

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.301 of 2015**

Dheeraj Kumar Shrivastava, S/o Shri Bharatlal Shrivastava, aged about 30 years, R/o Shikshak Nagar, Kayasth Baadi, Durg, Tahsil and District Durg, Chhattisgarh

---- **Petitioner****versus**

1. Municipal Corporation, Durg through its Commissioner, Tahsil and District Durg, Chhattisgarh
2. Mayor in Council, Municipal Corporation, Durg, Tahsil and District Durg, Chhattisgarh
3. State of Chhattisgarh through Secretary, Urban Administration and Development Department, Chhattisgarh Government, Mantralaya, Mahanadi Bhawan, New Raipur, Chhattisgarh
4. Smt. Hema Sharma, D/o Shiv Kumar Sharma, aged about 30 years, R/o Near Muktidham, Gayanagar, Durg, Chhattisgarh

---- **Respondents**

For Petitioner	:	Shri Ashutosh Ghade, Advocate
For Respondents No.1 & 2	:	Shri A.S. Kachhawaha, Advocate
For Respondent No.3/State	:	Shri B. Gopa Kumar, Deputy Advocate General
For Respondent No.4	:	Shri Abhishek Sinha, Advocate

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board**Per Navin Sinha, Chief Justice****9/9/2015**

1. Heard Learned Counsel for the Petitioner, the Municipal Corporation, the State and private Respondent No.4.
2. The Petitioner and Respondent No.4 *inter alia* were bidders with regard to lease hold rights to Shop No.4, Mini Stadium, Durg. The lease has been awarded to Respondent No.4 and the Petitioner is aggrieved by the same.
3. Learned Counsel for the Petitioner submits that his bid was the highest. The Municipal Corporation which is the protector of public finances

cannot justify award of the contract to Respondent No.4 for a lesser value. There was substantial compliance in submission of the offer by the Petitioner. Even if the Petitioner failed to pay Rs.300/- only as the purchase price of the tender documents, it was not a ground sufficient to deny acceptance of his offer and justify award of contract at a rate lesser by Rs.13,805/- to Respondent No.4. The Municipal Corporation could always have asked the Petitioner to make good the deficiency and which the Petitioner would have been ready and willing to do.

4. Learned Counsel for the Municipal Corporation submitted that there is no error in decision making process to invoke powers of judicial review in contractual matters. If the Petitioner did not comply with the terms of the notice inviting tender and which included payment of Rs.300/- towards the tender documents, there was in fact no offer by the Petitioner strictly speaking and if by inadvertence overlooking the same his bid was also considered, nothing prevents the Corporation in law from even subsequently relying on the conditions of the tender notice for the purpose. Learned Counsel for the Municipal Corporation acknowledged that being the protector of public finances the paramount consideration of the Municipal Corporation would be to protect the public interest by making settlement with the best offer it may be able to procure, in the facts of the case.

5. Learned Counsel for Respondent No.4 does not dispute that her bid was second to the Petitioner and in the facts of the case, Learned Counsel for Respondent No.4 has submitted on instructions that she is willing to increase the offer for bringing it at par with that offered by the Petitioner. If the offer submitted by the Petitioner was no bid at all in accordance with the notice inviting tender, the Municipal Corporation is now left with no option but to make settlement with Respondent No.4 and the financial interest of the Municipal Corporation is fully protected as Respondent No.4 is willing to

make the same offer and at the same rate as that made by the Petitioner. Any latitude at this stage to the Petitioner would basically be giving an advantage to him for his own lapses which would be contrary to law.

6. The Petitioner was the highest bidder and Respondent No.4 the next higher bidder. If the bid of the Petitioner was deficient and cannot be considered as a valid bid, Respondent No.4 would become the next higher bidder entitled to consideration. There is a difference of approximately Rs.13,805/- in the rate offered by the Petitioner and that by Respondent No.4 as far as back the year 2011. The tender did not relate to any public project but a shop in the stadium premises. Considering the passage of time of four years, keeping in mind that the Corporation is the protector of public finances and the best deal for the shop must be available, in the peculiar facts and circumstances of the case, we direct the Municipal Corporation to call the Petitioner and Respondent No.4 for private negotiations so that the Corporation gets the best deal possible to protect the public interest and public finances. There is no challenge laid out by any other tenderer.

7. Since the order is being passed in presence of Learned Counsel for the Petitioner and Respondent No.4 as also for the Municipal Corporation, the parties shall appear before the Municipal Commissioner on the 14th of September, 2015 at 11:00 A.M. The Municipal Commissioner shall complete the negotiations in presence of the parties and pass appropriate final orders in the interest of the Municipal Corporation within a maximum period of four weeks from the 14th of September, 2015.

8. The writ application is disposed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE