



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23190 of 2025

Rabi Narayan Acharya

....

Petitioner

Mr. Rajendra Narayan Rout, Advocate

-versus-

State of Orissa and another

....

Opposite Parties

Mr. Debasis Tripathy, AGA

CORAM:

THE HON'BLE THE CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER

22.08.2025

Order No.

01. 1. Questioning the validity of tender call notice dated 2nd August, 2025 vide Annexure-1 issued by the Superintendent, Maharaja Krishna Chandra Gajapati Medical College Hospital, Berhampur-opposite party no.2, the petitioner has approached this Court by way of filing this writ petition invoking provisions under Articles 226 & 227 of the Constitution of India with the following prayer(s):-

“It is therefore humbly prayed that this Hon’ble Court may graciously be pleased to admit the writ petition, issue rule nisi calling upon the Opp. Parties to show cause as to why the aforesaid Tender Call Notice dtd.02/08/2025, issued by the O.P. No.2, under Annexure-1, shall not be set aside after declaring the same is illegal;

And in the event the opp. Parties file no show cause or file insufficient or false cause the Hon’ble Court may be pleased to make the rule nisi absolute;

And/or may pass any other writ/writs,



Order/orders, direction/directions as this Hon'ble Court may deem fit and proper;

And for this act of kindness the petitioner as in duty bound shall ever pray."

2. As is revealed from the writ petition, the Superintendent of the Maharaja Krishna Chandra Gajapati Medical College Hospital, Berhampur-opposite party no.2 invited sealed tenders for "supply of Orthopedic Implant items". Alleging that clause-3 of the tender call notice made it imperative that tenderer should possess valid MD 42 (Medical Device 42) license issued by the competent authority of Government of India under the Drugs & Cosmetics Act, which is onerous condition as "hardly any intending tenderer from Berhampur, Ganjam is equipped with the same".

2.1. It is further alleged that varieties of such implant are available, which ought to have been incorporated in the notice inviting tender.

3. Learned counsel for the petitioner submitted that the conditions as stipulated in the tender call notice are such that none of the tenderer can fulfill.

4. Learned Additional Government Advocate appearing for the State-opposite parties vehemently opposed the contentions raised by the learned counsel for the petitioner and submitted that it is for the author of the tender to decide the requirement with respect to participant as also the specified items.

5. Heard Mr. Rajendra Narayan Rout, learned counsel for the petitioner and Mr. Debasis Tripathy, learned Additional Government Advocate for the State-opposite parties.

6. Upon hearing the counsel for respective parties, this Court is not persuaded by the contention of the learned counsel for the petitioner that instead of "one 6 hole small DCP with screws" with



respect to “item no.IMP0542-Orthopedics, Polytrauma” other accompaniments necessary for use of such item should have been included for supply. It is submitted that varieties of such items are available in the market. This Court has no expertise to specify the items. The requirement and need for use in the Institution is the domain of the tendering authority. This Court is afraid to indulge itself in specifying what is required for the Institution at the behest of the petitioner.

7. In the context of challenging the tender condition which is alleged to have been tailor-made to suit a particular bidder, the scope of intervention of this Court is discussed in *Balaji Ventures Pvt. Ltd. Vrs. Maharashtra State Power Generation Company Ltd.*, 2022 SCC OnLine SC 1967 the Hon’ble Supreme Court has been pleased to observe as follows:

“9. Now so far as the impugned Judgment and order passed by the High Court dismissing the writ petitions is concerned, what was challenged before the High Court was one of the tender conditions/clauses. The High Court has specifically observed and noted the justification for providing clause 1.12(V). The said clause was to be applied to all the tenderers/bidders. It cannot be said that such clause was a tailor made to suit a particular bidder. It was applicable to all. Owner should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid unless it is found to be arbitrary, mala fide and/or tailor made. **The bidder/tenderer cannot be permitted to challenge the bid condition/clause which might not suit him and/or convenient to him.** As per the settled proposition of law as such it is an offer to the prospective bidder/tenderer to compete and submit the tender considering the terms and conditions mentioned in the tender document.



10. *In the case of Silppi Constructions Contractors Vrs. Union of India, (2020) 16 SCC 489, it is observed in para 20 as under:*

*‘20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; **the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted.** The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.’*

11. *In the case of Montecarlo Limited Vrs. National Thermal Power Corporation Limited, (2016) 15 SCC 272, it is observed and held that **the tender inviting authority is the best person to understand and appreciate its requirement and tender documents, so long as there are no mala fides/arbitrariness etc.** It is further observed and held that the Government must have freedom of contract and such action can be tested by applying Wednesbury principle and also examining whether it suffers from arbitrariness or bias or mala fides.”*

8. With regard to the requirement of possessing the valid MD 42 license from the competent authority, it is the tendering authority to specify the qualification, which this Court is not the competent



authority to prescribe or modify to suit according to askance of the petitioner.

9. In view of the aforesaid discussions and reasoning, the writ petition seems to be misconceived, warranting its dismissal. Hence, the writ petition, sans merit, is dismissed. All the pending Interlocutory Application(s), if any, shall also stand disposed of.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

MRS/Laxmikant

Signature Not Verified

Digitally Signed
Signed by: LAXMIKANT MOHAPATRA
Designation: Senior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 25-Aug-2025 18:21:11

