



IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.5923 of 2026

Anupam Modi

....

Petitioner

Mr. Jatindra Kumar Mohapatra, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. Saswat Das, Addl. Government Advocate

CORAM:
THE HON'BLE THE CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER
25.03.2026

Order No.

- 02.
1. The petitioner beseeching issue of writ of *mandamus* to the opposite parties to consider the financial bid for evaluation along with other bids in connection with e-procurement notice *vide* Bid Reference No.SE, MID, DGR/06/2025-26 dated 20.12.2025 issued by the Superintending Engineer, MI Division, Deogarh, the present writ petition has been filed invoking Article 226 of the Constitution of India.
 2. The petitioner, B-Class Contractor, participated in the bid for civil construction work relating to “*Construction of Brahmanidei-I Check Dam over Balijore Nalla Near Village Brahmanidei in Barkote Block of Deoghar District under Maty Scheme*”. The date and time of availability of the bid documents in the portal was scheduled from 26.12.2025 to 05.01.2026. As per the e-procurement notice, the date of opening of the bid was 06.01.2026.



- 2.1. On 03.01.2026, *i.e.*, prior to last date as indicated above, an amendment in Appendix-IX appended to Volume-II of the Odisha Public Works Department Code (for short, “OPWD”), was brought into force by virtue of Works Department Office Memorandum bearing No. 07764600022025/173/W, dated 03.01.2026. It is stipulated *inter alia* that extant provisions of threshold negative bid caps (14.99%) introduced in Appendix-IX, Clause 36 of the OPWD Code, Volume-II in the procurement of works undertaken by the Government of Odisha and its agencies has been abolished and such amendments would take effect from the date of issue of said Office Memorandum. However, on 09.01.2026 a clarification has been issued by the Works Department to the following effect:

“As regards the bidding process in which the tender has been floated before the issue of Works Department Office Memorandum No.173 dt.03.01.2026, the bid shall be finalized as per the earlier provisions in Appendix-IX, Clause 36 of OPWD Code Volume-II”.

- 2.2. As the said clarification came to be issued after last date for submission of bid, the petitioner has participated in the bidding process by furnishing details in consonance with the amended provision in terms of Office Memorandum dated 03.01.2026.
3. Essentially what is submitted by Mr. Jatindra Kumar Mohapatra, learned Advocate that though during valid period of submission of bid documents, the OPWD Code has been amended, the authority concerned did not



brought out any corrigendum by extending last date of submission of bid notwithstanding the fact that by Office Memorandum dated 03.01.2026, the said amendments were made effective from the date of issue of the said Office Memorandum.

3.1. It is submitted that taking into consideration, the Office Memorandum dated 03.01.2026, the petitioner submitted the bid in connection with the e-procurement notice dated 20.12.2025 on the last date fixed for submission of the bid by quoting 15.6% below the estimated cost. It is vehemently argued that the clarification *vide* Office Memorandum No.632/W, was issued on 09.01.2026, *i.e.*, after the last date for submission of bid document. Therefore, due to such confusion, the petitioner having submitted his bid document in consonance with the requirement as per Office Memorandum dated 03.01.2026, his bid deserves to be considered along with other participants.

4. Mr. Saswat Das, learned Addl. Government Advocate appearing for opposite parties submitted on the basis of written instruction received from the Superintending Engineer, MI Division, Deogarh that since the e-procurement notice was published on 20.12.2025 by which the date of amendment to OPWD Code did not see the light of the day, there was no scope for entertaining any doubt or confusion as projected by the petitioner. The petitioner was supposed to act according to the terms and conditions as per the e-procurement notice, but not



otherwise. Even in absence of any clarification, it is but quite unequivocal that any amendment to the OPWD Code would not have any impact on the advertisement already made prior to such amendment. The authorities having proceeded to finalise the bid in accordance with the terms and conditions as stipulated in the e-procurement notice dated 20.12.2025, their action cannot be faulted with.

5. Heard Mr. Jatindra Kumar Mohapatra, learned Advocate appearing for the petitioner and Mr. Saswat Das, learned Additional Government Advocate for the opposite parties.

6. Perusal of Office Memorandum dated 03.01.2026 (Annexure-3), it is revealed that:

“2. *These amendments shall take effect from the date of issue of Office Memorandum*”.

3. *The relevant existing Codal/Contractual Provision stands modified with effect from the date of issue of this Office Memorandum.*”

6.1. Perusal of the record reveals that e-procurement notice was issued on 20.12.2025. The said amendment in the OPWD Code came to exist on 03.01.2026. It is trite that once process of tender commenced, the terms and conditions stipulated therein cannot be tinkered with till the end of the process. There is no scope for change in the terms and conditions on account of subsequent events unless such condition is explicitly contained in the bid document. Since the date of availability of bid documents in the portal was scheduled on 26.12.2025,



i.e., prior to the amendment by Office Memorandum dated 03.01.2026, the petitioner should have adhered to the terms and conditions as reflected in the e-procurement notice. In absence of any corrigendum issued by incorporating the amended provisions, the terms and conditions stipulated in such notice is sacrosanct and the participants are required to follow the same without any deviation and/or variation. The tendering authority found the petitioner not having submitted his bid document in consonance with the requirement of the e-procurement notice. Therefore, it is opined by the said authority that bid documents submitted by the petitioner is not liable to be considered along with the other participants, who have complied with the terms of e-procurement notice.

- 6.2. The written instruction received from the Superintending Engineer, MI Division, Deogarh by the learned Addl. Government Advocate reveals that:

“the petitioner participated in the tender process and submitted his bid at 15.6% below, the estimated cost without seeking any clarification regarding the applicability of the revised policy”.

- 6.3. Scrutiny of e-procurement notice it is found at Clause-19 that:

“This notice will be read with all clauses/addendum to the ‘Procedure to participate in on-line Biddings’.”

- 6.4. Clause 5 of said notice also envisages that:

“Subsequent corrigendum/addendum if required shall only be available in the website”.



- 6.5. Since the petitioner admitted that no corrigendum/addendum in pursuance of aforesaid amendment carried out in OPWD Code by virtue of the Office Memorandum dated 03.01.2026 has been published by the tendering authority, this Court does not find any force in the contention of the learned counsel that the tendering authority should have accepted his bid, which was submitted as per such amendment.
- 6.6. As the opposite parties-tendering authority has acted in accordance with the terms and conditions specified in the e-procurement notice and having found the bid of the petitioner not in consonance with the terms and conditions thereof, the same was rightly not considered. This Court, thus, finds no merit in the writ petition. Hence, the writ petition is dismissed. In view of disposal of writ petition, pending Interlocutory Application(s), if any, shall also stand disposed of.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

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