

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 33887 of 2023

*Brilliant Infraprojects Pvt. Ltd.,
Bolangir*

Vs.

*Petitioner
Mr. S.K. Acharya, Advocate*

*National Highways Authority
of India, Bhubaneswar & Ors.*

*Opposite Parties
Mr. P.K. Parhi, DSGI
(O.P.1)
Mr. Amitav Das, Advocate
(NHAI)
Mr. P.P. Mohanty, AGA
(O.P.2)*

CORAM:

**ACTING CHIEF JUSTICE DR. B.R. SARANGI
MR. JUSTICE MURAHARI SRI RAMAN**

**ORDER
18.10.2023**

W.P.(C) No.33887 of 2023

And

I.A. No.16395 of 2023

Order No.

2

This matter is taken up through hybrid mode.

2. In compliance of the order dated 13.10.2023, Mr. Amitav Das, learned counsel, who usually appears for National Highways Authority of India, appears before this Court and states that National Highways Authority of India is not a necessary party to this writ petition, but in its place the Ministry of Road Transport and Highways has to be made as a party.
3. It is brought to the notice of this Court that the bid of the petitioner has been submitted to the Chief Engineer, National Highways, Odisha. Therefore, National Highways, Odisha has been made as opposite party no.2 and Ministry of Road

Transport and Highways should be made as opposite party no.1.

4. Mr. S.K. Acharya, learned counsel appearing for the petitioner undertakes to make necessary amendment to the cause title by filing appropriate application. Let an extra copy of the writ petition be served on Mr. P.K. Parhi, learned Deputy Solicitor General of India to enable him to obtain instruction or file counter affidavit.

5. Mr. S.K. Acharya, learned counsel appearing for the petitioner vehemently contended that the petitioner has filed this writ petition against rejection of its technical bid holding that the same is non-responsive and as regards the reason for non-responsiveness it has been stated that *“the bidder has not submitted the letter comprising of technical bid as per Appendix-1A as per RFP. Therefore, the Committee observed that the bidder has failed in ‘test of responsiveness’ as per cl. 3.1.6 of the RFP”*. He brings to the notice of this Court that pursuant to tender call notice, the petitioner submitted its bid through online, which was duly acknowledged on 04.07.2023 at 10.17 AM, and as against the time of generation of certificate on BIMS, it was mentioned as 10:28:31. It is further contended that while certifying the documents which were submitted by the bidder through the Bidder Information Management System (BIMS), it was clearly indicated at Sl. No.1 that the bidder had submitted the letter comprising of the technical bid as per Appendix 1A. The said certificate has been placed at page-122 of the writ petition. Thereby, it is contended that the reason assigned by the authority for rejection of technical bid of the petitioner is an outcome of non-application of mind.

6. Issue notice to the opposite party.

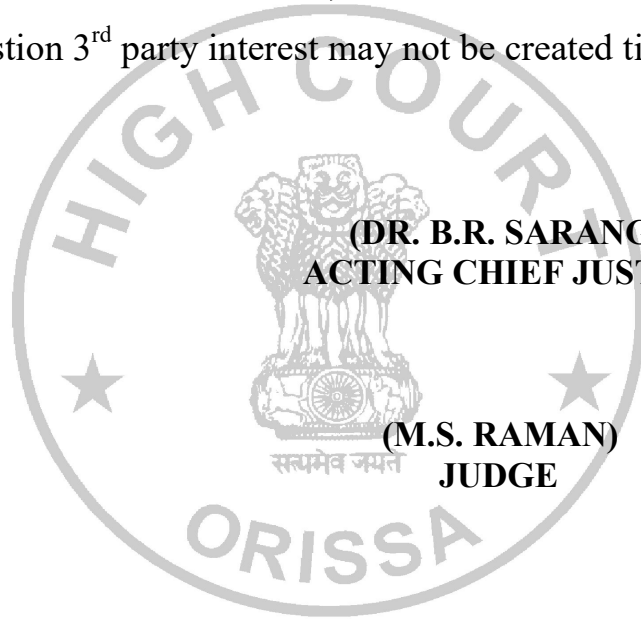
7. Since Mr. P.K. Parhi, learned Deputy Solicitor General of India appears on behalf of opposite party no.1, an extra copy of the brief be served on him to enable him to obtain instructions or file counter affidavit in the matter.

8. Since Mr. P.P. Mohanty, learned Additional Government Advocate appears for opposite party no.2, let an extra copy of the writ petition be served on him to enable him to obtain instructions or file counter affidavit.

9. Requisites for issuance of notice to opposite party no.3 by speed post shall be filed within three days. Office shall send notice to the said opposite party fixing a short returnable date.

10. As an interim measure, it is directed that in respect of work in question 3rd party interest may not be created till 02.11.2023.

Alok



(DR. B.R. SARANGI)
ACTING CHIEF JUSTICE

(M.S. RAMAN)
JUDGE