
(2009) 12 OHC CK 0005
In the Orissa High Court

Kalyani Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Citation : (2010) 3 BC 66 : (2010) 109 CLT 588 : (2010) 1 OLR 428

Hon'ble Judges : I.M. Quddusi, Acting C.J.;S. Panda, J

Bench : Division Bench

Judgement

1. Heard Mr. Santosh Ku. Swain, learned Counsel for the petitioner, Mr. D.P. Dhal, learned Counsel appearing for the intervenor-petitioner and Mr. Ramakanta Mohapatra, learned Government Advocate for the State-opposite parties.

2. By means of this writ petition, the petitioner has prayed for quashing of impugned Tender Call Notice No. 2 dated 24.9.2009 published under Annexure-2 with a further prayer to direct the authority to give the tender call notice afresh block wise inviting applications only from WSHGs and their federation by affording them reasonable time to submit their tender papers for supply of Arhar Dal under Supplementary Nutrition Programme for Bhadrak District during the year 2009-2010.

3. Facts of the case are that the petitioner is the Secretary of Alok Jyoti Block Federation (WSHG) of Tihidi Block in the district of Bhadrak. The Government of Orissa in Women and Child Development Department through "MISSION SHAKTI" has undertaken a series of drives for empowerment of women living below the poverty line and to achieve the above goal, the formation of Women Self-Help Groups has been done and is being encouraged in Panchayat level all over the State. The Collector, vide impugned tender notice dated 24.9.2009, invited sealed tenders in the prescribed format from the registered Firms/ Suppliers/Co-operative Agencies/WSHGs for supply of Arhar Dal under Supplementary Nutrition Programme (SNP) for Bhadrak district during the year 2009-2010. It was mentioned in the said notice that the tender papers can be obtained from the office of the DSWO, Bhadrak, opposite party No. 4 on payment

of Rs. 5,000/- during the office hour on any working day till 2.30 PM from 29.9.2009 to 5.10.2009. It has been further stated therein that the tender papers should be sent by Regd. Post with AD in a sealed cover to the D.S.W.O., Bhadrak so as to reach his office on or before 2.30 PM of 5.10.2009 and the tenders shall be opened on the same date i.e. 5.10.2009 at 3 PM by the Collector Bhadrak in the Collectorate or any officer authorized by him in presence of the Purchase Committee members.

4. The main ground of challenge in this writ petition is that the petitioner has not been given reasonable time to submit its tender paper. It appears from the tender call notice that the tender paper was to be sold during office hours till 2.30 p.m. on the working days during the period from 29.9.2009 to 5.10.2009. Learned Counsel for the petitioner submits that between 29.9.2009 and 5.10.2009, there were only three working days, i.e. 20.9.2009, 30.9.2009 and 1.10.2009 and during these three working days, it was practically impossible on the part of all the intending tenderers to obtain tender papers and arrange all the documents along with the EMD.

5. A perusal of the advertisement shows the arbitrariness of the opposite parties as the time granted by the opposite parties in ordinary course was not sufficient for a normal person to prepare himself for participation in the tender. The arbitrariness of the concerned officer is as under:

1. The tender call notice was published in a newspaper i.e. "The Samay" dated 25.9.2009 which has a less circulation and its rank is fifth in circulation in Bhadrak district. It is also to be noticed that the tender call notice was not published in widely circulated Oriya dailies like "The Samaj", "Sambad" and "Dharitri" presumably with the intention that let not more people know about this and participate in the tender process, as mentioned by the learned Counsel for the petitioner, so that the person of choice of the opposite party may get success in getting the contract;

2. The tender call notice was published in the newspaper, as aforesaid, on 25.9.2009 but the tender papers were not sold from that date rather it was mentioned in the tender call notice that the distribution of the tender papers would be starting during office hours from 29.9.2009 and continue till 2.30 p.m. of 5.10.2009 in the office of the District Social Welfare Officer, Bhadrak and the tender papers completed in all respect with all necessary documents should be sent by Registered Post with AD in a sealed cover so as to reach the DSWO, Bhadrak on or before 2:30 PM of 5.10.2009 or dropped in the tender box kept in the aforesaid office within the above date and time. It was also mentioned that the tenders shall be opened at 3:00 PM on 5.10.2009.

6. The question arises as to why the tender papers were notified to be sold from 29.9.2009 and not from the date of publication of the tender call notice in the newspaper. It is also to be noticed that 2.10.2010 was a holiday due to the birthday of Mahatma Gandhi and 3.10.2009 was also a holiday for Kumarpujima

and 4.10.2009 was Sunday and hence virtually intending bidders could get only 29th and 30th of September, 2009 and 1.10.2009 as working days for getting the tender papers. For filling up of the tender paper and obtaining necessary documents for fulfilling the conditions some time would be taken and in such circumstances only those persons, who had prior notice that such a tender call notice would be issued and with that knowledge who had obtained the necessary documents in advance can only participate or anybody can participate without furnishing necessary documents but to no avail. It is also to be noticed that if a person wants to send the tender paper by post, it would minimum three days to reach the destination.

7. It is contended by the learned Counsel for the petitioner that the cost of the tender paper was fixed at Rs. 5,000/- whereas in other districts like Phulbani, it was fixed at Rs. 1000/-. We have been informed by the learned Counsel for the petitioner that the supply involved in the tender in question was to the tune of Rs. 10.00 crores.

8. In view of the above, this Court is of the firm opinion that such an advertisement was not issued bona fide or in other wards, it can be said that the same was issued on extraneous considerations.

9. Learned Government Advocate has submitted that as the revised claims for Supplementary Nutrition Programme in ICDS Projects was issued on 3.9.2009 by Government of Orissa, the tender was invited in hot haste. We are unable to accept the submission of the learned Government Advocate. Had the advertisement been issued immediately after receipt of the letter dated 3.9.2009 of the Government, say, within a week, the intending bidders would have got ample time to submit their tenders and the revised norms would have come into effect from 1st of October, 2009 as stipulated in the letter dated 3.9.2009 of the Government of Orissa and not from 5.10.2009 as in the present case.

10. However, since the tender in question is urgent in nature, we do not want to disrupt the same and accordingly, we direct that for the coming year, the tender shall be invited on 25th of February, 2010 giving at least fifteen days time to the intending bidders for participation so that the agreement in question shall be effective from 1.4.2010.

11. Though we do not want that the supply of essential commodities which is under the Supplementary Nutrition Programme should be disturbed in any manner but that does not mean that the arbitrary action of the District Social Welfare Officer should be given a clean chit.

12. Therefore, we direct that apart from carrying out the direction as mentioned above, the Inspector General of Vigilance, Cuttack shall conduct an inquiry to know whether the arbitrariness and mala fide action as stated above was taken with an intention to provide undue advantage to certain persons by preventing other persons to participate in the tender process.

13. The writ petition is disposed of accordingly.

14. Issue urgent certified copy.

15. A free copy of this order shall be served on Mr. Ramakanta Mohapatra, learned Government Advocate for communication of this order to I.G. Vigilance for compliance.