
(2002) 10 OHC CK 0060
In the Orissa High Court
Case No : O.J.C. No. 2163 of 2002

Nabadurga Constructions Pvt. Ltd. and Another	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 BC 510 : (2002) 2 OLR 628

Hon'ble Judges : P.K. Balasubramanyan, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : S.K. Sanganerla, P.C. Patnaik and A.K. Sahu, for the Appellant;
Additional Government Advocate for Opposite Party Nos. 1 to 3, S.K. Rath and
R.K. Parida for Opposite Party No. 4, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—When this writ petition appeared in the list for orders, it was agreed to by learned Counsel on all sides that the writ petition itself may be heard and finally disposed of. Hence this writ petition itself was finally heard, especially since the counter affidavits and the rejoinder have already been filed.

2. Tenders were invited for the work "Construction of H.L Bridge over Kudutuli Nallah on Nuagaon-Kudutuli-Sainipada road in the district of Kandhamal". The petitioner and opposite party No. 4 submitted tenders along with four others. Certain qualifications were prescribed for the intending tenderers. The tenderer had to be a Special Class and above contractor of State P.W.D. Irrigation/P.H.D./ M.E.S./Railways, etc. having experience in bridge works particularly on well foundation with necessary construction machineries and equipments. Opposite party No. 4, whose correct name is Sarathi Das and not Dasarathi Das as described in the writ petition, was the lowest tenderer, his bid being 1.60% below the estimated rates. The petitioner was the second lowest tenderer, its bid being 7.54% above the estimated rates. Even though a pre-qualification was fixed, the

tender forms were sold somewhat indiscriminately with the result that three of the six tenderers who submitted tenders, were found not qualified to bid for the work, they having no experience in well foundation bridge work. The case of the petitioner is that even though the tender submitted by opposite party No. 4 was the lowest, he also did not have the experience in bridge works, particularly on well foundation and he did not have the construction machineries and equipments and the petitioner alone had that qualification. The tender opposite party No. 4 was accepted on the basis that it was the lowest and coming to know of it, the petitioner submitted a representation reducing its bid to the rate bid by opposite party No. 4 and seeking the award of the work on the ground that it alone was qualified and it was entitled to have its tender accepted. This request was not acceded to and opposite party No. 4 was favoured with the award of the work and it is in that context that the petitioner approached this Court with the present writ petition challenging the decision to award the work to opposite party No. 4 and claiming that the work should be awarded to it, especially when it had reduced its rate and since it alone possessed all the requisite qualifications specified in the notice inviting tender. The main thrust of the argument of the petitioner is that opposite party No. 4 did not possess the required qualification as per the tender notice and in that context the award of the work to opposite party No. 4 was illegal and it was also not in public interest since the work was being awarded to some one who did not have the necessary experience to ensure the proper and safe construction of the bridge.

3. In their counter affidavit, opposite parties 1 to 3 justified the award of work to opposite party No. 4 essentially on the ground that the bid by opposite party No. 4 was the lowest and the acceptance of the tender of opposite party No. 4 was justified in the circumstances. The assertion of the petitioner that opposite party No. 4 did not have experience in well foundation and did not possess the required number of machineries and equipments, could not be specifically denied by opposite parties 1 to 3. In his counter affidavit, opposite party No. 4 contended that the tender of opposite party No. 4 was rightly accepted and any interference at this stage would delay the work and that would not be in public interest. Regarding experience it was submitted that opposite party No. 4 was also equally competent, having experience of similar types of construction and the specified requirements as per the tender notice. It was also submitted that he also possessed various sophisticated machineries which were used by him in the course of execution of works of alike nature. It is seen from Annexure C/1, the report given by the Chief Engineer, that opposite party No. 4 had quoted the lowest rate, though having no well foundation experience, It is clear from the notice inviting tender and the nature of the work, that well foundation work experience was essential. In fact, Annexure C/1 also indicates that applications of three of the tenderers had to be rejected since they were not qualified to participate in the said tender since they did not have well foundation bridge experience, In the fact of this position, made clear by Annexure C/1, the report of the Chief Engineer and the further assertion therein that opposite party No. 4

also did not have well foundation bridge experience, it is clear that the award of work to opposite party No. 4 could not be sustained in the face of the notice inviting tender and the essential conditions referred to therein. There is therefore substance in the contention of the petitioner that its bid ought to have been accepted. It is seen that the original authority had in fact suggested the acceptance of the tender of the petitioner.

4. Thus, having found that the acceptance of the tender of opposite party No. 4 was illegal and unjustified, the question remains, as to what relief this Court should grant to the petitioner in the circumstances of the case. It is seen that tender forms were sold to six intending bidders, four of whom did not have the requisite qualification, going by the tender notice. It is contended that the work was financed by the NABARD and the work should not be delayed, lest the aid from the NABARD is withdrawn. Ordering of afresh tender would lead to further delay. The petitioner has reduced its bid and has offered that it will complete the work at the rate quoted by opposite party No. 4, the lowest tenderer, at 1.60% below the estimated rates. It appears to us that a fresh tender now, may also involve a higher rate and consequential higher investment by the State. In that situation, we are of the view that it would be just and proper to direct the award of the work to the writ petitioner at a rate 1.60% below the estimated rate as offered by it before the authorities and by its counsel before us. That will be in the interest of expediency and in the interests of the State.

5. We therefore allow this writ petition and quash the acceptance of tender of opposite party No. 4. We direct opposite parties 1 to 3 to accept the modified tender of the petitioner and award the work to the petitioner at a rate, 1.60% below the estimated rates, as agreed to by it. Opposite parties 1 to 3 will expeditiously complete the process and enter into the agreement with the petitioner. Counsel for the petitioner assures this Court that the work will be taken up expeditiously, done properly and completed without delay and as per schedule, if it is awarded to it.

6. Before parting with this writ petition, we think it necessary to observe that it is absolutely necessary for opposite parties 1 to 3 to adhere to the pre-qualification prescribed while permitting tendering and to insist on the qualifications specified in the notice invited tender. It is not open to the Department or its Engineers, to sell the tender forms to those who do not possess the qualifications contemplated, either by the pre-qualifications prescribed or by the notice inviting tenders. To sell forms to such tenderers or to award work to such persons will not be conducive, to maintaining quality, will not be in public interest and will jeopardise public safety, especially when it relates to construction of bridges and the like.