80 per quintal & entered into the agreement, it is for him & the Government to ensure performance of the contract. On considering the rival averments & scrutiny of materials on record, we do not find any illegality in the tender process.

9. Therefore, we are not inclined to interfere with the award of tender to the Opp. Party No. 7. Accordingly, the writ application being devoid of merit, is dismissed.

V. Gopalagowda, C.J.

10. I agree.

11. Writ application dismissed.