
(2007) 04 OHC CK 0046

In the Orissa High Court

Ganpat Lal Pawan Kumar and Others

APPELLANT

Vs

The State of Orissa and Another

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 103 CLT 761 : (2007) 1 OLR 779 Supp

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Das, J.—On 18.2.2005, a notice inviting bids for sale of two Spinning Mills was published by the Government of Orissa in its Department of Public Enterprises. The two Spinning Mills which were proposed to be sold were the Orissa Weavers Co-operative Spinning Mills Ltd. (ORICOSPIN) located at Tora, Bargarh with 30,800 spindles and the Kalinga Weavers Co-operative Spinning Mills Ltd. (KALICOSPIN) located at Govindpur, Dhenkanal with 25,000 spindles. It was stipulated in the said notice that the Government of Orissa reserves the right to withdraw from the process or any part thereof, to accept or reject any or all offers at any stage of the process and/or modify the process or any part thereof or to vary any terms at any time without assigning any reason whatsoever and that no financial obligation whatsoever shall accrue to the Government of Orissa in such event. The above mills were decided to be sold by the Government of Orissa in course of implementation of its policy on selective privatization/ dis-investment of loss making Public and Co-operative Enterprises operating in non-core sectors. As it is gathered from the records of this case that the objective of the Government's policy was to revive potentially viable loss making enterprises and to safeguard the interest of the workers and to create opportunities for further job creation as a part of the on-going Public Enterprises Reform Programme and a Medium Term Fiscal Restructuring Strategy of the Government. It was further stated in the said notice inviting bids that the Government intended to sell the assets and business of the above two Co-operative Spinning

Mills to the investors to operate the mills from the same location and the liability of the mills will not be transferred to the investors.

2. The Petitioner No. 1 firm was one of the bidders for the KALICOSPIN at Dhenkanal and participated in the bid and offered Rs. 4.00 crores as one time payment or Rs. 5.25 crores on deferred payment on mutual terms. The bids were opened on 21.3.2005 at 4.00 P.M. The Petitioner No. 1 -firm was called for negotiation in which it enhanced its price to Rs. 4.01 crores as one time payment and Rs. 5.31 crores on deferred payment basis. The only other bidder being Ruhatia Spinning Private Limited, offered Rs. 2.01 crores. As per letter dated 25.11.2005 under Annexure-13 issued by the Opp. Party No. 2, the Petitioners were intimated that their bid was not accepted by the Department of Public Enterprises. Being aggrieved by the said rejection of the offer of the Petitioners, they have approached this Court in the present Writ Petition under Article 226 of the Constitution for appropriate relief.

3. Various affidavits and counter affidavits have been filed in course of hearing of the Writ Petition. In the initial counter affidavit filed on behalf of the Opp. Parties, it has been stated that by the letter dated 18.8.2005 under Annexure-12 to the Writ Petition, the Petitioner No. 1-firm withdrew its offer of Rs. 5.31 crores though on deferred payment basis and stuck to its offer of Rs. 4.01 crores for the KALICOSPIN. As the said offer was much below the reserved price fixed by the Government, the same was rightly rejected by the letter under Annexure-13 and the Petitioners can not have any grievance against such rejection.

4. In course of hearing of the present Writ Petition, though Mr. Panja, Learned Senior Counsel appearing for the Petitioner raised various questions challenging the rejection of the bid of the Petitioners, but ultimately, he argued on the solitary question that on 1.2.2006 when the Petitioner made an offer before this Court to pay Rs. 5.31 crores as the price for the said KALICOSPIN and further offered that the Petitioner No. 1-firm will deposit a sum of Rs. 1.30 crores in the name of the Registrar (Judicial) of this Court in shape of Bank Draft by 15.2.2006 and the balance amount within two and half monthsthereafter, Learned Advocate General having accepted the said proposal and the Petitioners having subsequently deposited the said amount of Rs. 1.30 crores, they are entitled to an order from this Court directing the Opp. Parties to sell the KALICOSPIN in favour of the Petitioners. The Order dated 1.2.2006 passed in this case read as follows:

In Course of hearing in presence of the Learned Advocate General, Mr. Panja, Learned Counsel for the Petitioners offered Rs. 5.31 crores as the price for Kalinga Weavers Co-operative Spinning Mills Ltd. (KALICO SPIN), Dhenkanal, Mr. Panja further submits that out of the said amount, the Petitioners will deposit a sum of Rs. 1.30 crores by way of Bank Draft in favour of the registrar (Judicial) of this Court by 15.2.2006 and the balance amount shall be deposited within two and half months thereafter with the Registrar (Judicial) of this Court by way of Bank Draft payable at Cuttack.

Learned Advocate General accepts the proposal of Mr. Panja, Learned Counsel for the Petitioners and accordingly, we direct the Petitioners to deposit a sum of Rs. 1.30 crores in shape of Bank Draft drawn on any nationalized bank at Cuttack in favour of the Registrar (Judicial) of this Court by 15.2.2006 and to deposit the balance amount of Rs. 4.01 crores in a similar manner in favour of the Registrar (Judicial) of this Court by the end of 30.04.2006. List this matter on 15.2.2006.

Meanwhile, interim order passed earlier shall continue.

However, it appears from the records that when the matter was listed on 15.2.2006, an adjournment was sought for on behalf of the Petitioners and no deposit was made by them pursuant to the Order dated 1.2.2006. The case was adjourned to 1.3.2006 on which day, a petition was filed on behalf of the Petitioners seeking further time to deposit the amount as directed by this Court. Though the Order dated 1.2.2006 was not modified but the case stood adjourned to 8.3.2006. On 8.3.2006 again an adjournment was sought for by the parties and the matter was listed on 22.3.2006. When the matter was taken up on 22.3.2006, it was stated that the KALICOSPIN had certain liabilities and the Learned Government Advocate was given two weeks time to file a detailed affidavit stating therein all the liabilities in respect of the said mills. The matter was again listed on 3.5.2006 when on considering the submissions made by the respective parties, the following order was passed:

Heard Learned Counsel for the parties.

It is submitted by Mr. Panja, Learned Counsel for the" Petitioners that by Order dated 1.2.2006, the proposal of the Petitioners to purchase the Kalinga Weavers Cooperative Spinning Mills Ltd., Dhenkanal (in short "KALICO SPIN") at Rs. 5.31 crores and the Petitioners would deposit a sum of Rs. 1.30 crores by way of bank draft in favour of the Registrar (Judicial) of this Court by 15.2.2006 and the balance amount would be deposited within two and half months thereafter with the Registrar (Judicial) of this Court by way of bank draft payable at Cuttack, was accepted by the Learned Advocate General and the Petitioners were directed by this Court to deposit the said sum of Rs. 1.30 crores in shape of bank draft in favour of the Registrar (Judicial) by 15.2.2006 and further to deposit the balance amount in similar manner by 30.4.2006. Mr. Panja further submits that on 15.2.2006 due to some unavoidable circumstance, the Petitioners being unable to deposit the said amount prayed for an adjournment and the matter was directed to be listed on 1.3.2006. Ultimately, thee Petitioners came to know that there are various other liabilities against the company proposed to be purchased by the Petitioners and basing on such submission, this Court by Order dated 22.3.2006 directed the Learned Government Advocate to file a detailed affidavit within two weeks stating therein all the liabilities of the KALICO SPIN.

In the meantime, on 22.3.2006, an affidavit has been filed on behalf of the Regional Provident Fund Commissioner, Orissa, stating therein that certificate cases have been initiated by the Recovery Officer of the E.P.F. Organization for

recovery of the outstanding dues against the KALICO SPIN and the orders of attachment of immovable property were issued on 30.11.2005. Mr. Panja submits that the provident fund dues on the KALICO SPIN would be around Rs. 10.00 crores and even though the Petitioners are still willing to purchase the said factory at the rate agreed to, but steps should be taken by the Government of Orissa to get clearance from the Recovery Officer after lifting the orders of attachment for sale of the said factory. He further submits that since the Petitioners in order to show their bona fide have brought 29 (twenty nine) bank drafts totaling to a sum of Rs. 1.30 crores in compliance to the direction issued by this Court on 1.2.2006, the same may be accepted and kept in deposit by the Registrar (Judicial) of this Court in the Court's Account without prejudice to the rights and claims of the parties to this Writ Petition. The details of bank drafts have been given in separate sheet.

As it appears from the said bank drafts, instead of the Registrar (Judicial), Orissa High Court, the bank drafts (29 in number) have been drawn in favour of the Registrar (Judicial), Cuttack High Court. Mr. Panja deposits the said bank drafts before us. The Registrar (Judicial) of this Court is directed to deposit the said drafts in the Account of this Court. In the event, the said drafts are not accepted by the Bank, the same shall be returned to the Learned Counsel for the Petitioners for necessary correction to be made on it.

Learned Government Advocate prays for time to obtain specific instruction with regard to lifting of the order of attachment issued by the Recovery Officer in the proceeding for recovery of the outstanding dues of the Provident Fund Commissioner.

We accordingly grant time to the Learned Government Advocate till 1 9.6.2006.

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5. An affidavit sworn to by the Under Secretary , Department of Public Enterprises, Government of Orissa, has been filed on 3.11.2006. From the said affidavit, it appears that the Government of Orissa found that it is no more feasible and viable to sell the assets of the KALICOSPIN which has other liabilities to a tune of Rs. 21,32,82,610.36 and statutory liabilities (including provident fund) of Rs. 3,82,13,662.02 as on 31.8.2005. It was further disclosed in the said affidavit that the Government has decided to go for re-advertisement to sell the assets and business of KALICOSPIN mill Govindpur , Dhenkanal. Again during the course of hearing, the Principal Secretary to the Government in its Public Enterprises Department filed a further affidavit dated 17.12.2006 reiterating the liabilities of the said mill and the decision of the Government to make a fresh advertisement inviting offers for sale of the assets and business of said KALICOSPIN mill.

6. Mr. Panja, Learned Senior Counsel for the Petitioners strenuously urged that the statement/ concession made by the Learned Advocate General before this Court accepting the offer of the Petitioners at Rs. 5.31 crores pursuant to the

Petitioners" depositing a sum of Rs. 1.30 crores with the Registrar (Judicial) of this Court cannot be brushed aside and should be taken to be a concession of the Government. Learned Additional Government Advocate, however, submitted that since during the pendency of the Writ Petition, Certificate Case has been initiated by the Regional Provident Fund Commissioner for recovery of the dues of the KALICOSPIN and the properties have been attached by the date the alleged concession was made by the Learned Advocate General, such concession cannot be construed to have been made on instruction of the Government. Even otherwise, the Government had always the right to withdraw from the process of sale. However, he contended that the Petitioners being unsuccessful bidders, they have no right to challenge the process of sale as it was clearly intimated to the Petitioners that their offer of Rs. 4.31 crores is not acceptable. Mr. Panja, Learned Senior Counsel for the Petitioner in support of his contention that concession of the Learned Advocate General amounts to concession of the State, relied upon the decision in the case of Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, .

7. We called for the relevant records from the Government, which was produced before us. On verifying the same, we do not find any reason for not accepting the decision of the Government to sell the KALICO SPIN by making a fresh advertisement. On verifying the said records, we are also satisfied that the offer made by the Petitioners in the process of bid was rightly rejected by the Government. With regard to the concession of the Learned Advocate General, we also find that even accepting the same to have been made by the Government, the Petitioners did not comply with the direction given in the Order dated 1.2.2006 as no deposit was made by the date as undertaken by the Petitioners. Though the Petitioner No. 1 -firm has deposited Rs. 1.30 crores under 29 numbers of drafts, the same cannot be construed to be a deposit made pursuant to the direction dated 1.2.2006. The balance amount of Rs. 4.01 crores has also not been deposited within the period as undertaken.

8. In view of the above, we find no merit in the Writ Petition which is accordingly dismissed. The amount of Rs. 1.30 crores which has been deposited by the Petitioners with the Registrar (Judicial) of this Court be refunded to the Petitioners on proper identification along with the interest, which might have accrued thereon. Consequently, all the pending-Misc. Cases stand disposed of.

B.P. Das, J.

9. I agree