

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1028 of 2015**

M/S Bhawani Borewells through Smt. Savita Devi Sharma W/o Mukesh Kumar Sharma, aged about 37 years, R/o Champa Road Janjgir P.S. Janjgir Civil And Revenue District Janjgir Champa Chhattisgarh Power of Attorney Holder Mukesh Kumar Sharma S/o Late Dulichand Sharma aged about 38 Years R/o Champa Road, Janjgir P.S. Janjgir Civil & Revenue District Janjgir Champa Chhattisgarh .

---- Petitioner

Versus

1. State of Chhattisgarh through Secretary, Public Health Engineering Department, Mahanadi Bhawan, Naya Raipur District Raipur Chhattisgarh
2. Chief Engineer Public Health Engineering Department, Raipur District Raipur Chhattisgarh
3. Executive Engineer, Public Health Engineering Department Division District Janjgir Champa Chhattisgarh

---- Respondents

For Petitioner	:	Shri Awadh Tripathi, Advocate.
For Respondent/ State	:	Shri Prafull Bharat, A.A.G.

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Order On Board**Per NAVIN SINHA, C.J.****19/6/2015**

1. Heard Learned Counsel for the Petitioner and the Additional Advocate General on behalf of the Respondents.
2. The Respondents published a Notice Inviting Tender (hereinafter referred to as 'NIT') on 13.2.2015 for digging of total 105 bore-wells through DTH (Fast Rings Machines) in 10 different groups at varied locations. The bid of the Petitioner has not been accepted and has been returned on the ground that his was a single valid tender received.

3. Learned Counsel for the Petitioner submits that his was not the only tender received. There were other offers which were found to be invalid and therefore not considered. In the circumstances, the Respondents were required to consider the bid of the Petitioner in accordance with law even if it was a single valid offer. The Respondents could not have declined to consider his offer on that ground. It was next submitted that the Respondents in the Public Health Engineering Department cannot rely upon any Circular of the Panchayat Department with regard to the directions for cancellation of bid and re-tendering in case of a single tender. The last submission was that the Respondents have themselves accepted and acted upon a single tender evident from the letter dated 15.1.2015 with regard to laying of water pipelines.

4. Learned Additional Advocate General in reply submitted, the contention of the Petitioner that there were other bidders also and his was the lone valid bid is not supported by pleadings. It was next submitted that the Respondents have committed no wrong if in the nature and expanse of the work, they have decided to go in for a fresh NIT in view of the lone tender, to obtain better rates, terms and conditions for execution of the works. The Respondents cannot be said to have acted arbitrarily. The Petitioner has no vested right to demand acceptance of his bid. The acceptance of a lone tender, is always a question of fact in a particular case, the peculiar nature of the works etc.

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

6. The present is a matter pertaining to the realm of the contract for execution of public works. The government is the guardian of the finances of the State. Once a tender notice is published and bids are received, normally the process is required to be carried to its logical conclusion in

accordance with law by award of works to the successful bidder. But, it is always open to the Respondents not to accept the bid and to cancel a Notice Inviting Tender or go in for fresh Tender. No bidder has a vested right to demand acceptance of his offer. The power for judicial review will have to be restricted to examine if the cancellation was arbitrary or for valid reasons only. If the grounds are extraneous, not germane and irrelevant, question of arbitrariness may arise. If these three conditions do not exist, the scope for judicial review shall have to be restricted and the Court cannot step into the shoes of the Respondents to decide whether the sole bid is to be accepted. Clause 8 of the general conditions of the NIT reserved the right in the Respondents to cancel the Tender at any time.

7. In the present case, the Respondents published an advertisement inviting bids for digging 105 bore-wells at different locations in 10 different groups. If the Petitioner was the sole successful bidder or even the lone bidder and the Respondents have opined to cancel it, we find no infirmity in the same. It stands to reason that if there is more than one bidder, the Respondents shall have a better competitive environment for themselves with regard to quality, rate and time period etc. as may be offered by the competing candidates. We are therefore of the opinion that the Respondents cannot be said to have acted arbitrarily on irrelevant or extraneous grounds or for reasons that were not germane.

8. The submission that the Circular of the Panchayat Raj Department could not be imported does not impress us. Government is an entity. If one Department of the Government has issued an instruction, we find no infirmity in another Department of the Government taking a cue for the same and acting in accordance with law. The last submission for alleged

arbitrariness in accepting another single tender also merits no consideration because it related to a single work for laying water pipelines unlike the present to dig 105 bore-wells at different locations in 10 different groups. Even otherwise, if no one was aggrieved and did not challenge the award of works on 15.1.2015 by a single tender, it does not furnish a cause of action to the Petitioner to urge arbitrariness on basis of the same when the two situations are fundamentally different putting them in different categories according to the nature of the work. It is always open for the Petitioner to rebid if the Respondents publish fresh advertisement inviting bids.

9. The writ petition is dismissed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE