

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 2150 of 2015

M/s Vikas Agrawal, through Vikas Agrawal (Partner), S/o Late Om Prakash Agrawal, Age around 33 years, R/o Danipara, Raigarh, P.S. Kotwali, Raigarh, Chhattisgarh

---- Petitioner

versus

1. State of Chhattisgarh Through the Secretary Department of Panchayat & Rural Development, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
2. Chief Engineer (Mukhyamantri Gram Sadak Evam Vikas Yojana) Chhattisgarh Rural Road Development Agency, Collectorate Campus, Raipur, Chhattisgarh

---- Respondents

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---- Respondents

For Petitioners : Shri Mateen Siddiqui and Ms. Ruchi Nagar, Advocates
For State/Respondents : Shri Jugal Kishore Gilda, Advocate General with
Shri B.Gopa Kumar, Deputy Advocate General

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

Order on Board

Per Navin Sinha, Chief Justice

02/12/2015

1. In these two writ applications, the facts are markedly similar and the questions arising for consideration being common, they are heard together and are being disposed by a common order.

2. The Respondents issued a notice inviting tender (hereinafter called 'the NIT') dated 6.11.2015 for construction and maintenance of Chintapani to Bamhanpali (Balance Work) Road and of Rural Road from Dhiyarmuda to Sohanpur, respectively under Mukhyamantri Gram Sadak Evam Vikas Yojana in District Raigarh. Clause 16 of the NIT provides that the bidder should have ownership, leased status/rented computerised hot mix plant on the date of the submission of the bid within 70 KMs periphery of the roads for which the bids have been invited.

3. Learned Counsel for the Petitioners in both the writ applications submitted that the clause was arbitrary, discriminatory and intended to favour persons who may be having their hot mix plants within 70 KMs. periphery. If a person had a hot mix plant at 71 KMs periphery, even such an applicant would get rejected when he would otherwise be substantially compliant. The next submission was that there is no justification whatsoever for imposing a condition that the hot mix plant must be within 70 KMs periphery. The last submission was that the clause is arbitrary when it requires a pre-existing plant on the date of the submission of the bid without providing for any time period for the successful bidder for establishment of the plant.

4. Learned Advocate General for the State submits that the terms of the tender are not open to judicial review. There is nothing arbitrary if the Respondents in the nature of the contract which will require transportation of bitumen from the hot mix plant for laying on the concerned road have fixed distance which has direct co-relation with the quality of bitumen that would finally lay on the road.

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

6. Normally, the terms of tender are not open to judicial scrutiny and in the garb of judicial review it is not permissible for this Court to re-write the

terms of the tender as held in (1994) 6 SCC 651 (Tata Cellular v. Union of India) and (2004) 4 SCC 19 (Directorate of Education v. Educomp Datamatics Ltd.). It is only in extreme cases where the tender suffers from ambiguity, the conditions appear arbitrary or was intended to favour a particular bidder, that limited interference with the terms of the tender may be justified in judicial review in the facts of a case. Presently is not one such a case. The Petitioners do not have any installed hot mix plant much less within 70 KMs periphery. There is no allegation that the distance norm was fixed with the purpose to favour any individual bidder. The distance norm applies uniformly to all bidders. Last but not the least, if the Respondents for reasons to their satisfaction have considered the distance norm as relevant in the technical nature of the work, we consider it highly inappropriate for us to interfere with the terms of the tender in the garb of judicial review. We therefore find no merit in the writ applications.

7. At this stage, Learned Counsel for the Petitioners submitted that the Petitioners desire to represent. What the Petitioners desire to do or not to do, it is for them to decide and we make no observations with regard to the same.

8. The writ applications are dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE