
(2001) 04 OHC CK 0027
In the Orissa High Court
Case No : O.J.C. No. 1941 of 2001

Mahendra Kumar Jena

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 12-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 91 CLT 752 : (2001) 1 OLR 665

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : M/s J. Patnaik, S.K. Sangneria, P.C. Patnaik and A.K. Sahu, for the Appellant; M/s D.C. Mohanty, Senior Standing Counsel (Central), B.B. Rath, B. Rath, J.N. Rath, S.K. Jethy, M.K. Panda, P.S. Samantara and M.K. Singhdeo, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The petitioner has prayed for a direction to opposite parties 1 to 4 to accept the tender offered by the petitioner and for quashing the decision of opposite parties 1 to 3 recommending for acceptance of the offer given by opposite party No. 5 in respect of the work relating to "Construction of Buildings for J.N.V. at Dist-Kendrapara (Orissa under Phase-A Plan, School-Building-I No. Dormitories-2 Nos for Boys & 1 No. for Girls, Principal Residence-1 No., Type-1 Qrs. 8 Nos. and Kitchen & Dining Hall-1 No." The petitioner claims that though his offer was the lowest offer, opposite parties 1 to 4 have arbitrarily decided to award the work to opposite party No. 5. It has been asserted by the petitioner that he had given an offer of Rs. 3,78,56,672/- whereas opposite party No. 5 had given an offer of Rs. 4,01,99,512/-. It is further submitted that after opening the bids, the petitioner was called upon to give clarification regarding his quotation in respect of one of the items of the Schedule of Quantities for which no rate had been indicated by the petitioner and the petitioner had given clarification stating that he was prepared to undertake the entire work at the price given by him. It has been asserted by the petitioner that in spite of the aforesaid clarification, as

indicated in Annexure-3, it was arbitrarily decided to award the work to opposite party No. 5 ignoring the valid and lowest tender of the petitioner.

2. Counter affidavits have been filed on behalf of opposite parties 1 to 4 and also on behalf of opposite party No. 5 whose bid has been accepted by other opposite parties. It has been stated in the counter affidavit of opposite parties 1 to 4 that in the tender submitted by the petitioner no amount had been quoted by the petitioner in respect of a major item, namely No 3.1.1 (R. C. C. work up to plinth level). On the other hand, opposite party No. 5 while giving his offer had quoted price of Rs. 25,59,400/- for the aforesaid item. While considering, it was found that if the aforesaid sum of Rs. 25,59,400/- is deducted from the total bid of opposite party No. 5, the amount of tender came to Rs. 3,76,39,642.85 paise, which was lower than the offer of petitioner. Similar stand has been taken by opposite party No. 5 in his separate counter affidavit.

3. The basis on which the offer of opposite party No. 5 has been accepted cannot be characterized as arbitrary. In fact, the bid of the petitioner was incomplete in the sense that he had not given any quotation towards cost of item No. 3.1.1. Only after the bids had been opened and prices were disclosed, the petitioner came forward with an explanation that he was prepared to complete the entire work at the price quoted by him and he would not charge anything for the item No. 3.1.1. I do not think, such a subsequent offer could have been at all considered by opposite parties 1 to 4, Since petitioner had not given any quotation for item No. 3.1.1, the method adopted by opposite parties 1 to 4 appears to be reasonable. So considered, the petitioner's bid cannot be characterized as lowest bid. Since the decision of opposite parties 1 to 4 is not vitiated by any arbitrariness, there is no reason to set at naught the decision of opposite parties 1 to 4 to award the contract to opposite party No. 5. For the aforesaid reasons, I do not find any merit in the writ application, which is accordingly dismissed. There will be no order as to costs.

4. Writ application dismissed.