
(2018) 04 OHC CK 0052
In the Orissa High Court
Case No : W.P. (C) NO. 3202 OF 2018

TARUN MOHANTY

APPELLANT

Vs

STATE OF ODISHA AND OTHERS

RESPONDENT

Date of Decision : 09-04-2018

Acts Referred:

Citation : (2018) 04 OHC CK 0052

Hon'ble Judges : VINEET SARAN, C.J;B.R. SARANGI

Bench : Division Bench

Advocate : P.C. Nayak, P.C. Nayak, R.K. Mohapatra

Final Decision : Dismissed

Judgement

VINEET SARAN, C.J. Â

1.The petitioner is an â??Aâ?? class contractor registered under PWD Contractorsâ?? Registration Rules, 1967, so also is opposite party no.4. The

Superintending Engineer, Eastern Circle (R&B), Balasore, on behalf of Governor of Odisha, invited public tender, vide Bid Identification No.

SEEC(R&B)-06/2017-18 dated 23.11.2017, for several works including the one at serial no.4, i.e., â??Construction of H.L. Bridge over Raigudi

Nallah at 80/575 Km on Sergarh-NilgiriKaptipada-Udala-Baripada-Midanapur Road (SH-19) for the year 2017-18â? with estimated cost of

Rs.3,81,89,339.00 paise. The last date of submission of bid was 22.12.2017 up to 5.00 PM. The date of opening of technical bid cover was 27.12.2017

at 4.00 PM. Pursuant to such tender call notice, 13 bidders participated including the petitioner as well as opposite party no.4. The petitioner, having

complied with all criteria, qualified in the technical bid. Thereafter, price bid was opened on 12.02.2018 and it was found that the petitioner was 1st

lowest tenderer and the opposite party no.4 was 5th lowest tenderer. Therefore, in normal course, the petitioner, being the L-1, should have been given

the tender. Instead of doing so, the bid of opposite party no.4, who belonged to scheduled caste, was treated as lowest, after granting the benefit of

10% price preference under the State Government notification/circular dated 11.10.1977, and opposite party no.4 was awarded with the tender, hence

this application.

2. Mr. P.C. Nayak, learned counsel appearing for the petitioner contended that since the license of opposite party no.4, which was of 'A' class

contractor, does not indicate that the license has been given to a scheduled caste person, he would not be entitled to the benefit of the circular dated

11.10.1977. The submission is that the provision of noting the caste in the license is only upto 'B' class contractor and, as such, since the license

of 'A' class and above contractors do not have the provision of mentioning the caste, hence the intention of the Government was to give the

benefit of the circular dated 11.10.1977 only to contractors upto 'B' class and not above.

3. Per contra, learned Addl. Government Advocate, as well as Sri R.K. Mohapatra, learned counsel appearing for opposite party no.4 have submitted

that the benefit of the circular dated 11.10.1977 is to be given to all classes of contractors, which is for the benefit of Scheduled Caste and Scheduled

Tribe contractor, without any limitation with regard to category/class of the contractors.

4. We have heard Sri P.C. Nayak, learned counsel for the petitioner, as well as Sri B.P. Pradhan, learned Addl. Government Advocate appearing for

State opposite parties no.1 to 3 and Sri R.K. Mohapatra, learned counsel for opposite party no.4 and perused the record. Pleadings between the

parties have been exchanged and with the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of

admission.

5. On the basis of the pleadings available on record and the contentions raised by learned counsel for the parties, two questions emerge for

consideration; firstly, whether the notification/circular dated 11.10.1977 would be applicable only up to 'B' class contractors and not for

'A' class, special class and super-class contractors; and secondly, whether

the opposite party no.4 had provided the requisite information under Schedule-G of the tender call notice relating to existing commitments and ongoing works, and as such his bid should have been technically disqualified or not.

6. For better appraisal, the circular/notification dated 11.10.1977 is reproduced below: Guidelines to Works Department Government Instructions

Grant of Concession to Schedule Caste And Scheduled Tribe Contractors The question of providing certain concessions to S.C. and S.T. Contractors

regarding award of works had engaged the attention of Govt. for some time past. On the basis of the recommendation of the Committee of Chief

Engineers it has now been decided to allow the following facilities to individual S.C. and S.T. Contractors/Private Limited Companies/ and partnership

farms in which atleast 51% of the share are held by members of Scheduled Caste and Scheduled Tribe for execution of PWD Works.

The Scheduled Caste and Scheduled Tribe applicants desirous of enrolling themselves as contractors may furnish solvency certificate to the extent of

50% only of the amount of solvency prescribed for various classes of Contractors under Rule 7 of the PWD Contractors registration rules 1967. If the

tender of the following type of Scheduled Caste and Scheduled Tribe Contractors is within 10% of the rate quoted by the lowest tender for any work,

the work may⁸ be considered for award to him/them at the lowest tenders rate in the relaxation of Rule 18 of the O.G.F.R. Vol.-I and Para 3.5.14 of

the OPWD Code.

(a) Individual registered Contractors belongs to the S.C. and S.T.

(b) Private Limited companies in which atleast 51% of the share are held by member of Scheduled Caste and/or Scheduled Tribe.

(c) Partnership Farms in which atleast 51% of the share are held by members of Scheduled Caste and/or Scheduled Tribes. The security deposit

(earnest money initial security and performance security) at half the usual rate may be deposited realized by/from the Scheduled Caste or Scheduled

Tribe Contractors coming under the categories upto B Class only as against the prescribed percentage under Rule 13 of the PWD

Contractors registration rules. The above concession will take effect from date of issue of the resolution.

7. In the second paragraph of the said circular, it is clearly mentioned that the

benefit of 50% of the amount of solvency is to be provided for all class of Scheduled Caste and Scheduled Tribe applicants. In the said circular, it is provided that relaxation could be given if individual registered contractors belongs to the scheduled caste and scheduled tribe. From this, it would be clear that the registered contractor belonging to Scheduled Caste and Scheduled Tribe category are to be given the benefit of the circular. It is not stated that individual contractor registered as Scheduled Caste and Scheduled Tribe contractors are to be given the benefit. What is required is that the individual contractor should be registered with the Department/Government, and should belong to Scheduled Caste or Scheduled Tribe category. In the present case, it is not disputed that opposite party no.4 is a registered contractor and also belongs to Scheduled Caste category. As such, he would be covered under the said circular.

8. There is no provision in the circular dated 11.10.1977 providing for the benefit to be given to the registered contractors of the category upto

class contractors. The only additional concession given to the Scheduled Caste and Scheduled Tribe contractors upto category of class

is with regard to security deposit, which would be only 50% of the usual rate. The second paragraph of the circular dated 11.10.1977 makes it

clear that the benefit under the same would be available to all classes of contractors. Merely because certain additional benefit is given to Scheduled

Caste and Scheduled Tribe contractors upto class category would not mean that the remaining benefits under the circular would not be

given to the contractors of category A class and above.

9. The further submission of learned counsel for the petitioner is that the benefit under the circular should not be given to contractors of category

A class and above because such contractors are well to do and take contracts of high valuation and thus do not deserve to be given such

concession. The same is not worthy of acceptance. The circular does not make any distinction between various classes of Scheduled Caste and

Scheduled Tribe contractors with regard to the benefits to be given to them. Certain additional benefits have been provided for categories upto

class, which question is not involved in the present case. In the present case, the question involved is with regard to grant of 10% price

preference, which, in our opinion, would be available to all classes of contractors,

including the opposite party no.4, who is a class contractor.

10. The circular/notification dated 11.10.1977 has to be construed on the basis of plain language used in it. Therefore, the notification must be construed as to give effect to the intention of the Government as disclosed by the circumstances with the help of the maxim *ut res megis valeat quam perrat* (It is better for a thing to have effect than to be made void). The liberal constructions of written documents are to be made because of the simplicity of the laity, and with a view to carry out the intention of the parties and uphold the document; and words ought to be made subservient, not contrary, to the intention.

11. Giving the plain meaning attached to the notification itself and as discussed above, in our view, the first submission of learned counsel for the petitioner that the opposite party no.4, being a class contractor, would not be entitled to the benefit of the circular dated 11.10.1977, is not acceptable.

12. In *Shiv Sagar Tiwari v. Union of India and Ors.*, AIR 1997 SC 1483, the apex Court held that whatever procedure the Government proposes to follow in accordance with the tender must be clearly stated in the tender notice. The consideration of the tender received and procedure followed in the matter of acceptance of tender should be transparent, fair and open. Similar view has also been taken in *Common Cause v. Union of India*, 1996

(6) SCC 593. The powers of judicial review in the arena of contractual jurisdiction has been widened, as has been held by the Supreme Court in

Mahabir Auto Stores v. Indian Oil Corporation, AIR 1990 SC 1031, as well as *Food Corporation of India v. M/s. Kamdhenu Cattle Feed Industries*, AIR 1993 SC 1601.

13. With regard to the second submission that in the prescribed Schedule-G, the opposite party no.4 has only submitted details of the works which he had completed up to the year 2015, and has not given the details of the existing commitments and ongoing works, we are of the opinion that since no averment has been made in the writ application to the effect that the petitioner has any ongoing work, details of which he ought to have provided, the second submission made by learned counsel for the petitioner with regard to nonfurnishing of requisite details in Schedule-G is also not

worthy of acceptance.

14. For the foregoing reasons, we do not find any merit in this writ petition and accordingly the same is dismissed. However, there shall be no order as to costs.