

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9819-9820 OF 2014

(arising out of S.L.P. (Civil) Nos. 5407-5408 of 2013)

STATE OF ORISSA & ORS.

Appellant(s)

VERSUS

KISAN PRASAD AGRAWAL

Respondent(s)

WITH

CIVIL APPEAL NO. 9821 OF 2014

(arising out of S.L.P. (Civil) No. 3631 of 2013)

CIVIL APPEAL NOS. 9822-9823 OF 2014

(arising out of S.L.P. (Civil) Nos. 5409-5410 of 2013)

CIVIL APPEAL NOS. 9824-9825 OF 2014

(arising out of S.L.P. (Civil) Nos. 5411-5412 of 2013)

O R D E R

Leave granted.

2. In terms of a tender notice dated 24.09.2010 Government of Orissa, Department of Water Resources invited tenders from eligible contractors in regard to different works comprising Lower Indra Irrigation Project in district Nuapada

of the State of Odisha. Several contractors appear to have responded and submitted their respective tenders some of which were upon scrutiny found to be technically compliant, while some others were not. Four out of the several works advertised were claimed by the respondents in this batch of appeals, whose financial bids were also opened by the competent authority. But before the works could be awarded in their favour, the Tender Committee appears to have called for a report from the Chief Engineer concerned regarding the status of the land acquisition proceedings in relation to private lands over which the canal/works in question were to be constructed.

3. The Chief Engineer's report stated that the land acquisition proceedings in relation to the area required for execution of the works were still at Section 4(1) and 6(1) notification stage. The Tender Committee, therefore, recommended cancellation of the tender process which recommendation was accepted by the Government

culminating in the issue of an order dated 10.06.2011 by which the tender process initiated by the Department of Water Resources was cancelled. Aggrieved, the contractors who had been found to be technically compliant and whose financial bids were opened by the competent authority filed Writ Petitions before the High Court of Orissa at Cuttack for quashing the order passed by the State Government. The High Court has by the orders impugned in these appeals allowed the Writ Petitions and directed the State Government to allot the works in question in favour of the respondents-contractors.

4. On behalf of the appellant-State of Odisha, it was strenuously argued that the High Court fell in error in interferring with the order passed by the State Government cancelling the tender process. It was urged that the tender process had been cancelled not because of any extraneous and *malafide* considerations but on account of the non-availability of the area for execution of the

works because of the delay in the completion of land acquisition proceedings. It was argued that since the works in question were being executed in a very backward and sensitive area of the State of Odisha and since despite efforts made for an early completion of the acquisition process, the same had remained incomplete for one reason or the other, it became necessary to scrap the tender process. As allotment of contracts for execution of works without possession of the site requisite for such works being executed was meaningless, argues the appellant State.

5. On behalf of the respondents-contractors, it was, *per contra*, argued that the entire tender process having been initiated and taken to a stage where all that remained was issue of allotment letters, the cancellation of the tender process on the ground that the land in question was not available was no more than a lame excuse. It was further argued that the State Government had exercised its powers to cancel the tender process

not because public interest demand such cancellation but because the State Government had realised that those in whom it was interested had not emerged successful in the bidding process. It was argued that cancellation of tender process was for totally *malafide* and vitiated by extraneous reasons hence unsustainable especially when the Government was competent to invoke its powers under Section 17 of the Land Acquisition Act to quickly take over the possession of the land needed for execution of the works in question. It was also submitted that the respondents-contractors had filed an affidavit before the High Court not to claim any escalation in the cost involved in the construction of the project in question during the period the proceedings for acquisition of land remained incomplete, if the project was allotted to them. It was urged that according to the representation made by the State authorities before the High Court, such land acquisition proceedings could be completed within 6 to 8 weeks.

6. A notice inviting tenders is no more than an invitation to intending parties to make their offers and does not confer any enforceable legal right in any one making an offer to insist that the work must necessarily be allotted to him. All that is guaranteed under the constitutional scheme is that bids received by the authority inviting the same are considered on a fair and dispassionate basis, without any extraneous consideration ensuring a level playing field to all those who compete for allotment of the tendered works.

7. In the present batch of cases, there is no element of denying to anyone a level playing field for securing the works in question. We say so because no allotment of any contract had been made by the State authorities in favour of any party. The State Government, on the contrary, chose to cancel the tender process. The only question that in that view arises for our consideration is whether the cancellation of the tender process can be said to be *malafide* or vitiated by any

extraneous consideration. Our answer to that question is in the negative. We say so because the bare minimum which the State Government will have to ensure before a contractor is appointed for any given work is to make the site required for execution of the work available to him. It is not disputed that the project in question had to be executed predominantly, if not entirely, over private lands. It is also not disputed that although land acquisition proceedings had been initiated by the State authorities competent to do so, such acquisition had not been completed by the time the financial bids were opened. As a matter of fact, the Chief Engineer had reported that the land acquisition proceedings were still at Section 4(1) and 6(1) notification stage. Such being the case, the allotment of any work for execution over an area which was not in the physical possession of the State authorities was inadmissible that would have led to nothing except unnecessary litigation. The fact that land acquisition proceedings had not

been completed by the State authorities even after the lapse of about four years since the issue of the tender notice and opening of the financial bids clearly shows that the process had got embroiled in several difficulties. Such being the case, the State Government had a legitimate reason to cancel the tender process. In the absence of possession over the lands to be used for execution of the works even after four years, the contractor would have to work at the rates offered by it. But the rates offered by the respondents-contractors were not good for all times to come because of escalation in prices of goods and wages, etc. The rates offered by the contractors could hardly be viable even after lapse of four years nor would the respondent's offer to work at those rates inspire confidence.

8. So also the fact that the State Government had powers under Section 17 to take over the possession of the land even by dispensing with the enquiry under Section 5A was no answer to the

State's predicament or justify High Court's interference with the order directing cancellation of the tender process. At any rate, whether or not Section 17 had to be invoked, was a matter for the State Government to consider. The High Court could not have formed any opinion on behalf of the Government especially when the land owners could question the invocation of power under Section 17 as the same would affect their right to file objections under Section 5A and participate in the statutory enquiry before their lands are acquired. Allegations of malafides are also without any particulars to call for any further enquiry in the matter.

9. In the result, these Appeals succeed and are hereby allowed, the impugned orders passed by the High Court set aside and the Writ Petitions filed by the respondents-contractors dismissed. In the peculiar circumstances of the case, we direct the State Government to refund the earnest money deposited by the contractors with interest at the

rate of 6% *per annum* calculated from the date of deposit till the date of refund. Needful to be done within two months from today. No costs.

.....J.  
(T.S. THAKUR)

.....J.  
(ADARSH KUMAR GOEL)

NEW DELHI;  
OCTOBER 14, 2014

.....J.  
(R. BANUMATHI)

ITEM NO.19

COURT NO.2

SECTION XIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 5407-5408/2013  
(Arising out of impugned final judgment and order dated 20/09/2011 in RVWP No. 194/2011 and 08/11/2011 in WP No. 19934/2011 passed by the High Court Of Orissa At Cuttack)

STATE OF ORISSA &amp; ORS.

Petitioner(s)

VERSUS

KISAN PRASAD AGRAWAL  
(with interim relief and office report)  
[FOR FINAL DISPOSAL]

Respondent(s)

WITH

SLP(C) No. 3631/2013  
(With Office Report)

SLP(C) Nos. 5409-5410/2013  
(With Office Report)

SLP(C) Nos. 5411-5412/2013  
(With Office Report)

Date : 14/10/2014 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE T.S. THAKUR  
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL  
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. Shibashish Misra, Adv.

For Respondent(s) Mr. Sibho Sankar Mishra, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The Appeals are allowed in terms of the  
signed order.

(RAJESH DHAM)  
COURT MASTER

(VEENA KHERA)  
COURT MASTER

(signed order is placed on the file)