

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 962 of 2015**

General Security & Information Services Private Limited, Abinash Chandra Banerjee Lane Kolkata Through : Power of Attorney Holder Mayank Pandey S/o Late Shri C.S. Pandey, aged about 48 years, Ghanshyam Homes, Vyapar Vihar, Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. The General Manager, South East Central Railway, Bilaspur, Chhattisgarh.
2. Divisional Railway Manager, South East Central Railway, Bilaspur, Chhattisgarh.
3. The Senior Divisional Commercial Manager, South East Central Railway, Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Anup Majumdar, Advocate.
For Respondents	:	Shri H.S.Ahluwalia, Advocate.

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

Order on Board**Per Navin Sinha, Chief Justice****17/06/2015**

1. Heard Learned Counsel for the Petitioner and the Respondents.
2. The Petitioner, a private limited company engaged in providing security services, house keeping, cleaning, catering, pest control and allied services was inter-alia a bidder under an advertisement published by the Respondents for mechanised cleaning contract of the Bilaspur Railway Station for a period of three years.
3. The technical bid of the Petitioner has been rejected for non-compliance with Clause 10(XVI) of the Notice Inviting Tender (hereinafter referred to as 'the NIT'). The Clause reads as follows:

"10(XVI) The company must nominate a Project In-charge (who should possess a Diploma in Health Management and at least 5 years experience in managing a facility) at the station in

addition to the Supervisors. Necessary qualification certificate and experience certificate to be attached."

4. Learned Counsel for the Petitioner submits that the company possesses certificate of registration from Occupational Health and Safety Management Systems and complies with ISO requirements also. It has several competent and qualified persons to perform the jobs in question. The Respondents have themselves been awarding works to them. If proficiency existed in the Petitioner to bid for the contract otherwise and it was possessed of requisite personnel, the Respondents ought to have given it an opportunity to rectify a minor defect in not having named an individual officer for the project in question. The omission was inadvertent and not so gross as to reject the bid itself on a hyper-technical ground.

5. Learned Counsel for the Respondents opposing the writ application submitted that from the pleadings of the Petitioner itself, it is manifest that it did not comply with Clause 10(XVI) of the NIT. If the Petitioner on its own showing did not fulfill the conditions of the NIT, there is no merit in the writ application which is fit to be dismissed. He further submits that the NIT is explicit that compliance with Clause 10(XVI) was crucial for evaluation of the eligibility failing which the offer would be summarily rejected.

6. We have considered the respective submissions.

7. The jurisdiction for judicial review under Article 226 of the Constitution in contractual matters is confined to errors in decision making process only. The terms of the NIT are not open to judicial scrutiny and it is not for the Court to rewrite the terms of the NIT by a process of judicial interpretation of the terms of tender. If the language of the NIT is clear and unambiguous, full play has to be given to what the Respondents intended and the Court cannot by a process of interpretation apply its own reasoning and thereby possibly changing the meaning of the clause framed according to the requirements of the Respondents. This is clearly impermissible in the guise of judicial review.

Clause 10(XVI) of the NIT provides that the Company must nominate a Project Incharge. Obviously, an individual was required to be named which the Petitioner failed to do. That individual should possess a Diploma in Public Health Management. The individual must also have five years experience in managing a facility at the Station in addition to the Supervisors. Necessary qualification and experience certificate of the individual nominated was required to be enclosed. On the own showing of the Petitioner, it did not comply with these conditions. The submission that by an indirect process of reasoning, it may be deemed to have fulfilled the conditions is unacceptable as it would amount to rewriting of the terms of the NIT.

8. In (2009) 6 SCC 171 (Meerut Development Authority v. Assn. of Management Studies) it was observed as follows:

"26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be conditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process.

68. The impugned judgment illustrates "the danger of judges wrongly though unconsciously substituting their own views for the views of the decision-maker who alone is charged and authorised by law to exercise discretion". With respect, we find that the High Court virtually converted the judicial review proceedings into an inquisitorial one. The way proceedings went on before the High Court suggest as if the High Court was virtually making an inquiry into the conduct and affairs of MDA in a case where the Court was merely concerned with the decision-making process of MDA in not accepting the offer/tender of AMS in respect of the disputed plot on the ground that the offer so made was less than that of the reserved price fixed by MDA."

9. There is an additional reason why we hold that the writ petition has no merit. According to the Petitioner itself, one S.K.Singh was the successful bidder and the contract was in process of finalization with him. But he has not

been impleaded as party-Respondent. The writ petition therefore additionally suffers from a vital defect of necessary party.

10. On both the counts, we find no merit in the writ application. It is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE