

A

BISHNU PRASAD DASH

v.

RAJ KUMAR AGARWAL AND ORS.

MAY 1, 2006

B

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

C

D

Constitution of India, 1950—Article 226—Writ Petition—Maintainability of, when party whose right affected not impleaded—Proposal for tender—Government Order declaring the Corporation offering higher bid as successful out of the two—Subsequently, fresh bid by OSICL offering highest bid but not considered being belated—Writ Petition filed—Government Order set aside and IDCOL declared successful—Legality of—Held: High Court could not entertain writ petition because the successful bidder had not been impleaded—Courts can ask parties to offer higher amounts in greater public interest but only after hearing parties—Thus, order of High Court set aside and matter remitted back.

E

F

The proposal for tender was submitted for disposal of copper cables. Respondent no. 1-agent of OSICL offered a price of Rs. 80 per kg for lifting copper cables. Thereafter, appellant-agent of IDCOL made an offer of Rs. 84 per kg. Government then passed an order for disposal of copper cable at the rate of Rs. 84 per kg to IDCOL. Thereafter, OSICL submitted a fresh offer at Rs. 85/- per kg. but the same was not considered since it was made belatedly. Government Order was challenged. High Court set aside the Government Order and directed that the offer of OSICL at Rs. 85/- per kg to be considered by the Government at highest level. Hence the present appeal.

Disposing of the appeal, the Court

G

HELD: In the instant case, IDCOL and also the appellant who is the agent of IDCOL was not made a party in the writ petition. The writ petition was disposed after two days of its filing even without issuing notice to the parties, as such was disposed of in haste. High Court has interfered in a contractual matter without hearing the party whose offer had been accepted. High Court should not have entertained the writ petition because the successful bidder had not been impleaded. Such a course is clearly impermissible. Since

H

the High Court did not have the material facts before it, it did not notice that the offer made by IDCOL through its agent had been finalized and final order had been passed. It is true that in greater public interest the courts can ask parties to offer higher amounts. But that can necessarily be done after hearing the parties concerned. Since that was not done in the instant case, the High Court's order cannot be maintained and is accordingly set aside and the matter is remitted to the High Court for fresh disposal only if necessary parties- IDCOL and the present appellant are impleaded. [626-H; 627-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2402 of 2006.

From the Order dated 20.1.2005 of the High Court of Orissa at Cuttack in W.P.(C) No. 803/2005.

Janaranjan Das and Swetaketu Mishra for the Appellant.

Abhish Kumar and Raj Kumar Mehta for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Orissa High Court directing that the offer of Orissa Small Industries Corporation Ltd. (in short the 'OSICL') represented by its agent (Respondent no.1) at Rs.85/- per kg. will be considered by the Government at the highest level, namely the Chief Minister of Orissa. It was further observed that it will be open for the Government to pass such orders as it deems fit in the larger public interest; keeping in view all aspects of the matter. It would also be open for the Government to call for revised offers from the Industrial Development Corporation of Orissa Ltd. (in short the 'IDCOL'), OSICL or from any other party. Appellant represents IDCOL as its agent.

Background facts in a nutshell are as follows:

Respondent no.1 has been lifting copper cables scrap from the OSICL since 2002. For disposal of 16,625.09 kg. of copper cables pertaining to Main Dam Division, Burla, proposal for tender was submitted by the Chief Engineer, Mechanical and off set price was fixed at Rs.160/- per kg. The IDCOL did not respond to the said tender. The OSICL offered a price of Rs.80/- per kg. But no other party responded to the tender invited by the Executive Engineer. Thereafter, the IDCOL made an offer of Rs.84/- per kg. of copper cable

A excluding all taxes and duties. The matter was processed and finally orders were passed by the Government at the level of Chief Minister of Orissa for disposal of the copper cable at the rate of Rs.84/- per kg. to the IDCOL. After the aforesaid order was passed by the Chief Minister of Orissa on 16.12.2004, the OSICL submitted a fresh offer dated 20.12.2004 at Rs.85/- per kg. but the said offer of the OSICL was not considered pursuant to the notes given in the Department that the offer was made belatedly after order was passed by the Government and if the said order is entertained, it will affect the sanctity of the Government order. Respondent no.1 filed a writ petition challenging the Government order.

C The High Court was of the view that the offer of IDCOL was Rs.84/- per kg. where the offer of OSICL, though belated, was Rs.85/- per kg. It was felt that the offer of OSICL should have been considered at the rate of Rs.85/- per kg. by the highest level of the Government, namely the Chief Minister. Accordingly the Government order was set aside and directions as noted supra were given.

D Learned counsel for the appellant submitted that without impleading the IDCOL as a party, the writ petition should not have been disposed of. Respondent no.1 claimed to be an agent of OSICL. Appellant was the agent of IDCOL. Since IDCOL was not a party and the writ application was disposed of in a great haste, even without issuing notice relevant facts could not be placed on record. In fact, the State Government in its counter, filed before this Court, has clearly indicated that by the time the respondent no.1 made the offer, i.e. 20 days after the acceptance of offer by IDCOL acting through its agent i.e. appellant, a slightly higher amount was offered. No explanation was given by the respondent no.1 as to why the higher offer was being made after necessary decisions have been taken by the State Government. The letters from OSICL was received on 20.12.2004, whereas about a week before that, decision had been taken and orders were issued by Water Resources Department to IDCOL conveying the approval of the Government accepting its offer at Rs.84/- per kg.

G In response, learned counsel for respondent no.1 submitted that in greater public interest, the High Court has passed the order and this Court should not interfere.

H The order of the High Court is indefensible on more than one counts. Firstly, IDCOL was not a party in the writ petition. Similar was the position *vis-a-vis* the appellant who undisputedly is the agent of IDCOL. So far as the

question of disposal in haste is concerned, it is not disputed that the writ A
petition was filed on 18.1.2005 and merely two days thereafter the matter was
finally disposed of even without issuing notice to the parties. High Court has
interfered in a contractual matter without hearing the party whose offer had
been accepted. High Court should not entertain the writ petition because the
successful bidder had not been impleaded. It baffles us that that this B
fundamental aspect was not kept in view by the High Court. Such a course
is clearly impermissible. Since the High Court did not have the material facts
before it, it did not notice that the offer made by IDCOL through its agent
had been finalized and final order had been passed. It is true that in greater
public interest the courts can ask parties to offer higher amounts. But that C
can necessarily be done after hearing the parties concerned. Since that has
not been done in the present case, the High Court's order cannot be maintained
and is accordingly set aside and the matter remitted to the High Court for
fresh disposal. The writ petitioner shall implead IDCOL and the present
appellant as parties within a period of three weeks. If it is not done, the writ
petition will be dismissed. The High Court is requested to dispose of the D
matter within a period of four months from the receipt of order, only if
necessary parties as indicated above are impleaded. We make it clear that we
have not expressed any opinion on the merits of the case.

Appeal is disposed of accordingly. No costs.

N.J.

Appeal disposed of. E