

W.P.(C) No.370 of 2013

Radhamohan Petitioner.
Vs.
State of Odisha & three Ors.....Opp. Parties.

9. 27.08.2014 The petitioner is aggrieved by the disengagement of his support organization under the Orissa Community Tank Management Project, Angul and issuance of advertisement dated 28.12.2012 for recruitment of Cluster Level Team under the said project.

2. We have heard Mr. Aurovinda Mohanty, learned Counsel for the petitioner and Mr. Muduly, learned Addl. Standing Counsel for the State-opp. Parties.

3. The pleaded case of the petitioner in short is that in order to implement the above project support organizations were to be selected from amongst the registered NGOs/CBOs at the State Project Unit Level. Accordingly, the District Project Unit Level issued expression of interest inviting applications from the interested NGOs and CBOs to engage as Support organizations under the project and undertake rural development activities. In response to such expression of interest issued by the concerned State Project Unit, the petitioner submitted his EOI followed by his technical proposal. On due scrutiny, the concerned District Selection Committee eventually selected the petitioner's organization as consultant/support organization vide its letter dated 11.08.2011. A contract agreement was thereafter executed on 01.11.2011 between the parties and on completion of

the term as mentioned therein it was renewed on 01.11.2012 to be operative till 31.10.2013. According to the petitioner, his support organization successfully under-took its work without any objection or complaint from any quarter. However, while the matter stood at that, the opp. Party no.3 by letter dated 15.12.2012 disengaged the support organization of the petitioner as per Clause-13 of the contract agreement. The letter inter alia mentioned that the disengagement had been effected on the basis of a report of the external M & E Agency alleging that no progress and pace activities have been achieved in time and no information with regard to achievement of target have been forthcoming. The petitioner has asserted that thereafter before expiry of 21 days as referred to in the letter dated 15.12.2012, opp. Party no.3 got published an advertisement in the issue dated 29.12.2012 of the local daily, "The Samaja" initiating another process for recruitment of Cluster Level Team under OCTMP, Angul.

4. The opp. Party in their counter have substantially averred that the disengagement of petitioner's support organization has to be made due to non-progress of work and non-submission of required information in time. They have insisted that the action has been taken as per the procedure involved and in conformity with the letter and spirit of Clause-13 of the contract agreement. The answering

opp. party have additionally stated that the petitioner had not submitted the Data Collection Format in hard and soft copies till date, for which the work of the OCTMP had been badly affected and that not only out of three personnel engaged by the petitioner's organization, the technical organizer had frequently remained absent, there has been repeated change of staff adversely affecting the work. The opp. party have maintained that the petitioner's organization thus failed to discharge its duties properly as per the contract agreement and thus it had to be disengaged in the interest of work under the project.

5. Mr. Mohanty, learned Counsel emphatically argued that as the disengagement has been done purportedly on the basis of report of the external M & E Agency, the impugned action is invalid as neither the said report was made available to the petitioner's organization nor it was afforded an opportunity of hearing to rebut the adverse content thereof. According to the learned counsel, such disengagement in terms of Clause 13 of the contract agreement could not have been effected without following the principles of natural justice. He has urged further that advertisement dated 28.12.2012 having been issued before expiry of 21 days from 15.12.2012, it is per se non est in law.

6. In reply Mr. Muduli, Addl. Standing Counsel has argued that disengagement of the petitioner's organization had to be made in the interest of project works which were being hampered due to the indifferent attitude of its personnel and staff as well for their failure to take necessary and timely steps as obligated under the contract agreement. Learned counsel has urged further that a bare perusal of the letter 15.12.2012 would disclose that the ground for disengagement had been set out therein and therefore the plea of want in fairness in action is wholly unfounded.

7. Upon hearing learned counsel for the parties and on consideration of the rival pleadings and the materials on records, we are of the view that no interference with the impugned action is warranted in the facts and circumstances of the case. Clause-13 of the contract agreement acting on which the disengagement has been made is quoted herein below:

“13. Termination of Contract:

The Client may, by not less than twenty one (21) day's written notice of termination to the Consultant, terminate the contract. Similarly, the Consultant may, by not less than twenty one (21) day's written notice to the Client, terminate this Contract.”

It would be evident from the above extract that both the parties were empowered there-under to

terminate the contract by giving 21 days' written notice to each other. That this clause is binding on the petitioner's organization is not a matter of dispute. A perusal of the letter dated 15.12.2012 would indicate in clear terms that thereby the contract was said to be terminated as per clause 13 of the contract agreement within 21 days from issuance thereof. It disclosed further that the disengagement had been decided to be made as the petitioner's organization did not submit the required information with regard to the progress and pace activities in time and that the target fixed had not been achieved as well. The contract agreement does not contemplate any opportunity of hearing to the consultant or the client, as the case may be, before invoking Clause 13 thereof. The counter of the opp. Party asserts that the petitioner's organization had been from time to time required to furnish necessary information and take steps in the interest of the project to which it failed to respond as expected thus adversely affecting the project works.

8. On a cumulative consideration of all the relevant aspects we are not inclined to hold that the impugned disengagement suffers from the vice of violation of principles of natural justice. In that view of the matter, the issuance of the advertisement even before expiry of 21 days from 15.12.2012 is wholly inconsequential. Thereby only a fresh process was

started to engage another support organization for the works under the OCTMP Angul. The disengagement of the petitioner's organization having been held to be in accordance with the contract agreement and thus it is valid in law. Challenge to the advertisement dated 28.12.2012 on the ground of premature issuance thus is of no avail. The petition lacks in merit and is dismissed.

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Amitava Ray, C.J.

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Dr. B.R. Sarangi, J.