

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 618 of 2015**

Nawal Kishore Pandey S/o Shri Nawab Pandey Aged About 55 years
R/o Rampur Colony, Post Baikunthpur Tahsil And P.S. Baikunthpur,
District Korea, Civil & Revenue District Korea Chhattisgarh

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Urban Administration And Development Department, Mantralaya, Mahanadi Bhawan, New Raipur District Raipur Chhattisgarh
2. President, Municipal Council, Shivpur Churcha District Korea Chhattisgarh
3. Chief Municipal Executive Officer Municipal Council, Shivpur Churcha, District Koriya Chhattisgarh

---- **Respondents****And****Writ Petition (C) No. 567 of 2015**

Sant Kumar Jaiswal S/o Shri Satyanarayan Jaiswal Aged About 52 years
R/o Village Sakariya, Post Pondibachra, Tahsil And P.S. Khadgawa, District Korea Civil & Revenue District Koriya Chhattisgarh

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Urban Administration And Development Department Mantralaya, Mahandi Bhawan, New Raipur District Raipur Chhattisgarh
2. President, Municipal Council, Shivpur Churcha, District Korea, (Chhattisgarh)
3. Chief Municipal/Executive Officer, Municipal Council, Shivpur Churcha, District Korea, (Chhattisgarh)

---- **Respondents****And****Writ Petition (C) No. 617 of 2015**

Amit Kumar Vishwas S/o A.K. Vishwas Aged About 36 years R/o Kachhari Para Baikunthpur, Tahsil And P.S. Baikunthpur, District Korea, Civil & Revenue District Korea Chhattisgarh

---- **Petitioner**

1. State Of Chhattisgarh Through The Secretary, Urban Administration And Development Department Mantralaya, Mahandi Bhawan, New

Raipur District Raipur Chhattisgarh

2. President, Municipal Council, Shivpur Churha, District Korea, (Chhattisgarh)
3. Chief Municipal/Executive Officer, Municipal Council, Shivpur Churha, District Korea, (Chhattisgarh)

---- Respondents

And

Writ Petition (C) No. 616 of 2015

Prabhat Kumar Ranjan S/o Shri Girija Nandan Aged About 46 years
R/o Sanjay Nagar, Talwapara, Tahsil And P.S. Baikunthpur, District
Korea Civil & Revenue District Koriya Chhattisgarh

---- Petitioner

1. State Of Chhattisgarh Through The Secretary, Urban Administration And Development Department Mantralaya, Mahandi Bhawan, New Raipur District Raipur Chhattisgarh
2. President, Municipal Council, Shivpur Churha, District Korea, (Chhattisgarh)
3. Chief Municipal/Executive Officer, Municipal Council, Shivpur Churha, District Korea, (Chhattisgarh)

---- Respondents

For Petitioner:-	Shri Awadh Tripathi, Advocate
For Respondent No. 1:-	Shri B. Gopa Kumar, Dy. AG.
for Respondents No.2 & 3:-	Vikas Pandey, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Chief Justice

10/07/2015

1. The Respondent Corporation published Notice Inviting Tender (NIT) for various works on 7.11.2014. The Petitioners were inter-alia bidders for some of the works. It is their contention that they were declared L-1 after opening of financial bid, but subsequently the tender was cancelled by a resolution of the Municipal Council (hereinafter called 'the Council') on 20.1.2015, mentioned

as for unavoidable reasons, but was actually done at the behest of the local MLA, for the benefit of his persons. Fresh tender was published on 13.3.2015 which is the subject matter of challenge in these writ petitions. Since the facts and grounds of challenge are common, they have been heard together and are being disposed by a common order.

2. Learned Counsel for the Petitioner submits that the earlier tender notice has been cancelled arbitrarily and for malafide reasons. It was not done for valid and germane reasons by independent application of mind by the Corporation, but at the behest of the local MLA to favour his own persons. The resolution of the Council mentions two reasons for cancellation (a) non availability of funds and (b) large number of complaints received and the likelihood of financial loss to the Corporation. The second tender notice has been published on 13.3.2015 without any change in circumstances regarding non availability of funds. The contention in the counter affidavit is that funds have been received much later on 6.4.2015 only. There is nothing mentioned in the resolution with regard to the nature of complaints received and how financial loss would accrue. Even if one of the grounds is held to be bad and evidence of malafides the subsequent tender notice is vitiated by malice in law. Financial bids had already been opened. Cancellation of the tender at such late stage could be done only for valid and cogent reasons in public interest. The Respondents should be directed to proceed for finalization of the earlier tender notice dated 7.11.2014. It was lastly submitted that cancellation of the tender was not even in the agenda of the Council meeting on 20.1.2015. It was hastily and malafide taken up under the heading of other items without any proper discussion.

3. Learned Counsel for the Corporation submitted that the issue with regard to cancellation of the tender at the meeting dated 20.1.2015 was taken

bona fide. The resolution mentions the satisfaction of the Council that financial loss was likely to accrue to the Corporation as large number of complaints had been received. The cancellation was therefore done bona fide in the larger public interest. Considering the importance, it was taken up under the residuary clause of the agenda with regard to other matters. Keeping in mind that the Corporation had the larger duty to protect public finances the Court may not interfere in the matter.

4. We have considered the submissions on behalf of the parties and are satisfied that the writ application can be disposed off at the stage of admission on a single issue. No vested rights have accrued to the Petitioners under the tender notice dated 7.11.2014 only because they may have been L-1. Likewise under the fresh tender notice dated 13.3.2015, no final contract has been executed with any bidder and matters are at the stage of final bids having been opened only.

5. The previous tender was at the stage of finalization. The Respondents undoubtedly have the authority and jurisdiction to cancel the tender at any stage. But it can be done only for valid and germane reasons. If the cancellation is alleged to be arbitrary or motivated by malicious exercise of power, the power of judicial review over the decision making process empowers the Court to examine the issue and pass appropriate orders in the law.

6. Section 56(3) of the Chhattisgarh Municipalities Act, 1961(hereinafter referred to as 'the Act') provides for the finalization of the agenda for the meeting of the Council. The circulation of the agenda for a meeting is a crucial matter. It makes the participants aware of the issues to be discussed and enables them to come prepared for discussion. The authorities are also obliged to place all relevant materials in the agenda for discussion along with

the necessary accompaniments. If matters are taken up for discussion suddenly without forming part of the agenda, a proper discussion on the matter is hindered. There is no evidence that all papers with regard to the agenda for cancellation of the earlier tender was circulated to the members. The cancellation of the tender at the penultimate stage was a serious matter. There is no doubt that important matters can be taken up under the residuary clause of the agenda. But there has to be compelling reasons for the same. The only reason emerging from the counter affidavit of the Corporation is the request received from the local MLA. We have no hesitation in holding that the Corporation acted for extraneous considerations abdicating its own statutory powers. This ground alone was sufficient to strike down the resolution dated 20.1.2015 canceling the earlier tender notice.

7. The importance of an agenda for the meeting and the taking up of important issues abruptly under the residuary clause was considered in (1999) 6 SCC 464 (M.I. Builders (P) Ltd. v. Radhey Shyam Sahu) observing as follows :-

“53....As noted above there was no agenda for consideration of these resolutions of the Executive Committee of the Mahapalika. The Corporators had no time to apply their minds. Such an important matter, where the cost of the project was likely to run into crores of rupees, could not have been considered under the topic “Other Subjects, Subject to the Permission of the Presiding Officer”.....”

54..... When the agenda did not include the subject of construction of underground shopping complex nor was there any material to support the discussion on the subject of construction of underground shopping complex it could not have been considered in the meetings of the Mahapalika and the Executive Committee.

8. An order passed by a public authority will have to be tested on the grounds mentioned in the order. It cannot be supplemented by additional reasons in the counter affidavit. The first ground mentioned in the resolution

for cancellation of the tender was non-availability of funds. The position remained the same when the fresh NIT was published on 13.3.2015. According to the Respondents themselves the funds were made available to them on 6.4.2015. Cancellation of the first tender notice on that ground therefore was per-se arbitrary. No explanation has been furnished by the Respondent Corporation how without any change in circumstances the second NIT came to be issued. Likewise, there is no discussion in the resolution of the Council regarding the nature of complaints received and how the financial interests of the Corporation would be affected. If it had been part of the agenda matters may have been different. If it was not part of the agenda there had to be a minimum recital in that regard to demonstrate a discussion on the issue where after judicial review may have had its limitations. We therefore need not consider the allegation that most of the fresh successful bids for settlement have been found to be of the same chosen few stated to be close to the MLA concerned. The minutes of the meeting of the Council brought on record are cryptic. It does not display that any discussion took place and for reasons deliberated the tender notice was decided to be cancelled. The decision to cancel the tender notice was not bonafide and was done in undue haste.

9. The cancellation of the tender notice dated 7.11.2014 is therefore held to be arbitrary and unjustified. There was no occasion for publication of fresh NIT on 13.3.2015 by the Respondent Corporation. Since no vested rights had accrued to any bidder including the Petitioners under the tender notice dated 7.11.2014 and neither has any vested right accrued to the bidders under the fresh tender notice dated 13.3.2015, we set aside the tender notice dated 13.3.2015 and direct the Respondents Corporation to publish a fresh NIT where all eligible including the Petitioners can participate

afresh and award of works be then done in accordance with law to the eligible.

10. The writ applications are allowed.

Sd/-
(Navin Shiha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Priya