

(2024) 01 OHC CK 0114

In the Orissa High Court

Case No : Writ Petition (C) No. 334 Of 2024

M/s. Bansal Infraprojects Pvt. Ltd Vs State Of Odisha & Others ?

Date of Decision : 11-01-2024

Acts Referred:

Citation : (2024) 01 OHC CK 0114

Hon'ble Judges : Dr. B.R. Sarangi, ACJ; M.S. Raman, J

Bench : Division Bench

Advocate : P.C. Nayak, P.P. Mohanty

Final Decision : Dismissed

Judgement

W.P.(C) No.334 of 2024 And I.A. No.434 of 2024

1. This matter is taken up through hybrid mode.
2. Heard Mr. P.C. Nayak, learned counsel appearing for the Petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite Parties.
3. The Petitioner has filed this writ petition seeking to quash the decision making process adopted by the tender authority in inviting 2nd tender for the self same work on a higher side vide tender call notice dated 30.12.2023 under Annexure-1 and further to issue direction to Opposite Party No.1 to approve the 1st evaluated lowest bid of the petitioner which was recommended vide order dated 02.12.2023 under Annexure-9 in respect of the tender call notice dated 28.06.2023 in Annexure-2 wherein the authority has recommended the bid of the petitioner, having negotiated 0.01% less i.e. Rs.49,63,98,996/- as against the tender cost of Rs.49,64,48,641/-, whereas the cost of second tender dated 30.12.2023 is Rs.49.90 (crores), in the interest of State exchequer.
4. Mr. P.C. Nayak, learned counsel appearing for the Petitioner vehemently contended that when Opposite Party No.3 has recommended the name of the Petitioner for approval of the tender work under Annexure-9 dated 02.12.2023 as he is the lowest bidder having negotiated i.e., less than the cost of the tender,

the fresh advertisement should not have been issued. Inaction in approving the bid of the Petitioner is absolutely arbitrary, unreasonable and contrary to the provisions of law. To substantiate his contention, he has relied upon the judgment of the Apex Court in *BECIL v. Arraycom India Limited and others*, (2010)1SCC139, wherein the apex Court in paragraph-6 held that in contracts to be given by the government authorities or statutory bodies or instrumentalities of the State, Article 14 of the Constitution applies. Hence, there should be transparency by holding an open public auction/tender because such contracts often involve huge amounts of public money. Ordinarily, the lowest bidder should be given the contract. He has also further relied upon the judgment of this Court in *Sampad Samal v. State of Odisha & Others*, AIR 2017 Orissa 33, wherein one of us (Dr. B.R. Sarangi, J) is a Member. In paragraph-7 of the said judgment, this Court held as follows:-

"A tenderer cannot be allowed to suffer because of the fault and inaction of the opposite parties. In the present case, it is clear that the opposite parties sat over the matter and allowed 90 days to expire, without there being any fault of the tenderer and then for cancelation of the tender call notice, gave the reason that 90 days period has expired. If this is permitted, then in every case, after the opening of tender, where the lowest bidder does not suit the opposite party, they can always sleep over the matter without taking any decision and resorting to clause 17 of the detailed tender call notice, cancel the notice itself, which in our opinion, cannot be justified. Had there been any fault on the part of the petitioner, the case would have been different. In the present case, the opposite parties have not stated anywhere that either the conditions stipulated were not fulfilled by the petitioner or that his tender was not the lowest. As such, not awarding the work to the Petitioner in terms of the tender call notice, cannot be justified in law."

5. In view of such position, without approving the recommendation made by the authority so far as the bid of the Petitioner is concerned, issuance of fresh tender call notice cannot be sustained in the eye of law.

6. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite Parties seeks time to obtain instructions in this matter.

7. Issue notice to the Opposite Parties both in main case and interlocutory application.

8. Since Mr. P.P. Mohanty, learned Additional Government Advocate accepts notice on behalf of Opposite parties, let three extra copies of the writ petition be served on him within three working days to enable him to obtain instructions or file counter affidavit, if any.

9. Put up this matter next week connecting with W.P.(C) No.39578 of 2023.

.....