

(2008) 08 OHC CK 0019
In the Orissa High Court
Case No : Writ Petition (C) No. 8431 of 2008

Sankarshan Sethi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Citation : (2008) CLT 431 Supp

Hon'ble Judges : I.M. Quddusi, J;B.P. Ray, J

Bench : Division Bench

Advocate : Gautam Mukherji, P. Mukherji, A.C. Panda, M.R. Barik and S. Patra, for the Appellant; S. Das, A. Mohanty and M.K. Swain, for the Respondent

Judgement

I.M. Quddusi, J.—By means of this writ petition, the Petitioner has prayed for issuance of a writ quashing the acceptance of the tender of opposite party No. 4 and for a direction to the opposite parties to finalise the tender in respect of construction of 1000 MT Godown at Jeypore after adhering to guidelines under Annexure-1.

2. Facts of the case are that opposite party No. 3, a Government Undertaking, floated a tender call notice inviting item rate tenders from the registered contractors of State PWD/Irrigation/RW/CPWD/Railway having valid license from competent authority for construction of Godown 1000 MT and 500 MT Godowns at different places mentioned in the tender call notice in Gluding Jeypore. Pursuant to the said tender call notice, four contractors including the Petitioner submitted their tenders for construction of 1000 MT Godown at Jeypore. The case of the Petitioner is that by way of providing certain concession to Scheduled Caste and Scheduled Tribe contractors for execution of P.W.D. works, the State Government in Works Department Resolution No. 27748 dated 11.10.1977, copy of which is annexed as Annexure-1 to the writ petition, inter alia, provided that if tenders of Scheduled Caste and Scheduled Tribe contractors is within 10% of the rate quoted by the lowest tenderer for any work, the work may be considered for award to him/them at the lowest tendered rate in relaxation of Rule 18 of the

O.G.F.R. Volume I and para 3.5.14 of the O.P.W.D. Code. In the tender notice it was also provided that Scheduled Caste & Scheduled Tribe tenderers will be considered to be preferred over lowest tenders, if such tendered price are within 10% of the rate quoted by the lowest tenderer. The work may be considered for award to him/them at the lowest tendered rate, subject to submission of attested copy of caste certificate. The grievance of the Petitioner is that even though by virtue of the aforesaid Government resolution he was the Lowest-1 tenderer, the opposite party No. 3 has recommended the case of opposite party No. 4 ignoring his rightful claim on the ground that he has no past experience. It is averred by the Petitioner that he has ample work experience under various departments of Government and other Governmental agencies. In the aforesaid circumstances, he has filed this writ petition for the reliefs as mentioned earlier.

3. Counter affidavit has been filed on behalf of opposite party No. 3 wherein it has been stated that four contractors had Submitted tenders for the work in question. The details of the rates quoted by the four tenderers were as follows:

Name of the Contractor

Amount quoted.

1.

Basanta Panda

Rs.33,14,828.00

2.

Sankarshan Sethi (Petitioner)

Rs.32,16,964.00

3.

Babaji Ch.Sethi

Rs.31,18,148.00

4.

Anil Kumar Jena

Rs.29,55,637.00

4. Out of the four tenderers two belonged to Scheduled Caste, Le., the Petitioner and one Babaji Charan Sethi. As the tender committee was of the opinion that the rate quoted by Babaji Ch. Sethi was unduly low and unworkable in some items, his tender was not taken into consideration. Opposite party No. 4 had quoted the lowest rate for the work in question, i.e, Rs. 29,55,637.00 whereas the Petitioner quoted the rate as Rs. 32.16,964.00. After giving 10% price preference over the rate quoted by the lowest tenderer, the Petitioner was

considered to be the lowest tenderer but as he has less work experience compared to opposite party No. 4, the Committee selected opposite party No. 4 for the work in question. If the Petitioner Would have been selected, he had to execute the work at the lowest rate offered by opposite party No. 4, i.e. Rs. 29,55,637.00. It is further stated that selection of contractor basing on 10% price preference to contractors from Scheduled Caste community as provided in the resolution referred to above is not mandatory. Opposite party No. 3 has taken the plea that in view of Para 3.5.14 of the OPWD Code Volume-I which provides that "normally in selecting the tenders, other aspects being equal the lowest valid tender should be accepted", the tender committree selected opposite party No. 4 in preference to the Petitioner as he had less work experience than opposite party No. 4. The work experience as furnished by the Petitioner and opposite party No. 4 has been mentioned in the counter affidavit. It is the case of opposite party No. 3 that the tender committee in selecting opposite party No. 4 has considered every aspect of the matter vis-a-vis the Petitioner and having maintained transparency and there being no discrimination or favouritism, the writ petition is liable to be dismissed.

5. We have perused the minutes of the meeting of the Tender Committee dated 29.3.2008 produced by the learned Counsel for opposite party No. 3. It appears there from that the committee found opposite party No. 4 as the lowest tenderer but at the same time after allowing 10% price preference over the rate of 1st lowest tenderer, i.e. Rs. 29,55,964.00 quoted by opposite party No. 4, as the rate became higher than the rate quoted by the Petitioner, the committee came to the opinion that on principle the work was to be awarded to the Petitioner in consideration of other aspects of the tender. Since the Petitioner has less work experience compared to opposite party No. 4, the committee decided to allot the work to opposite party No. 4 at a cost of Rs. 29,55,637.00 subject to deposit of initial security and lacking document such as labaur license prior to execution of agreement. The committee further opined that in the event of failure of opposite party No. 4 to execute the agreement, the work is to be offered to Basanta Kumar Panda at a cost of Rs. 29,55,637.00 We have perused the tender documents submitted by the Petitioner and opposite party No. 4. No doubt, the Petitioner has less work experience than opposite party No. 4 and, therefore, if the committee decided to award the work to opposite party no A, no fault can be found with the same. But there was no justification for the committee to opine that in the event of failure of opposite party No. 4 to execute the agreement, the work was to be offered to Basanta Kumar Panda. The basis or reasons for such an opinion has not been mentioned in the minutes of the committee. If work experience was the basis for awarding the work to opposite party No. 4, then without referring to the work experience of Basanta Kumar Panda and comparing the same with the work experience of the Petitioner or the 1st lowest tenderer, it was not proper for the committee to offer the work to him in the event of failure of opposite party No. 4 to execute the agreement without considering his work experience vis-a-vis the Petitioner. Neither the minutes of meeting of the

committee nor the counter affidavit filed by opposite party No. 3 indicates the work experience of Basanta Kumar Panda.

6. Therefore, without interfering with the decision of the committee to allot the work to opposite party no A, we set aside that part of the decision by which the committee recommended to offer the work to Basanta Kumar Panda in the event of failure of opposite party No. 4 to -execute the agreement and remit the matter to the opposite party No. 3 to take a decision afresh as to who should be given the work in the event of failure of opposite party No. 4 to execute the agreement after considering the work experience and other relevant aspects of the Petitioner and Basanta Kumar Panda.

7. The writ petition is accordingly disposed of.

B.P. Ray, J.

8. I agree.