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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.1306 of 2015**

M/s C.D.O. Securities and Public Helpline Service, through its Proprietor Anjani Kumar Dwivedi, son of Shri Shyam Lal Dwivedi, aged about 36 years, Address H.O.D. 3 New Indira Market, Near Bhilai Power House Railway Station, Bhilai, District Durg, Chhattisgarh

---- Petitioner**versus**

Chief Executive Officer, District Cooperative Central Bank, Maryadit, Bilaspur, Head Office, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondent**AND****Writ Petition (C) No.1444 of 2015**

M/s C.D.O. Securities and Public Helpline Service, through its Proprietor Anjani Kumar Dwivedi, son of Shri Shyam Lal Dwivedi, aged about 36 years, Address H.O.D. 3 New Indira Market, Near Bhilai Power House Railway Station, Bhilai, District Durg, Chhattisgarh

---- Petitioner**versus**

Chief Executive Officer, District Cooperative Central Bank, Maryadit, Bilaspur, Head Office, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondent

For Petitioner	: Shri C.J.K. Rao, Advocate
For Respondent	: Shri D.K. Swain and Shri Ramakant Pandey, Advocates

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Order on Board****Per Navin Sinha, Chief Justice****19/8/2015**

1. The two writ applications by the same Petitioner are based on common facts with regard to tender notice dated 19.5.2015, cancellation of the same leading to publication of fresh tender notice on 25.7.2015. They have been heard together and are therefore being disposed by this common order.

2. Learned Counsel for the Petitioner submits that in response to the tender notice dated 19.5.2015 and opening of the bids on 11.6.2015 he

was in the L-1 category. Instead of awarding the works to him, the Respondents arbitrarily, without any valid justification, cancelled the tender notice itself and invited fresh offers. The Respondents undoubtedly have the power to cancel the tender notice, but not arbitrarily and after the Petitioner was declared L-1, a fact not disputed in the counter-affidavit. Further more, the counter-affidavit itself discloses that even thereafter the Respondents made private negotiations with him and the Petitioner lowered his rates further. In the facts of the case, the cancellation of the tender was therefore completely arbitrary and the Respondents may be directed to finalise the tender as published on 21.5.2015 by awarding the works to the Petitioner.

3. It is next submitted that after this Court on 29.7.2015 directed the Respondents to file counter-affidavit and ordered that any award of works to another under the subsequent tender would remain subject to the result of the writ application, the Respondents have passed a back-dated order dated 15.6.2015 rejecting his bid on the ground that it was on the higher side. In support of the allegations of *mala fide*, Learned Counsel for the Petitioner relies upon an order dated 6.5.2015 addressed to the Proprietor, Target Security Services before publication of the first tender notice asking him to continue works at much higher rates than offered by the Petitioner. An application I.A. No.2 of 2015 has been filed to implead Proprietor, Target Security Services as party-Respondent in the writ application.

4. Learned Counsel for the Respondents submitted that the tender notice dated 19.5.2015 has not been cancelled arbitrarily, but for valid, germane and relevant reasons. Even if the Petitioner was an L-1, no indefeasible right has accrued to him as no communication has been made to him or any agreement entered into. The Court in exercise of powers for judicial review will only examine if the reasons for cancellation

are germane or not. The Court cannot substitute its own view for that of the executive in the matter. Referring to the counter-affidavit, Learned Counsel for the Respondents submits that for the provision of the security services only three offers were received in response to the tender notice dated 19.5.2015. The Respondents justifiably believed that if they publish a fresh tender notice it may bring in more participants providing them more competitive rates. Before going in for the fresh tender, the Respondents had called the Petitioner for negotiations which were not conclusive to the satisfaction of the Respondents, who had to deal with the public finances and further efforts have to be made so that public money is utilised properly. The order dated 6.5.2015 addressed to Proprietor, Target Security Services itself says that it was purely temporary in nature till finalisation of the present tender process.

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

6. The Respondents undoubtedly have the right to cancel a tender at any stage before communication and finalisation by award of works after an agreement. Even if a person is in the L-1 category, no indefeasible right accrues to him demanding that the works must be awarded to him and agreement executed. But simultaneously, cancellation of the contract after having invited bids and opened the same cannot be arbitrary but only for valid and germane reasons. If reasons are there, the Court cannot examine the sufficiency of the reasons, but only the relevancy of the same. It has also to be kept in mind that the Respondents deal with public money and the payments under the contract are to be made from public finances of which the government is the primary custodian.

7. In the present case, even if the Petitioner was L-1, no communication has been made to him by the Respondents much less any agreement has been executed. It cannot be said that the Petitioner has an indefeasible right to demand issuance of a mandamus to the

Respondents for entering into a contract with him.

8. The counter-affidavit states that only three offers were received in pursuance of the first tender notice and the Respondents reasonably believed that a fresh notice may bring in more participants providing them more competitive rates. Considering that the payments are to be made from public finances and the Respondents have a duty to protect the same, we do not consider this ground as irrelevant or arbitrary. It is a subjective decision of the executive which cannot be interfered with in a judicial review by substituting the views of the Court.

9. The next ground mentioned in the counter-affidavit is that the Respondents were of the opinion that the rates quoted by the Petitioner were on the higher side. Therefore they called him for negotiations during which the Petitioner reduced his further offer but not to the satisfaction of the Respondents. In our opinion, this only shows fairness in decision making on the part of the Respondents and their efforts to protect public finances. We are again of the opinion that the ground urged is not irrelevant or arbitrary.

10. The contention of the Petitioner that in the meantime the works have been asked to be continued by the erstwhile security provider at a higher rate meaning thereby that there was no justification to reject the Petitioner's offer does not appeal to us. Apparently based on the past experience, the Respondents are of the considered opinion that they can obtain lower rates. The order dated 6.5.2015 makes it explicit that it is purely a stop-gap arrangement till finalisation of the tender process. We are informed by Learned Counsel for the Respondents that 31.7.2015 was the last date for submission of the bids. The Respondents are directed to complete the tender process under the fresh notice dated 24.7.2015 within a maximum period of four weeks from 31.7.2015, failing which the stop-gap arrangement dated 6.5.2015, already described by

them to be temporary in nature, shall come to an end.

11. Since no vested right has been created in favour of the beneficiary of the order dated 6.5.2015 which itself was temporary in nature, we do not consider it necessary to issue notice to him.

12. If the Petitioner has submitted fresh bids in response to the subsequent tender notice dated 24.7.2015, it is required to be decided on its own merits in accordance with law without being prejudiced by the present order.

13. The writ applications are dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE