



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.18053 of 2025**

**M/s. Bose Constructions, Nuapada**

....

**Petitioner**

Represented by Adv.–  
Mr. B.B. Mishra, Advocate

-Versus-

**State of Odisha and others**

....

**Opposite Parties**

Represented by Adv.–  
Ms. A. Dash, Additional Standing Counsel (State)  
Mr. S.K. Sarangi, Senior Advocate  
assisted by Mr. S. Sarangi, Advocate (OP No.4)

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**AND**

**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

**ORDER**

**23.07.2025**

**Order No.**

- 03.**
1. It is one of the classical examples, where the case is being improved at the time of hearing by a counsel representing the litigant. The fact which is not pleaded nor forms part of the pleading is being improved as and when the adversary discloses the documents and the evidence which belied the stand of the petitioner. The law does not permit the litigant to prevaricate his stand or improve his case de hors the pleading at the time of a hearing.
  2. Admittedly, pursuant to the notice inviting tender the intending bidders submitted their bids and the date for evaluating the suitability and the eligibility at the technical stage was fixed. Since the date so



fixed, the authorities found some difficulties in finalizing the same, the dates were postponed from time to time.

3. On 10<sup>th</sup> June, 2025, the technical bid was opened and the challenge was made by the petitioner on the ground that without serving any notice, or giving any intimation of the date so fixed, the authorities proceeded with the tender at the technical bid stage which offends the core value of equality and the equal opportunity to be given to all the intending bidders.

4. Since such stand is taken in the pleading, the Court was swayed by the same and invited the State-opposite party to respond. On the last occasion, it was pointed out by the State that intimation was given to all the intending bidders of the date so fixed i.e., 10th June, 2025 and, in fact, the brother of the petitioner remained present at the time of evaluation and/or finding suitability of the intending bidders at the technical bid stage and since the petitioner does not fulfill all the requisite conditions indicated in the said notice inviting tender, his bid was rejected.

5. As indicated above, the challenge is simpliciter founded upon an allegation that no notice nor any intimation was given of a date fixed by the authority to open the technical bid.



6. We do not venture to go into any other aspects after being made aware of the fact disclosed by the State. The learned counsel for the petitioner, though initially took a stand disowning the person, who representing him but later on took time to take appropriate instructions.

7. Today when the matter is taken up, the learned counsel for the petitioner submits on instruction that the name which is disclosed by the said authority to have represented the petitioner is related to him as a full blood brother, but he attended on the said day, after receiving an information, but the fact remains that no notice was ever served on the petitioner.

8. It can be reasonably inferred from the aforesaid submission that the petitioner was made aware of the date so fixed and, in fact, his brother as his representative remained present at the time when the authority evaluated and/or undertaken an exercise in order to find the suitability. The brother is not an intending bidder nor filed its bid and, therefore, his presence has to be construed as a presence on behalf of the petitioner as his representative.

9. Interestingly, a further improvement at the bar is made in taking a plea that the bid document submitted by the petitioner was not included at the time when the authorities undertook such exercise on 10<sup>th</sup> June,



2025. It corroborates the very first expressions made by us in the opening remark that the case is being improved at the bar *de hors* the pleadings in this regard.

10. There is incongruity in the submission advanced by learned counsel for the petitioner that the documents were not included on the said date for the simple reason that if the stand of the petitioner is considered to be true and he remained absent on the said day, it is inconceivable and improbable that such litigant would say that his documents were not included at the time of undertaking such exercise.

11. We find from the conduct of the petitioner that it approbates and reprobates at the different stages of the litigations, which we do not permit as such recalcitrant litigant should not be permitted to misuse the remedy provided in the law in such manner.

12. We thus do not find any merit in the instant writ petition. Accordingly, the same is hereby dismissed.

**(Harish Tandon)**  
**Chief Justice**

**(M.R. Pathak)**  
**Judge**

SK. Jena/Secy.  
S.K. Behera/Jr. Steno

**Signature Not Verified**

Digitally Signed  
Signed by: SISIRA KUMAR BEHERA  
Designation: Junior Stenographer  
Reason: Authentication  
Location: High Court of Orissa, Cuttack  
Date: 01-Aug-2025 14:16:06

