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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.1871 of 2015**

M/s Muskan Caterers, through its proprietor Manvendra Chandra Singh, S/o Shri D.C. Singh, aged about 33 years, R/o Near Singh General Stores, Ward-32, Balaji Nagar, Khursipara Zone-II, Bhilai, District Durg (Chhattisgarh)

---- Petitioner**versus**

1. Union of India, through the Secretary, Ministry of Steel, Udyog Bhavan, Rafi Ahmed Kidwai Marg, New Delhi
2. Steel Authority of India, through its General Manger, Ispat Bhawan, Lodhi Road, New Delhi
3. Bhilai Steel Plant, through Assistant General Manager (Per-CS), Bhilai Steel Plant, Bhilai, District Durg (Chhattisgarh)
4. Deputy General Manager I/c (Canteen Cell – Non Works), Bhilai Steel Plant, Bhilai, District Durg (Chhattisgarh)
5. M/s Supriya Hospitality, through its partner Rajappan, having its office at Quarter No.4-C, Street 45, Sector 10, Bhilai, District Durg (Chhattisgarh)
6. Central Vigilance Commission, through its Secretary, Satarkata Bhavan, A – Block, GPO Complex, INA, New Delhi

---- Respondents**Writ Petition (C) No.1896 of 2015**

M/s Prisha Culinary Services, through its proprietor Vikrant Kathale, S/o S.M.Kathale, aged about 42 years, R/o Flat No.34, Block C, Surya Apartments, Model Town, Bhilai, District Durg (Chhattisgarh)

---- Petitioner**versus**

1. Union of India, through the Secretary, Ministry of Steel, Udyog Bhavan, Rafi Ahmed Kidwai Marg, New Delhi
2. Steel Authority of India, through its General Manger, Ispat Bhawan, Lodhi Road, New Delhi
3. Bhilai Steel Plant, through Assistant General Manager (Per-CS), Bhilai Steel Plant, Bhilai, District Durg (Chhattisgarh)
4. Deputy General Manager I/c (Canteen Cell – Non Works), Bhilai Steel Plant, Bhilai, District Durg (Chhattisgarh)
5. M/s Supriya Hospitality, through its partner Rajappan, having its office at Quarter No.4-C, Street 45, Sector 10, Bhilai, District Durg (Chhattisgarh)
6. Central Vigilance Commission, through its Secretary, Satarkata Bhavan, A – Block, GPO Complex, INA, New Delhi

---- Respondents

and

Writ Petition (C) No.1895 of 2015

M/s Raja Decorators & Caterers, through its proprietor Sunder Singh, S/o Late Chotelal Singh, aged about 65 years, R/o Quarter No.91-B, A - Market, Sector-1, Bhilai, District Durg (Chhattisgarh)

---- **Petitioner**

versus

1. Union of India, through the Secretary, Ministry of Steel, Udyog Bhavan, Rafi Ahmed Kidwai Marg, New Delhi
2. Steel Authority of India, through its General Manger, Ispat Bhawan, Lodhi Road, New Delhi
3. Bhilai Steel Plant, through Assistant General Manager (Per-CS), Bhilai Steel Plant, Bhilai, District Durg (Chhattisgarh)
4. Deputy General Manager I/c (Canteen Cell – Non Works), Bhilai Steel Plant, Bhilai, District Durg (Chhattisgarh)
5. M/s Supriya Hospitality, through its partner Rajappan, having its office at Quarter No.4-C, Street 45, Sector 10, Bhilai, District Durg (Chhattisgarh)
6. Central Vigilance Commission, through its Secretary, Satarkata Bhavan, A – Block, GPO Complex, INA, New Delhi

---- **Respondents**

For Petitioners	:	Shri Rajeev Shrivastava, Advocate
For Respondent/BSP	:	Dr. Saurabh Kumar Pande, Advocate
For Respondents/UOI	:	Shri Bhupendra Singh, Shri Raj Kumar Gupta and Shri Ramakant Pandey, Standing Counsel

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Navin Sinha, Chief Justice

29/10/2015

1. These three writ applications arise out of Notice Inviting Tenders (hereinafter called as 'the NIT') dated 29.4.2015 published by Respondent No.3 for running of canteens, cancelled on 21.9.2015. The facts for consideration being identical and questions of law involved being common, they have been heard together and are being disposed by a common order.

2. Learned Counsel for the Petitioners submitted that earlier on 16.2.2015 an NIT had been published for settlement of the same 46 canteens. It was cancelled purportedly for the reason that a minimum of eight offers had not been received as required by the Purchase Procedure Rules. It was unjustified as six offers had been received and which fulfilled the requirements of the Purchase Procedure Rules. Respondent No. 5, common in all the writ applications, was not a bidder. The cancellation on the purported ground was basically a camouflage to facilitate submission of fresh offer by Respondent No. 5.

3. The subsequent NIT dated 29.4.2015 has again been cancelled by the impugned order arbitrarily without justification. There was in fact no ambiguity in the eligibility criteria at Clauses (A) and (B) of the NIT as contended to justify cancellation. The nature of ambiguity, if any, has also not been explained. The Respondents contend receipt of representations with regard to the ambiguity, but no dates, copies or names of those who may have represented has been mentioned. It is an artificial defence and an after-thought to facilitate Respondent No. 5 whose techno-commercial bid under the second tender notice has been found to be non-compliant. The Petitioners have specifically asserted that the cancellation of the second tender notice was done to favour Respondent No.5 by submission of fresh bid.

4. The conduct of the Respondents in canceling two successive tenders reflects patent arbitrariness, as a mistake may be once but not twice. Being a public sector undertaking, it is required to act reasonably, responsibly and fairly and there can be no arbitrariness in cancellation of tender deprecated and cautioned by the Central Vigilance Commission also in its office order No.15/3/05 dated 24.3.2005. Clear logical reasons are required to be given

for cancellation of a tender which is wanting in the present case. The impugned order dated 21.9.2015 is therefore required to be set aside and directions may be given to complete the tender process in accordance with the NIT dated 29.4.2015.

5. Learned Counsel for Respondent No.3 submitted that cancellation of the first tender notice is not the subject-matter of the writ applications. What may or may not have happened is totally irrelevant for the present controversy. The Petitioners did not challenge the same. On the own showing of the Petitioners, Respondent No. 5 was not even a bidder in the first tender notice. There has been no arbitrariness in cancellation of the second tender notice and the reasons have been fully explained in the counter-affidavit. The cancellation has not been made by any individual officer, but by a Tender Committee comprising of five senior officers from the rank of Assistant General Manager to the level of General Manager concurred by the Deputy General Manager and the Executive Director. The terms of the tender terms were published by the Respondents. They alone are the best suited to decide if it suffers from any ambiguity to their own understanding. If on a prudent reading of Clause (A) of the eligibility criteria, they were of the considered opinion that it tantamounted to restricting consideration to those who may actually be running the canteen till the previous month for submission of bids, excluding those who may nonetheless have had the requisite experience in running the canteen, and they never intended it to be so, no further ground is required to justify the cancellation. The extracts of the minutes of the Tender Committee quoted in the counter-affidavit adequately reflects that this matter had invited attention of the Vigilance Cell also. Representations had been received. If the deliberations of the Tender Committee consisting of five senior officers refers to them, then merely because no date has been mentioned or copies

of the representations have not been enclosed to the counter-affidavit, cannot lead to an irresistible conclusion that no representations had been filed and the ground urged was *non est*.

6. No prejudice is being caused to the Petitioners as they are all running canteens presently in view of the non-finalisation of the tender, their contract has been renewed till 7.6.2016 before which date it is expected that the Respondents will finalise fresh tender with the eligible. This fact, that they were running canteens already for which extension has also been granted, was not mentioned by them in the writ applications.

7. If a tender notice has been published, it does not prohibit or preclude the Respondents from cancelling it for valid and germane reasons. If reasons have been mentioned, the Court in exercise of its jurisdiction for judicial review under Article 226 of the Constitution of India may not go into the sufficiency of the reasons unless the reasons on the face of them can be said to be absurd, illogical, arbitrary or is of a nature which no reasonable person would accept in the facts and circumstances of the case, which is not the case presently.

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

9. The issue whether cancellation of the first tender was valid or invalid has now become an academic issue in view of the second tender notice having been published. It is nobody's case that the first tender cancellation had been challenged. We therefore need not dwell on this aspect any further.

10. Once a tender notice is published, the process is required to be normally taken to its logical conclusion by award of work to the eligible. But it does not preclude in any manner the person publishing the tender from

cancelling it while the process is under way, before finalisation, for valid and germane reasons. If reasons are furnished for the cancellation, judicial review under Article 226 will have to be confined to examining whether the reasons are relevant or not. Sufficiency of the reasons will not be gone into by the writ Court to substitute its views for that of the Respondents. If the reasons furnished are fanciful, irrelevant and no person of ordinary prudence would have arrived at such conclusion, in such exceptional cases, the writ Court may interfere, but not otherwise. Those who framed the terms of the tender notice are the best judge to decide what they meant and what they did not. If the person framing terms of the tender is of the opinion that there is an ambiguity in the tender notice, restricting applicants and hindering wider participation, *prima facie* it will not be the jurisdiction of the writ Court under Article 226 to enter into the mind of the person writing the tender and take decisions on its behalf to hold that there was no ambiguity unless of course on a plain reading of the terms, no other interpretation was possible.

11. In (2014) 3 SCC 760 (Maa Binda Express Carrier v. North-East Frontier Railway), the principle was observed as follows at paragraph 8:

“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 recognise 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. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.”

12. The decision to cancel the tender has been taken after deliberations and application of mind not by any individual officer but by a Tender Committee comprising of five senior officers from the rank of Assistant General Manager to the level of General Manager, concurred in by the Deputy General Manager and the Executive Director also. It has been discussed at the meeting of the Tender Committee that there is an ambiguity in the eligibility criteria of the tender notice in Clause 8, the relevant extract for the present controversy reads as follows :-

“8. Eligibility Criteria:

- A) The Bidder should have experience of running of Industrial Canteen for a minimum period of one year during the last 03 years ending in the previous month in which NIT is issued.
- B) The Bidder should also be extending Industrial Canteen Services at the time of submission/extended date of submission of this tender.

Experience should be from Govt. Organisation or PSU or Public Limited Company for a period of 01 year in continuation under single work order/award letter/contract.”

13. The submission on behalf of the Respondents that it could be interpreted to mean as confined to those who were actually running a canteen till 31.3.2015, cannot be said to be absurd or illogical. *Prima facie* it

appears to be a possible misinterpretation of the eligibility criteria and if the Respondents are of the opinion that they never intended it to be so, it will not be our jurisdiction to enter their minds and take decisions on their behalf.

14. No rights have accrued to the Petitioners merely because their techno-commercial bids have been accepted as financial bids were yet to be opened, agreements executed etc. No prejudice is going to be caused to the Petitioners if fresh tender notice is published because they will equally have an opportunity to participate. The present is not even a case where their commercial interests are being affected because of delay in finalisation of the tender as they all have been given extended contract till 7.6.2016 to run the canteens.

15. *Mala fide* is more easily alleged than proved. In order to demonstrate that the tender was cancelled after opening of the techno-commercial bid to favour Respondent No. 5, the pleadings had to be more specific supported by allegations of facts for the developments that may have taken place during the opening of the techno-commercial bids in presence of the parties. Such pleadings are completely wanting. Paragraph 8.13 of the writ application avers "but it appears that respondent no. 2 to 4 are gloved in hands with respondent no.5" is too vague a plea to support a plea of *mala fides* on fact with regard to one person. No further discussion is required that it is a mere apprehension of the Petitioners unsupported by any evidence.

16. The CVC instructions dated 24.3.2005 itself recognises the cancellation of tender notice, but only emphasises the well settled principle that it should not be done arbitrarily. The instructions cannot be interpreted in any manner restricting the rights of the Respondents not to cancel the tender notice. Prudently, it may be in the interests of the Respondents

themselves to be more careful in publishing tender notices as repeated cancellation not only delays finalisation, generates litigation but also leads to cost escalation etc.

17. In conclusion, we find no reason to interfere with the impugned order dated 21.9.2015. The writ applications are dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE