
(2010) 12 OHC CK 0029
In the Orissa High Court
Case No : WPC No. 11416 Of 2010

Pooja Enterprises

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Citation : (2011) 3 BC 361 : (2011) 111 CALLT 753 : (2011) 1 OLR 447

Hon'ble Judges : S. Panda, J;B.P. Das, J

Bench : Division Bench

Judgement

1. Heard Mr. P.K. Rath, learned Counsel for the Petitioner, and learned Counsel for the State.

2. The Petitioner has come up before this Court alleging illegality committed in the tender process pursuant to the tender call notice dated 7.5.2010 (Annexure-1) floated by the Collector, Bhadrak (O.P. No. 2) inviting sealed tenders from Registered Firms/Traders/Co-operative Agencies WSHGs/WSHG Federation for supply of good quality Arhar Dal for use in Supplementary Nutrition & Mid-dal Meal Programmes in the district of Bhadrak for the year 2010-11.

3. Learned Counsel for the Petitioner submits that the Petitioner submitted its bid, but the same was rejected on the ground that the sample of polished Arhar Dal provided by the Petitioner-firm was found inferior to the samples of non-polished Arhar Dal provided by other three firms and did not confirm to the best quality of Arhar Dal. He further submits that the ground taken by the opposite parties to reject the Petitioner's bid cannot withstand judicial scrutiny in view of the fact that on 28.5.2010, the date fixed for opening the tenders, the representative of the Petitioner was present. The Committee Members in absence of the Chairman of the Committee (O.P. No. 2) opened the tender papers, examined the same, prepared a comparative statement and thereafter adjourned the meeting to 31.5.2010 to take final decision in presence of the Chairman. On 31.5.2010 the samples were opened in presence of the Chairman of the

Committee (O.P. No. 2) and after examining the samples of Arhar Dal with reference to the quality, the Committee rejected the bid of the Petitioner, approved the samples of three tenderers and ultimately issued work order in favour of O.P. No. 3-Balasore Wholesale Co-operative Society, though it quoted much higher price. According to the Petitioner, the samples were examined behind its back without giving, an opportunity to know the defect in its sample, for which the entire tender process is vitiated.

4. In our considered opinion, the case of the Petitioner to some extent is correct and the opposite parties should have given notice to the Petitioner before rejecting the samples on 31.5.2010. Even though the learned Counsel for the State submits that as the Petitioner's representative was present on 28.5.2010, he must have known the next date and in his own interest, he should have been present on 31.5.2010.

5. On perusal of the counter-affidavit and the proceedings of the District Level Tender Committee dated 31.5.2010, we find that neither there is anything on record to show that the representative of the Petitioner was asked to be present on 31.5.2010 nor is there anything on record to show the decision to adjourn the meeting from 28.5.2010 to 31.5.2010. As to Petitioner's allegation regarding acceptance of bid of O.P. No. 3 in spite of higher price, an affidavit sworn by the Deputy Director, MI Food Supplies and Consumer Welfare Department, Orissa, Bhubaneswar shows that the price of Arhar Dal per quintal during the period from 7.5.2010 to 27.11.2010 varied from Rs. 6700/- to Rs. 5900/-. To the contrary, the Petitioner produced a document which shows that the rate per quintal was less than the rate quoted in the said affidavit.

6. In view of the fact that the tender has already been finalised on 8.6.2010 and the supply is already continuing, we dispose of the writ petition with the following directions and observations:

The Secretary, Women & Child Development Department, shall issue directions to all the Collectors to ensure transparency in the tender process and it should be free from any suspicion. That apart, the tender papers should be opened and the samples should be tested in presence of the parties. After finalisation of the tenders, the samples shall be kept in a sealed cover in presence of the Chairman and the parties concerned after obtaining their signatures in that respect and preserved for at least one year.

7. So far as the price is concerned, we are of the opinion that the rate on which the work order is issued, a Committee should be formed under the Chairmanship of Commissioner-Secretary, Women and Child Development Department, who after taking the prevalent market rate, shall fix the price of Arhar Dal or any other commodities to be supplied under SNP & MDM programmes, Only thereafter, such tender process shall commence and the rate shall be fixed by assessing the monthly price of the commodity to be supplied. As the purchase is made on monthly indent basis, the price should also tally the market price

prevailing for that month.

8. The entire process could be completed within a period of two months from the date of communication of this order.

We also direct the opposite parties to be careful and cautious in future.

Urgent certified copy of the order may be granted as per rules.