

SUPREME COURT OF INDIA

Bishnu Prasad Dash

Vs

Raj Kumar Agarwal and Others

Appeal (Civil) 2402 of 2006 (Arising Out of S.L.P. (C) No.5959 of 2005)

(Arijit Pasayat and S. H. Kapadia, JJ)

01.05.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Orissa High Court directing that the offer of Orissa Small Industries Corporation Ltd. (in short the 'OSICL') represented by its agent (Respondent no.1) at Rs.85/- per kg. will be considered by the Government at the highest level, namely the Chief Minister of Orissa. It was further observed that it will be open for the Government to pass such orders as it deems fit in the larger public interest; keeping in view all aspects of the matter. It would also be open for the Government to call for revised offers from the Industrial Development Corporation of Orissa Ltd. (in short the 'IDCOL'), OSICL or from any other party. Appellant represents IDCOL as its agent.

Background facts in a nutshell are as follows:

Respondent no.1 has been lifting copper cables scrap from the OSICL since 2002. For disposal of 16, 625.09 kg. of copper cables pertaining to Main Dam Division, Burla, proposal for tender was submitted by the Chief Engineer, Mechanical and off set price was fixed at Rs.160/- per kg. The

IDCOL did not respond to the said tender. The OSICL offered a price of Rs.80/- per kg. But no other party responded to the tender invited by the Executive Engineer. Thereafter, the IDCOL made an offer of Rs.84/- per kg. of copper cable excluding all taxes and duties. The matter was processed and finally orders were passed by the Government at the level of Chief Minister of Orissa for disposal of the copper cable at the rate of Rs.84/- per kg to the IDCOL. After the aforesaid order was passed by the Chief Minister of Orissa on 16.12.2004, the OSICL submitted a fresh offer dated 20.12.2004 at Rs.85/- per kg. but the said offer of the OSICL was not considered pursuant to the notes given in the Department that the offer was made belatedly after order was passed by the Government and if the said order is entertained, it will affect the sanctity of the Government order. Respondent no.1 filed a writ petition challenging the Government order.

The High Court was of the view that the offer of IDCOL was Rs.84/- per kg. where the offer of OSICL, though belated, was Rs.85/- per kg. It was felt that the offer of OSICL should have been considered at the rate of Rs.85/- per kg. by the highest level of the Government, namely the Chief Minister. Accordingly the Government order was set aside and directions as noted supra were given.

Learned counsel for the appellant submitted that without impleading the IDCOL as a party, the writ petition should not have been disposed of. Respondent no.1 claimed to be an agent of OSICL. Appellant was the agent of IDCOL. Since IDCOL was not a party and the writ application was disposed of in a great haste, even without issuing notice relevant facts could not be placed on record. In fact, the State Government in its counter, filed before this Court, has clearly indicated that by the time the respondent no.1 made the offer, i.e. 20 days after the acceptance of offer by IDCOL acting through its agent i.e. appellant, a slightly higher amount was offered. No explanation was given by the respondent no.1 as to why the higher offer was being made after necessary decisions have been taken by the State Government. The letters from OSICL was received on 20.12.2004, whereas about a week before that, decision had been taken and orders were issued by Water Resources Department to IDCOL conveying the approval of the Government accepting its offer at Rs.84/- per kg.

In response, learned counsel for respondent no.1 submitted that in greater public interest, the High Court has passed the order and this Court should not interfere.

The order of the High Court is indefensible on more than one counts. Firstly, IDCOL was not a party in the writ petition. Similar was the position vis-à-vis the appellant who undisputedly is the agent of IDCOL. So far as the question of disposal in haste is concerned, it is not disputed that the writ petition was filed on 18.1.2005 and merely two days thereafter the matter was finally disposed of even without issuing notice to the parties. High Court has interfered in a contractual matter without hearing the party whose offer had been accepted. High Court should not entertain the writ petition because the successful bidder had not been impleaded. It baffles us that that this fundamental aspect was not kept in view by the High Court. Such a course is clearly impermissible. Since the High Court did not have the material facts before it, it did not notice that the offer made by IDCOL through its agent had been finalized and final order had been passed. It is true that in greater public interest the courts can ask parties to offer higher amounts. But that can necessarily be done after hearing the parties concerned. Since that has not been done in the present case, the High Court's order cannot be maintained and is accordingly set aside and the matter remitted to the High

Court for fresh disposal. The writ petitioner shall implead IDCOL and the present appellant as parties within a period of three weeks. If it is not done, the writ petition will be dismissed. The High Court is requested to dispose of the matter within a period of four months from the receipt of order, only if necessary parties as indicated above are impleaded. We make it clear that we have not expressed any opinion on the merits of the case.

Appeal is disposed of accordingly. No costs.