

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6711 of 2013
(Arising out of SLP(C)No.9467/2011)

Naim Shariff

...Appellant

Versus

State of Orissa & Ors.

...Respondents

O R D E R

This appeal has been preferred against the impugned judgment and order dated 15.3.2011, passed in M.C. No.4232 of 2011 in Writ Petition No.19790 of 2009 by the High Court of Orissa at Cuttack, by way of which it has recalled the earlier judgment and order dated 4.3.2011 and issued fresh directions.

Facts and circumstances giving rise to this appeal are not in dispute.

The office of the Executive Engineer, P.H. Division, Berhampur, Dist. Ganjam, Orissa issued a Detailed Tender Call Notice dated 4.11.2009 for disposal of old/condemned/rejected scrap materials on an "as is where is" basis. The book value of the scraps was fixed at Rs.17,96,864/-. The tender had to be submitted by 25.11.2009. Clause 16(b) of the General Terms and Conditions provided for inclusion of sales tax.

A corrigendum was issued on 29.11.2009 to the said notice and subsequently a second corrigendum was issued on 8.12.2009. A large number of persons purchased the tender documents but it is submitted that only 12 persons fulfilled the requisite qualifications. The appellant made a bid for Rs.18,65,000/- and was placed at 5th position. However, the petitioner raised the objection that in view of the erroneous clause contained in the tender documents he could not submit the correct bid. In that respect he also made a representation dated 19.12.2009 that he was willing to take the scrap for a sum of Rs.25,36,400/- in case clause 16(b) is taken into consideration.

As there was no action on part of the authorities, appellant filed Writ Petition No.19790 of 2009 before the High Court of Orissa at Cuttack for quashing the tender notice as it was defective. The respondent no.3 herein was also impleaded as a party.

The High Court entertained the writ petition and passed an interim order dated 22.12.2009. However, the writ petition was heard and disposed of finally vide order dated 4.3.2011, i.e., after one and a half year of its entertainment and after hearing of the parties concerned including the contesting respondent no.3.

The operative part of the said judgment and order reads as under:-

"So, we direct that if the petitioners deposit the entire bid amount within seven days from today, the tender shall be settled with them. If the petitioners do not deposit the said amount within seven days from today, a cost of Rs.5,00,000/- (rupees five lakhs) shall be deposited before this Court by them and failure to deposit the said cost, it shall be construed to be an act of contempt. Thereafter, O.P.3 shall deposit the entire bid amount and the tender shall be settled with him."

Subsequent thereto, Maman Kumar Agarwal, respondent no.3 filed an application for correction/recall of the order and without specifying what the mistakes were and why could the mistakes in the order dated 4.3.2011 not be corrected, the High Court changed the complete tenor of the said judgment and re-wrote a fresh judgment completely by-passing each and every direction issued earlier.

We fail to understand under what circumstances such a course is permissible in law. An application of recall can be filed only with the grievance that the party was not heard or that the party was not served or the party or its lawyer had no notice of hearing.

The course adopted by the High Court is not permissible in law as it amounts to re-writing the whole judgment and that too without recalling the earlier judgment or giving cogent reasons for the same.

Thus, in view of the above, the order impugned dated 15.3.2011 is set aside. The order dated 4.3.2011 is restored.

The appeal stands disposed of accordingly.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(S.A. BOBDE)

New Delhi,
August 12, 2013

ITEM NO.42

Court No.5

SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9467/2011

(From the judgement and order dated 15/03/2011 in WP No.19790/2009,MC No.4232/2011 of The HIGH COURT OF ORISSA AT CUTTACK)

NAIM SHARIFF

Petitioner(s)

VERSUS

