(2018) 03 OHC CK 0054

In the Orissa High Court

Case No : W.P. (C) NO. 8578 OF 2016

Krishik Infrastructure Developers Pvt. Lt — APPELLANT

Vs

Orissa Industrial Infrastructure Development Corporation and others — RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Citation : (2018) 03 OHC CK 0054

Hon'ble Judges : VINEET SARAN, Dr. B.R SARANGI

Bench : Single Bench

Advocate : Santun Sarangi,??B.K. Biswal and M. Das, Pradipta Kumar Mohanty, D.N.??Mohapatra, J. Mohanty, P.K.??Nayak, A.Das, P.K.Pasayat

Final Decision : Allowed

Judgement

DR.B.R.SARANGI,J.

1. M/s Krishik Infrastructure Developers Pvt. Ltd., a company incorporated under the Companies Act, 1956, is a registered Class-A contractor

eligible to carry out civil works of the State Government, Central Government, Public Sector Undertakings by way of participating in the tender

process. The Orissa Industrial Infrastructure Development Corporation (in short â??IDCOâ??) issued Invitation for Bids (IFB) on 21.09.2015

through online for â??Construction of Gents Hostel (second floor) of Govt. Polytechnic at Ragadi in the district of Jajpurâ?. Pursuant to such IFB, the

petitioner, along with others, submitted its bid. Even though the petitioner was qualified, being a single bidder, its tender was cancelled.

Consequentially, a fresh IFB was issued on 07.12.2015 through online from the registered IDCO Vendors/Contractors having appropriate class of

registration from State PWD/CPWD/Railways/MES for the selfsame work as per the terms and conditions stipulated therein. The estimated cost of

such work was Rs.130.00 lakhs approximately. The petitioner, having satisfied the terms and conditions stipulated therein, submitted its bid on

19.12.2015. The tender of the petitioner, having been found suitable both in the technical bid and in financial bid, was accepted at Rs.1,25,47,857/-,

which is lower than the estimated price. The Chief General Manager (Civil), IDCO- opposite party no.2 issued a letter of acceptance on 15.03.2016.

Accordingly, the petitioner was asked to deposit initial security deposit of Rs.2,50,957/-, either in shape of demand draft or bank guarantee drawn in

any nationalized bank / schedule bank in favour of IDCO. Thereafter, the petitioner was asked to deposit additional performance security of

Rs.73,927/- and requisite nonjudicial stamp paper worth Rs.100/- with sufficient catridge papers for execution of agreement within fifteen days from

the date of issuance of the acceptance letter. The petitioner complied with the same on 16.03.2016. The Divisional Head IDCO, Jajpur Road Division-

opposite party no.3 issued work order on 30.03.2016 for execution of work in question, which was received by the petitioner on 07.04.2016. The

petitioner requested the office of the opposite party no.3 for supply of approved drawing of the building. The same having not been supplied, the

petitioner again issued reminder on 15.04.2016 through registered post with A.D., but the same was not responded to by opposite party no.3. Lastly on

27.04.2016, the petitioner made a further request, but opposite party no.3 remained silent. For execution of work, the petitioner invested huge amount

of money. At this juncture, by letter dated 07.04.2016, opposite party no.3 instructed its material testing section for testing of raw materials to be used

in the construction of building in question. Accordingly, the petitioner was intimated to deposit an amount of Rs.8,419/- with the Officer-inCharge of

Testing Laboratory along with the samples. The petitioner, thereafter, got the samples of design mix M-20 tested by Sai Consultancy, Bhubaneswar,

which supplied the test result report of the cement concrete mix design to the petitioner on 18.04.2016.

2. When the matter thus stood, opposite party no.2 invited a fresh IFB on 07.05.2016 for the self same work. Then the petitioner approached opposite

party no.1 to ascertain the reason for inviting fresh tender. It was informed that the letter of acceptance issued in favour of the petitioner dated

15.03.2016 had been withdrawn and tender was cancelled. On 13.05.2016, a copy of the letter bearing no. 9412 dated 04.05.2016 was made available

to the petitioner, wherein it was intimated that letter of acceptance issued in favour of the petitioner company has been withdrawn and tender process

stood cancelled on administrative ground, hence this application.

3. Mr. B.K. Biswal, learned counsel for the petitioner contended that a perusal of the office order dated 04.05.2016 in Annexure-11 would indicate

that the letter of acceptance issued in favour of the petitioner for the work in question has been withdrawn and tender process stood cancelled on

administrative ground. As such, for cancelling such tender neither an enquiry was conducted, nor notice was issued, nor any show cause was called

for, nor the letter contains any reason for such cancellation of tender. Therefore, the same cannot sustain in the eye of law and is liable to be quashed

and thereby the consequential invitation for bid dated 07.05.2016 in Annexure-12 is also liable to be quashed.

4. Mr. P.K. Mohanty, learned Senior Counsel appearing along with Mr. P.K. Pasayat, learned counsel for the opposite parties tried to justify the order

passed by the authority concerned. Though he fairly admits that the petitioner was selected by following due tender process and was issued with an

work order, but submits that the petitioner, as per the requirement of the tender documents, was to furnish the turnover certificate and as such the

petitioner furnished the turnover certificates for the years 2012-13, 2013-14 and 2014-15, which were issued by Chartered Accountant M/s. R.K.

Sahoo & Company in the letterhead of Chartered Accountant M/s. Sanjay Shradha & Associates. As the Chartered Accountant M/s. R.K. Sahoo &

Company was not duly authorized by the Chartered Accountant M/s. Sanjay Shradha & Associate to issue such turnover certificates, the turnover

certificates so submitted cannot sustain in the eye of law. It is further submitted that the Chartered Accountant Sri S.K. Agrawalla, partner of M/s.

Sanjay Shradha & Associates in his letter dated 26.04.2016 confirmed that M/s. R.K. Sahoo & Company, Chartered Accountant signed and issued

the turnover certificates inadvertently in the letterhead of Chartered Accountant M/s. Sanjay Shradha & Associates. It is thus contended that the

turnover certificates furnished by the petitioner were not acceptable. It is also contended that as regards the digital signature for uploading the bid, it was confirmed by the State e-procurement Cell, Works Department, Government of Odisha that the digital signature used, while uploading the bid for

the work in question, was in the name of Sri Lalat Keshari Jena in his capacity as proprietor of the erstwhile firm and not as Sri Lalat keshari Jena as

Director of the petitioner company. By using the name of Sri Lalat Keshari Jena in different capacity it had created confusion and as such it was

found that the petitioner misrepresented by using the name of Sri Lalat Keshari Jena in different capacity than the real-one and thereby contravened

the condition laid down in the tender call notice. Consequentially, the work order issued in favour of the petitioner has been cancelled and fresh

invitation for bid issued on 07.05.2016.

5. We have heard Mr. B.K. Biswal, learned counsel for the petitioner and Mr. P.K. Mohanty, learned Senior Counsel appearing along with Mr. P.K.

Pasayat, learned counsel for the opposite parties. Pleadings having been exchanged between the parties and with the consent of the learned counsel

for the parties, this petition is being disposed of finally at the stage of admission.

6. In view of the factual matrix as delineated above, there is no dispute that following due process of tender the petitioner was selected and having

found L-1 its bid was accepted and letter of acceptance was issued by opposite party no.2 on 15.03.2016 for â??Construction of Gents Hostel

(second floor) of Govt. Polytechnic at Ragadi in the district of Jajpurâ?. The conditions stipulated in the acceptance letter were complied with by the

petitioner on 16.03.2016 and as a consequence thereof work order was issued in its favour on 30.03.2016, which was received by the petitioner on

07.04.2016. Had the opposite parties supplied the copy of the approved drawing of the building, the petitioner could have started the work, but in spite

of several reminders the delay was caused at the level of the opposite parties for supply of such approved drawing. As a matter of fact, the petitioner

in order to execute the work has invested huge sum of money and also gone for material testing as required for the said purpose. But all on a sudden,

the letter dated 04.05.2016 was issued for withdrawal of the letter of acceptance dated 15.03.2016 issued in favour of the petitioner and the tender

process was cancelled on administrative ground. What is the administrative ground, for which the office order dated 04.05.2016 was issued, has not

been indicated nor any reason has been assigned why the letter of acceptance dated 15.03.2016 issued in favour of the petitioner was withdrawn.

From the impugned letter dated 04.05.2016 it is found that for such cancellation of tender no show cause was issued nor was any inquiry conducted

and abruptly the order was passed for withdrawal of the letter of acceptance dated 15.03.2016 and consequential cancellation of tender process on

administrative ground. Merely mentioning â??administrative groundâ? in the office order dated 04.05.2016, without assigning reasons for withdrawal

of letter of acceptance, cannot germen to the issue in question. It is well settled principle of law laid down by the apex Court time and again that the

giving of reasons facilitates detection of errors committed by the authority concerned. Therefore, failure to give reasons may permit the Court to infer

that the decision was reached by the reasons of an error in law. In absence of any reasons in the order impugned, the same cannot sustain in the eye

of law.

7. In the counter affidavit the opposite parties have justified the order dated 04.05.2016, by which the letter of acceptance has been withdrawn and

tender process has been cancelled, by contending that the bidders had to furnish the turnover certificate. The turnover certificates furnished by the

petitioner for the years 2012-13, 2013-14 and 2014-15 had been issued by Chartered Accountant M/s R.K. Sahoo & Company in the letterhead of

Chartered Accountant M/s Sanjay Shradha & Associates. Therefore, it is contended that Chattered Accountant M/s R.K. Sahoo & Company had not

been duly authorized by the Chattered Accountant M/s Sanjay Shradha and Associates to issue such turnover certificates. Rather Chartered

Accountant Sri S.K. Agrawalla, partner of M/s Sanjay Shradha & Associates, in his letter dated 26.04.2016 confirmed that M/s R.K. Sahoo &

Company, Chartered Accountant signed and issued the turnover certificates inadvertently in the letterhead of Chartered Accountant M/s Sanjay

Shradha & Associates. The grounds which now set forth in the counter affidavit would be an afterthought, reason being this requirement is to be

considered at the time of evaluation of financial bids. The same having been considered and petitionerâ??s bid accepted and work order issued to

execute the work, subsequently the opposite parties cannot turn around and say that the turnover certificate furnished by the petitioner is not

acceptable. As such, the opposite parties are estopped from making such contention, which is forbidden under law.

8. It is further contended that as regards the digital signature for uploading the bid, it was confirmed by the State e-procurement Cell, Works

Department, Government of Odisha that the digital signature certificate used, while uploading the bid for the work â??Construction of Gents Hostel

(2nd Floor Building) of Govt. Polytechnic at Ragadi in the District of Jajpurâ? was in the name of Sri Lalat Keshari Jena in his capacity as proprietor

of the erstwhile firm and not as Sri Lalat Keshari Jena as Director of M/s Krishik Infrastructure Developers Pvt. Ltd. By using the name of Sri Lalat

Keshari Jena confusion has been created. Therefore, the petitioner company has misrepresented by using the name of Sri Lalat Keshari Jena in

different capacity and thereby contravened the condition laid down in the DTCN. This question cannot also be taken into consideration, in view of the

fact that after the scrutiny of the documents the petitioner, having been found suitable, was issued with the letter of acceptance and consequentially

work order was issued in its favour. Therefore, there was no justifiable reason to place the matter before the tender committee on 03.05.2016 to re-

examine the issue so as to withdraw the letter of acceptance and cancel the tender process. More particularly, for withdrawal of the letter of

acceptance and cancellation of tender, no opportunity of hearing was given to the petitioner nor any show cause notice issued nor the order of such

withdrawal or cancellation of tender has been passed assigning reasons thereof and entire action taken by the opposite parties, being an afterthought,

cannot sustain in the eye of law. Furthermore, the opposite parties cannot justify their action by assigning reasons in the counter affidavit, in absence

of any reasons placed in the letter of withdrawal of acceptance letter and cancellation of tender dated 04.05.2016. This proposition no more remains

res integra in view of law laid down by the apex Court in Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16 and subsequently

followed in catena of decisions including the Constitution Bench judgment in Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi,

AIR 1978 SC 851.

9. It is well settled principle of law laid down by the apex Court that the reasons are the links between the materials on which certain conclusions are

based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or

quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the

conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is

vital for the purpose of showing a person that he is receiving justice. This view has been taken into consideration by the apex Court in Union of India

v. Mohan Lal Capoor, AIR 1974 SC 87 and Uma Charan v. State of Madhya Pradesh, AIR 1981 SC 1915.

10. In Maneka Gandhi v. Union of India, AIR 1978 SC 597, the apex Court held as follows:-

Â â??the reasons, if disclosed, being open to judicial scrutiny for ascertaining their nexus with the order, the refusal to disclose the reasons would

equally be open to the scrutiny of the Court; or else, the wholesome power of a dispassionate judicial examination of executive orders could with

impunity be set at naught by an obdurate determination to suppress the reasons.â??

11. In S.N. Mukherjee v. Union of India, AIR 1990 SC 1984, the apex Court held that keeping in view the expanding horizon of the principles of

natural justice, the requirement to record reasons can be regarded as one of the principles of natural justice which governs exercise of power by

administrative authorities. Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative

authority is required to record reasons for its decision.

12. In view of the law discussed above and applying the same to the present context, we are of the considered view that the impugned order dated

04.05.2016 in Annexure-11, withdrawing the letter of acceptance and consequential cancellation of tender, cannot sustain in the eye of law and the

same is liable to be quashed and is accordingly quashed, and thereby the consequential invitation for bid dated 07.05.2016 in Annexure-12 also cannot

sustain in the eye of law and the same is hereby set aside.

13. The writ application stands allowed. No order as to costs.