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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30069 of 2026

CNR No.ODHC010708202026

Bikramananda Mohanty

....

Petitioner

Mr. Prabodha Chandra Nayak, Advocate

-Versus-

State of Odisha & Ors.

....

Opp. Parties

Mr. Sanjay Rath, AGA

CORAM:

HON' BLE THE CHIEF JUSTICE

AND

HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing & Date of Judgment: 30.09.2026

HARISH TANDON, C. J.

1. Heard learned counsel for both the Parties.
2. Astonishingly, the Petitioner has challenged the internal communication between the F.A.-cum-Special Secretary to Government, Works Department, and the Engineer-in-Chief (Civil-cum-Roads), Nirman Soudh, Bhubaneswar, whereby the addressees were requested to ensure fair, transparent and impartial participation in the open tender process, with an intent to eradicate any cartelization at the behest of any person or association of persons.
3. The said internal communication is a reminder of the duties and responsibilities of the Administrative Officers in the process of floating and/or deciding the tender, so as to ensure adherence to the objects and reasons underlying the enactment and promulgation of the



Competition Act, 2002. The said communication is not addressed to any individual or association of persons, but to the tender-floating authorities, requiring that, in the event of any evidence of cartel formation, a data led cost analysis of the tender may be undertaken and suitable administrative action, i.e., rejection of the bids and/or reporting the matter to the Competition Commission of India (CCI), may be taken.

4. The said communication dated 05.08.2026 is sought to be challenged in the instant Petition by the Petitioner, whose name neither figures in the said letter nor can any remote nexus be perceived therefrom.

5. As a follow-up action, another letter dated 19.08.2026 was issued by the Office of the Engineer-in-Chief (Civil) to all the Chief Construction Engineers of the respective Circles, requiring adherence to the instructions to be followed by the Tender Inviting Authorities. On its bare perusal, the said communication encapsulates the requirements of maintaining genuine competition and preventing cartelization/bid-rigging, detailed analysis of tenders, avoiding mechanical acceptance, taking administrative action, reporting serious cases, fixing responsibility of the Tender Inviting Authorities, maintenance of records, review of ongoing tenders, and sensitization of the field officers.

6. These are simpliciter instructions given to the Tender Inviting Authorities, without affecting any individual, but laying down an internal mechanism to be strictly followed.



7. Keeping in view the provisions contained in the Competition Act, 2002, the Petitioner has challenged the aforesaid letters on the premise that they would affect all ongoing tenders and have larger ramifications, which, according to him, is evident from the subsequent letter issued to the Petitioner cancelling the tender.

8. Learned counsel for the Petitioner took us through several provisions of the Competition Act, 2002. According to him, the term “cartel” has been defined in Section 2(c) of the said Act, which includes not only individuals but also extends to every class of persons, including service providers, suppliers, manufacturers and any other persons. Section 19 of the said Act contains provisions relating to the enquiry to be made by the Commission into certain agreements and/or the dominant position of an enterprise. According to him, such enquiry can be made either on receipt of any information or on a reference made by the Central Government, the State Government or a statutory authority. He further submits that the Commission may also initiate an enquiry *suo motu*. Reference has also been made to Section 27 of the said Act to contend that where the Commission finds, after an enquiry, that any agreement or action of an enterprise in a dominant position has contravened Sections 3 or 4, the consequences provided therein may be resorted to. It is contended by learned counsel for the Petitioner that the Commission must arrive at a prima facie opinion that there exists a cartel, either on a reference from the Central Government, the State Government or a statutory authority, or on its own, whereupon it may direct the Director General to cause an investigation to be made into the matter.



9. The sum and substance of the entire contention is founded upon a single premise, namely, that it is only the Competition Commission which is entrusted with the power to make an enquiry and/or investigation upon a reference or *suo motu*, and that the impugned letters, in effect, usurp the powers of the Competition Commission and, therefore, being contrary to the said Act, are liable to be quashed and set aside. Before we advert to the aforesaid submission, it would be apposite to recapitulate the objects and reasons underlying the promulgation of the Competition Act, 2002.

10. It is vividly observed that, since our country opened up its economy by resorting to liberalization and removing controls and obstructions in pursuit of globalization, a High-Level Committee was constituted by the Central Government on Competition Policy and Law, and its report was submitted on 22nd May, 2000.

11. The Bill was introduced and was later converted into a full-fledged Act with the nomenclature of the Competition Act, 2002. The Preamble, encompassing the objects and reasons, reveals that the said Act seeks, keeping in view the economic development of the country, to provide for the establishment of a Commission to prevent practices having adverse effects on competition and to promote and sustain competition in the market, so as to protect the interests of consumers and, above all, to ensure the freedom of trade carried on by other participants in the market.

12. The objects and reasons are laudable, as is evident from the statement of objects and reasons, inasmuch as it is an ardent duty to ensure fairness in the process, fairness in dealing with goods or



services, and fair competition amongst the players in their respective fields, so as to eradicate any possibility of cartelization by a group of persons or an association of persons.

13. It is a self-contained enactment containing exhaustive provisions with the avowed object of ensuring fair competition in the market. The initiation of proceedings by the Competition Commission can be triggered by a reference from the Central Government, the State Government or a statutory authority, or on its own upon formation of a prima facie opinion in this regard. We have no scintilla of doubt in our mind that, the moment an allegation of cartelization or evidence thereof is found with convincing material, the provisions contained in the said Act would be activated, and the procedure prescribed therein shall be strictly followed by the competent authority.

14. Keeping the aforesaid in mind, let us examine whether the said letters dated 05.08.2026 and 19.08.2026 have been issued in gross contravention of the said Act and the provisions contained therein. At the very outset, the internal communication between different departments or different officials within the same department is merely an executive instruction and does not create any legally enforceable right in favour of a third party.

15. Such communication is intended to ensure and/or streamline the functioning and workability within the department or amongst different departments and, therefore, the Court should be slow and circumspect in interfering at such stage. Since a serious question has been raised that the said communications have affected certain rights



of persons, it would be pertinent to reproduce the contents of the letters impugned in the instant Writ Petition, which run thus:

“Sir, In inviting kind reference to the captioned subject, I am directed to say that, a lot of Grievance petitions pertaining to cartelization and bid rigging in Tendering Process are being received in Works Department. Fixing of tender prices by violating the Code of Integrity in Public Procurement undermines the basic principles of transparency and competitive bidding. Such practices cause an adverse effect on competition and have been declared as an offence under the Competition Act, 2002 and amended by Competition (Amendment) Act, 2007.

After scrutiny of these petitions, Govt. have decided that in case of evidence of cartel formation, data led cost analysis of the tender may be done and suitable administrative actions (i.e. rejecting the bids, reporting the matter to Competition Commission of India etc.) may be resorted.

In view of above facts and kind observation of Govt., it is therefore, requested to issue suitable instruction to all CEs and all the Tender Inviting Authorities under your administrative control that in case of any such instance is noticed by Government, the concerned Tender Inviting Authority shall be personally held responsible.

Sir, I am directed to invite your attention to the subject and reference cited above. Government has viewed seriously the receipt of grievance petitions alleging cartelization, bid-rigging and fixing of tender prices in the tendering process. Such practices undermine transparency, fair competition and the integrity of public procurement and may attract action under the provisions of the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007.

In view of the above, the following instructions shall be followed strictly by all Tender Inviting Authorities (TIAs) under your administrative control:

- a) **Ensure genuine competition:** Every tender shall be processed with complete transparency and adequate safeguards to ensure genuine and effective competition among the eligible bidders.*
- b) **Watch for cartelization/bid-rigging:** Any unusual pattern in bidding, including identical or closely matching quoted rates, systematic rotation of successful bidders, withdrawal of bids without reasonable justification, common ownership/control, suspiciously similar bid documents or other indications of coordinated bidding, shall be carefully examined*



c) **Detailed analysis of tenders:** Wherever there is prima-facie evidence or reasonable suspicion of cartel formation/bid-rigging, the TIA shall undertake a detailed cost and comparative analysis of the bids, including the estimated cost, quoted rates, rate pattern and relevant tender history, before taking further action.

d) **No mechanical acceptance:** A tender shall not be recommended for acceptance merely because it satisfies the basic eligibility criteria when there are credible indications of cartelization or manipulation of competition. Such cases shall be brought to the notice of the competent authority immediately.

e) **Administration action:** In cases where cartel formation or bid-rigging is established or there is sufficient evidence warranting intervention, appropriate administrative action, including rejection of bids wherever legally permissible, shall be taken in accordance with the applicable procurement provisions.

f) **Reporting of serious cases:** Cases involving substantial evidence of cartelization/bid-rigging shall be reported to this office along with a detailed factual report, tender comparative statement bid analysis, relevant tender history and specific recommendations. Where warranted, the matter may also be referred to the Competition Commission of India (CCI) through the appropriate channel.

g) **Responsibility of TA:** The concerned Tender Inviting Authority shall exercise due diligence at every stage of the tendering process. Any instance of cartelization noticed subsequently due to lack of proper scrutiny or failure to take timely action shall be viewed seriously, and responsibility shall be fixed on the officer(s) concerned.

h) **Maintenance of records:** All records relating to tender participation, comparative statements, bid evaluation, correspondence, rate analysis and decisions taken in suspected cases shall be properly maintained so that the tender process remains fully auditable.

i) **Review of ongoing tenders:** All CCEs shall review ongoing tender processes under their jurisdiction and specifically examine whether there- are any indications of cartelization or bid-rigging. Any such case shall be reported to this office immediately, without waiting for finalization of the tender.

j) **Sensitization of field officers:** CCEs shall ensure that all SEs /Divisional officers and other officers associated with tendering are suitably sensitized regarding the serious implications of cartelization and bid-rigging and the need for strict adherence to transparency and competitive procurement principles.



The above instructions shall be strictly complied with in letter and spirit. CCEs shall personally monitor compliance within their respective jurisdictions and ensure that Tender Inviting Authorities do not adopt a mechanical approach in cases where there are indications of cartelization or suppression of genuine competition.

This may be accorded top priority.”

16. On a bare perusal of the contents of the letter dated 05.08.2026, there is no ambiguity that it overrides or undermines the provisions of the Competition Act or the powers of the Competition Commission, nor can it be construed as an act or thing done in violation of the said Act. The said internal communication is a reminder to all the Authorities to ensure that there is no cartelization in the tender process and, in the event of evidence of cartel formation, a deta cost analysis of the tender may be undertaken and suitable administrative action, i.e., rejection of the bid or reporting the matter to the Competition Commission, may be taken.

17. It does not convey any sense that the said Authority would usurp the power of the Competition Commission conferred under the said Act. Rather, it is in conformity with the provisions contained under Section 26, under which a reference has to be made to the Competition Commission and, if the Competition Commission forms a prima facie opinion, it may direct an investigation to be made by the Director General. There is no indication that the said Authority would discharge the duties and functions entrusted to the Competition Commission under the said Act; rather, it only contemplates the action or steps to be taken in this regard.



18. So far as rejection of the bid is concerned, it is within the domain and jurisdiction of the Tender Inviting Authority, which is otherwise competent either to proceed with the tender or to cancel the same, subject, however, to the limitations carved out in this regard. The letter dated 19.08.2026 is simply an instruction given to the different authorities to be followed, which may have a remote connection with the evidence to be collected for onward reference to the Competition Commission for formation of a *prima facie* opinion and for the direction to be passed by the Director General to make an investigation into the matter. Unless the materials are placed before the Competition Commission, there would be no material before it on the basis of which it could form a *prima facie* opinion for an investigation to be made and, therefore, the impugned communication can, at best, be termed as a trigger point for invocation of the provisions contained in the Competition Act, 2002.

19. A conjoint reading of the contents of both the letters does not convey any sense that they override the powers and jurisdiction of the Competition Commission conferred under the Competition Act, 2002, nor do they have any overriding effect upon any of the provisions of the said Act.

20. Rather, it inculcates in us the sense that, when such an innocuous letter is issued by the Authorities and instructions are given to their different officials, a challenge thereto by a third party on the ground that it may propagate cartelization in the tender process is inconceivable. The object of the said communication is to activate the provisions of the Competition Act, and the challenge thereto is



founded on the untenable premise that such provisions are applicable only upon a reference or *suo motu* initiation by the Competition Commission.

21. The Authorities were conscious of the applicability of the said provisions and have specifically recorded that, in the event any evidence is found, the matter should be reported to the Competition Commission of India (CCI), so that the same may be dealt with under the provisions of the Competition Act. Challenging the said letter has an implied effect of creating a hindrance in taking recourse to the provisions of the said Act and placing a restraint upon the action to be taken by the Authorities, in the event there are materials in support of cartelization in the tender process.

22. A litigant should not be allowed to challenge such a decision when the Authorities have adopted a fair approach by ensuring that action is taken in accordance with the statute, particularly when the matter has a larger impact on fair competition and prevention of cartelization in the open tender process.

23. So far as rejection of the work or a bid is concerned, taking note of the letter dated 05.08.2026, since such rejection is an independent exercise, we do not find any scope for interference therewith. It is within the competence of the Tender Inviting Authority either to proceed with the tender or to cancel the same, subject, however, to the exceptions carved out in the catena of decisions which we do not intend to delve into, as the rejection constitutes an independent and separate cause of action not relatable thereto.



24. The conduct of the Petitioner gives us an impression that he sought to get away from the aforesaid letters, obviously with the latent intent to promote cartelization, and, therefore, we do not find this to be a fit case warranting interference.

25. We, thus, dismiss the writ petition with costs of ₹50,000/- (Rupees Fifty Thousand only), to be deposited with the State Legal Services Authority within two (02) weeks from today. Upon such deposit, the amount shall be kept in an account earmarked for juveniles and shall be utilized for their betterment.

(Harish Tandon)
Chief Justice

(Chittaranjan Dash)
Judge

AK Pradhan/Priyanka

Signature Not Verified

Digitally Signed
Signed by: PRIYANKA BARIK
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 06-Oct-2026 18:31:04