
(2018) 01 OHC CK 0042

In the Orissa High Court

Case No : 12375 of 2017

United Contractors Association & Ors

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 25-FFF](#)

Citation : (2018) 01 OHC CK 0042

Hon'ble Judges : Vineet Saran, B.R. Sarangi

Bench : Division Bench

Advocate : S.K. Dalai, P. Swain, S. Mohapatra, B.P. Pradhan

Final Decision : Allowed

Judgement

1. The petitioner in W.P.(C) No. 12375 of 2017, being an association of contractors of Super Class, Special Class, Class-"A" and Class-"B"

registered under the provisions of law having registration no.KPT2070-39/94-95, seeks to challenge the action of opposite party no.3 in cancelling

the tenders at the behest of local MLA for the works from serial no. 1 to 168 by way of 4th corrigendum dated 13.06.2017 without assigning any

reasons.

Similarly, the petitioners in W.P.(C) No. 12650 of 2017 and W.P.(C) No. 12652 of 2017, who are "A" Class contractors as per

the revised classification prescribed under the Registration Rules, 1969, seek to challenge the very same 4th corrigendum dated

13.06.2017 on the ground that the tenders for the work from serial no.1 to 168 have been cancelled without assigning any reason.

The above three writ applications, having common cause of action, have been

heard together and disposed of by this common judgment.

2. For better appreciation, the factual matrix of W.P.(C) No. 12357 of 2017 has been taken into consideration, which is also applicable to W.P.

(C) No. 12650 of 2017 and W.P.(C) No. 12652 of 2017.

2.1 The Superintending Engineer, Southern Circle, (RW), Sunabeda-opposite party no.3 issued tender call notice dated 04.05.2017

in Annexure-1 through e-procurement for 380 numbers of works in three categories, i.e., (a) Estimated cost more than Rs.40.00

lakhs up to Rs.1.50 crores for "B" Class contractors and "A" Class contractors; (b) Estimated cost more than Rs.1.50 crores up to

Rs.4.00 crores for "A" Class and Special Class contractors; and (c) Estimated cost more than Rs.4.00 crores up to Rs.10.00 crores

for Special Class and Super Class contractors fixing 03.06.2017 as last date for online bidding. The technical bid was to be opened

on 05.06.2017. The bidders in the undivided Koraput district participated in the same at their suitability. During process of online

bidding, at the midsession, i.e., on 16.05.2017, the Superintending Engineer-opposite party no.3 issued 1st corrigendum in extending

the last date of participation from 03.06.2017 to 17.06.2017 and, thereafter, issued 2nd and 3rd corrigendum in making necessary

correction to the tender stipulations. Though the issuance of 1st and 2nd corrigendum was within the notice of the petitioner, the 3rd

corrigendum was not known to the petitioner.

2.2 At that point of time, the local MLA-opposite party no.4 on 10.06.2017 wrote a letter to opposite party no.1- Commissioner-

cum-Secretary, Rural Development Department, Government of Odisha with a proposal for merging small works relating to "B"

Class to "A" Class, Special Class and Super Class and, accordingly, gave his opinion that if "B" Class contractors would enter into

PMGSY works, then quality or standard of work would decrease and requested for merger of "B" Class contractor's items to the

Super Class, Special Class and "A" Class contractors. Considering the recommendation of the local MLA, the Addl. Secretary to

Government wrote a letter to the Chief Engineer, PMGSY, Government of Odisha-

opposite party no.2 for discussion and in view of the communication dated 13.06.2017 issued by opposite party no.1 for discussion, on 16.06.2017, the opposite party no.2 directed to the tender inviting authority i.e. opposite party no.3 to give suggestion on the recommendation of the local MLA for needful action.

While this was the position and the decision making authorities were on the process to think over about the suggestion of the local MLA and called for suggestions from Superintending Engineer opposite party no.3, all on a sudden on 13.06.2017 opposite party no.3 issued 4th corrigendum in a selective manner in cancelling part of the tender items i.e. serial nos. 1 to 168. During pendency of the writ applications, a fresh tender call notice was issued on 21.08.2017 in Annexure-6, which has been brought on record by way of amendment to the writ application. Therefore, the petitioner seeks to quash the fourth corrigendum dated 13.06.2017 in Annexure-5 and consequential action taken in issuing fresh tender call notice dated 21.08.2017 in Annexure-6.

3. Sri S.K. Dalai, learned counsel for the petitioners in all the writ petitions strenuously urged before this Court that the 4th corrigendum notice dated 13.06.2017 cancelling the tenders for the works from serial no. 1 to 168 of annexure to NIT No. 974 dated 07.04.2017 vide bid identification no. SERWSCSBD online 01/2017-18, has been issued without assigning any reason. It is further contended that the only reason has been assigned that ""due to unavoidable circumstances"" and what is unavoidable circumstances has not been indicated in such cancellation notice dated 13.06.2017 issued by way of 4th corrigendum. As such, the consequential tender call notice issued during pendency of the writ petition before this Court also amounts to overreaching the orders of this Court. Therefore, it is contended that both the 4th corrigendum dated 13.06.2017 and consequential fresh tender call notice dated 21.08.2017 cannot sustain in the eye of law and the same are liable to be quashed. It is further contended that the cancellation of works from serial no. 1 to 168 has been done as per instruction of the higher authorities of the Orissa State Rural Road Agency (OSRRA), who is not the competent authority and, as such, it has no jurisdiction to suggest for cancellation of tender.

Thereby, the cancellation of tender, having been made at the best of the authority, who has no jurisdiction, cannot sustain in the eye of law.

4. Sri B.P. Pradhan, learned Addl. Government Advocate contended that the Superintending Engineer-opposite party no.3 is the designated

officer to invite tenders for Pradhan Mantri Gram Sadak Yojana (PMGSY). As such, he is competent to issue the 4th corrigendum notice dated

13.06.2017, during commencement of the process, by cancelling the works from serial no.1 to 168, out of 380 tendered items of the original

tender call notice, as per Clause 14 of the notice inviting tender. As per the said tender call notice, as many as 80 numbers of packages were

available for bidding for "B" class contractors, out of total number of 168 packages relating to Koraput district. There was consideration at the

level of OSRRA to combine the nearby packages as per feasibility so as to make it to bigger size for participation of more number of higher class

contractors having more expertise and more sophisticated machineries required for these works for smooth execution of the work maintaining

better quality and workmanship. Therefore, as per instruction of higher authority from OSRRA, tenders for packages relating to Koraput district

from serial no.1 to 168 were cancelled so as to go for fresh tender after re-packaging of work as per feasibility. Thereby, no illegality or irregularity

has been committed by the authority concerned in issuing the 4th corrigendum dated 13.06.2017 in cancelling the works from serial no.1 to 168.

The consequential tender notice issued in Annexure-6 dated 21.08.2017 is well within its competency and, as such, the same does not warrant

interference of this Court at this stage.

5. We have heard Mr. S.K. Dalei, learned counsel for the petitioners, and Mr. B.P. Pradhan, learned Addl. Government Advocate for the State

opposite parties. The pleadings between the parties having been exchanged, with their consent the writ petition is finally disposed of at the stage of

admission.

6. The fact delineated above are undisputed and a perusal of 4th corrigendum dated 13.06.2017 would go to show that it is a cryptic one and no

reason has been assigned for cancelling the tenders for the works from serial no.1 to 168 of notice inviting tender dated 07.04.2017. As a matter

of fact, the cancellation of tenders has been made only "due to unavoidable

circumstances"". Therefore, no reasons have been assigned while issuing such corrigendum cancelling the works from serial no.1 to 168 of annexure to NIT No. 974 dated 07.04.2017.

7. Franz Schubert said-

Reason is nothing but analysis of belief.

In Black's Law Dictionary, reason has been defined as a-

faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce

inferences from facts or from propositions.

It means the faculty of rational thought rather than some abstract relationship between propositions and by this faculty, it is meant the

capacity to make correct inferences from propositions, to size up facts for what they are and what they imply, and to identify the best

means to some end, and, in general, to distinguish what we should believe from what we merely do believe.

Therefore, reasons being a necessary concomitant to passing an order allowing the authority to discharge its duty in a meaningful

manner either furnishing the same expressly or by necessary reference.

8. ""Nihil quod est contra rationem est licitum"" means as follows:

nothing is permitted which is contrary to reason. It is the life of the law. Law is nothing but experience developed by reason and

applied continually to further experience. What is inconsistent with and contrary to reason is not permitted in law and reason alone

can make the laws obligatory and lasting.

Therefore, recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is pertinent

to note that a decision is apt to be better if the reasons for it are set out in writing because the reasons are then more likely to have

been properly thought out. It is vital for the purpose of showing a person that he is receiving justice.

In *Re: Racal Communications Ltd.* (1980)2 All ER 634 (HL), it has been held that the giving of reasons facilitates the detection of

errors of law by the court.

In *Padfield v. Minister of Agriculture, Fisheries and Food* (1968) 1 All E.R. 694, it

has been held that a failure to give reasons may

permit the Court to infer that the decision was reached by the reasons of an error in law.

9. In *Union of India v. Mohan Lal Capoor*, AIR 1974 SC 87 it has been held that reasons are the links between the materials on which certain

conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely

administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt

support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts

on record. It is vital for the purpose of showing a person that he is receiving justice.

Similar view has also been taken in *Uma Charan v. State of Madhya Pradesh*, AIR 1981 SC 1915.

10. In *Travancore Rayons Ltd. v. The Union of India*, AIR 1971 SC 862 it is observed by the apex Court that the necessity to give sufficient

reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where

a non-judicial authority exercises judicial functions is obvious. When judicial power is exercised by an authority normally performing executive or

administrative functions, the Supreme Court would require to be satisfied that the decision has been reached after due consideration of the merits

of the dispute, uninfluenced by extraneous considerations of policy or expediency. The court insists upon disclosure of reasons in support of the

order on two grounds: one, that the party aggrieved in a proceeding before the court has the opportunity to demonstrate that the reasons which

persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible

arbitrary action by the executive authority invested with the judicial power.

11. In *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, the apex Court held that the reasons, if disclosed, being open to judicial scrutiny for

ascertaining their nexus with the order, the refusal to disclose the reasons would equally be open to the scrutiny of the Court; or else, the

wholesome power of a dispassionate judicial examination of executive orders

could with impunity be set at naught by an obdurate determination to suppress the reasons.

12. Taking into consideration the principles laid down by the apex Court, as discussed above, to the present context, it is only indicated in the 4th

Corrigendum that cancellation of tenders for the works from serial no.1 to 168 has been done ""due to unavoidable circumstances"". While

considering the provisions contained in Section 25-FFF of Industrial Disputes Act in Kuttanecherry Quseph Antony v. P.V. Kumaran, 1979 LAB

IC 1165, it has been held as follows:

Legislative intent is to limit the scope of the expression ""unavoidable circumstances"" to such cases where closure was for reasons

connected with the business. If the closure of the undertaking was on account of unavoidable circumstances beyond the control of an

employer, but those circumstances are not connected with the functioning of the undertaking, although such reasons are personal to

him, the closure cannot come within the ambit of the Section 25-FFF(1) proviso.

13. In view of the above mentioned factual and legal discussion, there is no iota of doubt that 4th corrigendum dated 13.06.2017 has been issued

without assigning any reason and, as such, the meaning of unavoidable circumstances cannot and could not be inferred from the circumstances

mentioned in the said letter. Therefore, the cancellation of tenders so made with regard to the works from serial no.1 to 168 of annexure to NIT

No.974 dated 07.04.2017 cannot sustain in the eye of law. Consequentially, the National Competitive Bidding through e14 procurement issued

under Annexure-6 dated 21.08.2017 during pendency of the writ application also cannot sustain and is liable to be quashed. Accordingly, 4th

corrigendum notice dated 13.06.2017 cancelling tenders for the works from serial no.1 to 168 of annexure to NIT No.974 dated 07.04.2017 and

consequential National Competitive Bidding through eprocurement dated 21.08.2017 vide Annexure-5 and 6 respectively are hereby quashed.

14. The writ petitions are allowed to the extent indicated above. No order to cost.