
(2013) 06 OHC CK 0016

In the Orissa High Court

Case No : Writ Petition (C) No. 11442 of 2013

M/s. Divine Construction

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 26-06-2013

Acts Referred:

Citation : (2013) 2 OLR 325

Hon'ble Judges : C. Nagappan, C.J;I. Mahanty, J

Bench : Division Bench

Advocate : Prabodh Ch. Nayak, for the Appellant;

Judgement

1. Heard Mr. P.C. Nayak, learned counsel for the petitioner and learned counsel for the State. The present writ petition has been filed by a partnership firm in the name of M/s. Divine Construction seeking direction to opposite party No. 3 to consider the tender bid of the petitioner-firm in terms of the Works Department Resolution dated 11.10.1977 under Annexure-7 by granting concession to the petitioner-firm on the basis of the firm being constituted along with one Balaram Jena, a member of the Scheduled Caste holding 60% share in the said firm.

2. The case of the petitioner is that the said Balaram Jena (S.C.) was the holder of "B" Class Contractor Registration Certificate which had been issued to him by the Office of the Engineer-in-Chief (Civil), Odisha. It is further averred in the writ petition that the said Balaram Jena had entered into a partnership agreement along with two others, namely, Prasanta Das and Susanta Kumar Samal, who formed the partnership firm by the name of M/s. Divine Construction (petitioner-firm). It is also made clear that the said Balaram Jena was holding 60% of share while the rest of the two partners hold 20% share each. This partnership agreement was entered into between the parties on 01.08.2012. It appears that after the partnership deed was signed by the respective parties, they made the necessary application to the authorities concerned for being issued with P.W.D. Contractors Registration Certificate and M/s. Divine Construction was granted in Special Class Registration Certificate bearing Registration No. 9264 of 2012-13

vide order No. 34201 dated 05.10.2012. Pursuant to such registration, it appears that the petitioner-firm had participated in a tender floated by the State of Odisha under Annexure-5, but the petitioner after having participated in such tender apprehending that the benefit available to the petitioner-firm as declared by the State of Odisha under Annexure-7 may not be extended to the petitioner-firm have approached this Court.

3. Learned counsel for the State after being noticed issued to them has obtained a written instruction from the office of the Superintending Engineer Cuttack (R & B) Circle dated 20.06.2013, a copy of which is filed by way of memo in Court today. In terms of the such written instruction para-11 thereof is extracted herein below:

11. Since, the partnership details including share of SC/ST member of firm had not been furnished during registration of license, the case of M/s. Divine Construction had not been considered by the Tender Committee to qualify for availing preference applicable to SC/ST firm. Hence, the tender details of 1st lowest tender of Sri Pradeep Kumar Parida at 15.1 % less than estimated rate was recommended to the Chief Engineer (DPI & Roads) Odisha for approval vide S.E. Cuttack (R&B) Circle letter No. 2575 dt. 10.05.2013 with all relevant particulars (copy enclosed).

4. Learned counsel for the State placing reliance on the above, submits that since the partnership details including the share by the SC/ST member i.e. Balaram Jena had not been furnished during registration of licence, they would not be entitled to the benefit of being treated as SC/ST firm.

5. On the other hand, Mr. Nayak, learned counsel for the petitioner placed reliance on the Caste Certificate issued to Balaram Jena under Annexure-1 to the writ petition as well as the letter issued from the Office of the Engineer-in-Chief (Civil), Odisha dated 06.05.2013 contents of which are extracted herein below:

"OFFICE OF THE ENGINEER-IN-CHIEF (CIVIL)" ORISSA

* * *

No. A-Cont. 23(Spl) 2012

Dt. BBSR, the

From

The Engineer-in-Chief (Civil), Orissa

To

The Chief Engineer

National Highways, Odisha, Bhubaneswar

Sub : Transmission of original "B" Class R.C. of Sri Balaram Jena (S.C.).

Sir,

It is to transmit herewith the original "B" class R.C. of Sri Balaram Jena (SC), Contractor for necessary cancellation at your end since his R.C. has been upgraded to Class vide this office Order No. 34201 dt. 05.10.2012 with Registration No. 9264 of 2013-14.

Receipt of the R.C. may please be acknowledged.

Yours faithfully

Encl. : Original "B" Class R.C.

For ENGINEER-IN-CHIEF (CIVIL): ORISSA

Memo No. 18680/Dt. 06.05.2013

Copy forwarded to Sri Balaram Jena (SC) At : Kurisahi, P.O. : Udrang, Dist. Jaipur for information and necessary action.

for ENGINEER-IN-CHIEF (CIVIL) ORISSA

6. Relying on the above, Mr. Nayak, learned counsel for the petitioner asserts that Balaram Jena admittedly belongs to S.C. and had been originally holding a Contractor Registration Certificate in "B" Class granted to him by the State and as would be available on the letter of the Engineer-in-Chief referred hereinabove that his R.C. i.e. Balaram Jena R.C "had been upgraded to Class vide this office Order No. 34201 dt. 5.10.2012 with Registration No. 9264 of 2013-14".

7. Having heard learned counsel for the petitioner as well as learned counsel for the State and after perusing the pleadings in the writ petition as well as the written instruction received, we are of the considered view that there can be no doubt that Balaram Jena belongs to the S.C. community and further that the Office of the Engineer-in-Chief (Civil), Odisha has accepted Balaram Jena as Special Class Contractor had granted him earlier a "B" Class (S.C.) Registration Certificate and that there can be no further doubt that the Special Class Registration Certificate had been granted in favour of the petitioner firm-M/s. Divine Construction. Admittedly, Balaram Jena has a majority share and, therefore, the petitioner-firm would be entitled to the benefit of being treated as S.C. firm for the purpose of extending the benefits under Annexure-7. Therefore, we are of the considered view that the writ petition is allowed in terms of the aforesaid directions and the petitioner-firm shall be considered to be a firm to which Annexure-7 and the benefits contemplated therein shall be extended. The State is further directed to ensure early compliance of the order. Urgent certified copy of this order be granted on proper application.