

(2005) 04 OHC CK 0046
In the Orissa High Court
Case No : Writ Petition (C) No. 9741 of 2004

Madhusudan Rout

APPELLANT

Vs

Divisional Railway Manager, East Coast Railway and Others

RESPONDENT

Date of Decision : 19-04-2005

Acts Referred:

Citation : (2005) 4 BC 455 : (2005) 100 CLT 31

Hon'ble Judges : Sujit Barman Roy, C.J; L. Mohapatra, J

Bench : Division Bench

Advocate : Nihar Ranjan Rout, for the Appellant; Bidyadhar Mishra, N. Patra, A.K. Patnaik and B.N. Sahani, (For O.Ps. 1 and 2), for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—The petitioner has filed this Writ Application for a direction to the opposite parties to settle the contract with him pursuant to tender call notice in Annexure-1 and direct the Opposite Parties 1 to 4 not to settle the contract with the Opposite Party No. 5.

2. Case of the petitioner is the Opposite Party No. 2 invited sealed tender on 23.3.2004 for storage and safe custody of bicycles including two wheelers in the Railway premises at Cuttack Railway Station for a period of three years. The Tender Notice indicated that the intending bidders should submit their offers along with earnest money of Rs. 20,974/- and to fulfil all other conditions while submitting tender. The tender was in two parts, i.e., Technical Bid (Packet-A) and Financial Bid (Packet-B). The Technical Bid relates to eligibility such as, solvency, experience, etc. and the Financial Bid relates to the rates of offer. Further case of the petitioner is that pursuant to the said Tender Call Notice he submitted his bids both Technical and Financial. The day the Technical Bids were opened the tender submitted by the petitioner was not accepted and therefore his Financial Bid was not opened. Specific case of the petitioner is that his offer is much more than that of the Opposite Party No. 5 and therefore the contract should be settled with him.

3. Counter-affidavit has been filed by the Opposite Parties 1 and 2. Along with the counter-affidavit an evaluation sheet has also been filed. It is the case of the Opposite Parties that out of the requirements the petitioner did not fulfil one of the requirements as a result of which his Technical Bid was rejected and consequently his Financial Bid was not opened. It is case of the opposite parties that since the Financial Bid was not opened he has no right say that his offer was more than the Opposite Party No. 5. Learned Counsel appearing the petitioner submitted that the only document which the petitioner had not filed is solvency certificate According to the Learned Counsel for the petitioner since the petitioner has already produced documents in support of financial resources which was also a requirement of the Tender Call Notice there was no necessity for filing solvency certificate. Apart from the above it is contended that a Bank guarantee to the tune of Rs. 1,26,612/- is lying with the opposite parties and that itself shows solvency of the petitioner. Shri Patra, Learned Counsel appearing for the opposite parties, on the other hand, submitted that the petitioner was earlier awarded with the contract and in connection with that contract he had furnished Bank guarantee of Rs. 1,26,612/- and therefore this cannot be considered for the purpose of finding out solvency of the petitioner. Reliance was placed by Sri Patra on the document attached in the Technical Bid and it was submitted that the petitioner having not furnished solvency certificate his Technical Bid was rightly rejected.

4. Annexure-1 is the Tender Call Notice. Said Tender Call Notice clearly specifies that the tender papers must accompany current solvency certificate from revenue authorities or from any Nationalized Bank. Admittedly, the petitioner has not furnished solvency certificate. It was contended by Sri Rout that earlier Bank guarantee furnished by the petitioner was alive and that could be taken as solvency and on that ground his bid should not have been rejected. In support of such contention Learned Counsel for the petitioner relied upon a decision of the Apex Court in the case of M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, . Referring to the said decision it was contended by the Learned Counsel for the petitioner that every term of Tender Call Notice need not be literally complied with. We have pursued the judgment of the Apex Court referred to above. One of the tender conditions in the case was that the earnest money has to be deposited only by cash or by demand draft drawn on State Bank of India. The petitioner in the said case had furnished a cheque of the Union Bank of India and on that ground alone his offer was rejected. The Apex Court held that as per the terms of the auction notice the participant has to furnish earnest money. Therefore, whether it is made by cash or by cheque drawn on State Bank of India or Union Bank of India make no difference. In the case in hand, solvency is one of the important factors for operating bicycle/two wheeler stand and in absence of solvency certificate it may be difficult on the part of the opposite parties to assess as to whether the petitioner would be in a position to run a bicycle/two wheeler stand or not. Therefore, the facts of the decision of the Apex Court have no application to the present case. Learned

Counsel for the petitioner also relied upon two other decisions reported in M/s. G. J. Fernandez Vs. State of Karnataka and others, . On reading of those two decisions also we are of the view that on facts the same are not applicable to the present case. In the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, the Apex Court has laid down limitation of the Court in interfering in such matters and we are of the view that the petitioner having not furnished solvency certificate as required under the Tender Call Notice his Technical Bid was rightly rejected.

5. We, therefore, do not find any merit in the Writ Application and the same is dismissed. With dismissal of the Writ Application, all interim orders passed by this Court stand automatically vacated.

Sujit Barman Roy, C.J.

6. I agree.