

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (C) No. 1152 of 2015**

M/s. Amit Trading Company, through its Proprietor, Amit Khandelwal, aged about 37 years, S/o Madan Khandelwal, R/o Kesar Nagar, Ward No. 30, Near Gayatri School, Rajnandgaon.

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

1. Municipal Corporation, through its Commissioner, Rajnandgaon.
2. Commissioner, Municipal Corporation, Rajnandgaon.

**---- Respondents**


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| For Petitioner  | : | Shri Parag Kotecha, Advocate  |
| For Respondents | : | Shri Shivraj Singh, Advocate. |

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

**Order on Board****Per Navin Sinha, Chief Justice****10/09/2015**

1. Heard Learned Counsel for the Petitioner, Learned Counsel for the Municipal Corporation and also Shri Prafull N Bharat, Additional Advocate General who appeared at our request to assist and which has facilitated the decision.

2. A tender notice was published by the Respondent-Corporation on 24.4.2015 for running of a newly constructed Food Court and garden on the northern side of Budh Sagar, near G.E. Road, Rajnandgaon. The minimum bid price quoted was Rs. 5 Lacs. The Petitioner quoted Rs. 6,30,000/- and claimed to be the highest bidder. The Tender Committee recommended settlement with him. The Mayor-in-Council after consideration forwarded it to the General Body for approval and which opined at a meeting after deliberations that the bid amount was inadequate and it was required to be re-tendered to fetch better offers at a minimum bid price of Rs. 7 Lacs.

3. Learned Counsel for the Petitioner submitted that according to the Chhattisgarh Municipalities (Conduct of Business of the Mayor-in-Council/ President-in-Council and the Powers and Functions of the Authorities) Rules, 1998 (hereinafter called 'the Rules') considering the value of the tender, the Mayor-in-Council was itself competent to take decision. Only if the value of the tender was beyond the specified limits, it was required to go before the General Body. There is no decision by the Mayor-in-Council that the bid amount was inadequate and re-tender was necessitated to fetch better offers. The Petitioner stands to be prejudiced because the rates quoted by it is now known to all. There was no justification for the Respondent-Corporation to cancel the tender after having found the Petitioner to be the highest bidder far above the minimum bid amount fixed in the tender notice. Reliance was placed on 2012 AIR SCW 4727 (M/s. Michigan Rubber (India) Ltd. v. State of Karnataka) to submit that in contract matters, the State or its instrumentalities must act reasonably, fairly and in public interest in awarding contracts. The action of the Respondent-Corporation in the facts of the case was neither fair nor reasonable. Reliance was further placed on 2012 AIR SCW 6194 (Special Reference No. 1 of 2012 under Article 143 of the Constitution of India) to submit that in matters relating to grant of largesse, contracts, the action has to be tested on the anvil of Article 14 and can be struck down if it is arbitrary as all governmental actions must be fair, reasonable, non-discriminatory, transparent, non-capricious, non-biased without favoritism, or nepotism to promote healthy competition and equitable treatment.

4. In reply, it was submitted that even if the Petitioner was the highest bidder, no indefeasible right has accrued to it merely for that reason. No communication whatsoever has been made to him for acceptance, much less any final orders issued, communicated and/or agreement entered into awarding works to it. The Respondent-Corporation has the authority to cancel any tender even after its opening for valid and germane reasons. Judicial

review under Article 226 has to be confined only to examine if the reasons are relevant and germane or are they irrelevant or extraneous. If the Mayor-in-Council was satisfied that in the given nature of the contract alongwith other surrounding circumstances, it ought to be considered by the General Body and the General Body has opined that the bid amount fixed was itself inadequate and that the tender keeping in mind the purpose could invite better and higher offers, it cannot be said that the reasons for cancellation of tender and publication of a fresh tender already made is arbitrary or irrelevant. There is no challenge to the decision of the Mayor-in-Council referring the matter to the General Body.

5. We have considered the submissions on behalf of the parties.

6. Once a tender notice is published, normally speaking, it is required to be taken to its logical conclusion by awarding of works to the eligible. But, it is not an absolute rule and compulsion, if for relevant and germane reasons the Respondent-Corporation decides to cancel the tender before actual award of the works, much less any communication to the person concerned. In certain cases, cancellation can even be justified after award of works for valid reasons.

7. If such action is challenged, the jurisdiction of the Court under Article 226 has to be limited in examining if the reason for cancellation of tender existed. The Court cannot go into sufficiency of the reason. Additionally it can be examined if the reason was relevant and germane or was it irrelevant or extraneous. The decision of the Mayor-in-Council keeping all the aspects of the matter in mind despite having the jurisdiction to decide, but forwarding to the General Body has not been questioned by the Petitioner. The decision of the General Body dated 18.6.2015 opining that the bid amount fixed was itself inadequate and in given nature of the tender, better offers could be invited protecting the financial interest of the Respondent-Corporation which is the

guardian of public finances cannot be said to be arbitrary, irrelevant and not germane. Once the General Body has spelt out the reasons for inadequacy of the bid amount, it is not for the Court to sit in judgment as an appellate authority over the General Body to decide what should be the appropriate bid amount. The General Body reflecting the will of the Corporation, its decisions have to be respected.

8. The publication of the tender notice was only an invitation to offer and did not constitute a concluded contract only because the Petitioner may have been the highest bidder. No final decision was taken for award of works to it alone by acceptance of its offer by the Mayor-in-Council before the General Body decision dated 18.6.2015.

9. In *Michigan Rubber (supra)*, relied upon by the Petitioner, it was held that normally the Court will not interfere with regard to the contractual matters unless it was contrary to the public interest, unreasonable or there was discrimination in action. It was observed as follows:

"31...As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, *mala fide* or actuated by bias, the Courts would interfere. The Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical...."

10. In (2014) 3 SCC 760 (*Maa Binda Express Carrier v. North East Frontier Railway*) it was observed with regard to judicial review in such matters as follows:

"8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognize that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than

making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision..."

11. The cancellation of a tender for inadequacy of bid amount opining for higher returns and the scope for judicial review under Article 226 in such matters was considered in (2007) 1 SCC 477 (Rajasthan Housing Board v. G.S. Investments) observing:

"11. The sale of plots by the Rajasthan Housing Board by means of an auction is essentially a commercial transaction. Even if some defect was found in the ultimate decision resulting in cancellation of the auction, the Court should exercise its discretionary power under Article 226 of the Constitution with great care and caution and should exercise it only in furtherance of public interest. The Court should always keep the larger public interest in mind in order to decide whether it should interfere with the decision of the authority. In the present case, there was enough material before the State Government to show that in the past plots in the area had fetched a price of Rs. 10,000 per square meter and the highest bid made by the respondent in the present case was nearly half i.e. Rs. 5750 per square meter, which clearly indicated that the auction had not been conducted in a fair manner. If in such a case the State Government took a decision to disapprove the auction held and issued a direction for holding of a fresh auction, obviously the said decision was taken in larger public interest...."

12. A certain amount of latitude described as free play in the joints has to be given to the State authorities especially when they appear to be acting to protect public finance and public interest. There are no allegations of *mala fide*, arbitrariness or discrimination.

13. In reference (supra) relied upon by the Petitioner, the same principles have been reiterated including the issue for healthy competition specially where public finance and public interest is involved. Nothing prevents the Petitioner from participating afresh in the tender process if it so desires when its bid will also naturally have to be considered in accordance with law.

14. The writ petition is dismissed.

Sd/-

(Navin Sinha)  
**CHIEF JUSTICE**

Sd/-

(P. Sam Koshy)  
**JUDGE**