

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1456 of 2015**

Madhav Agrawal S/o Shri Gopal Prasad Agrawal, Aged about 42 years, R/o Guruparivesh, Sriramnagar, Phase II Shankar Nagar, Raipur, District Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretary, Water Resources Department, Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. Engineer-in-Chief, Water Resources Department, Sihawa Bhawan, Civil Lines, Raipur, Chhattisgarh.
3. Chief Engineer, Hasdeo Basin, Water Resources Department, Bilaspur, District Bilaspur, Chhattisgarh.
4. Executive Engineer, Maniyari, Water Resources Division Mungeli, District Mungeli, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Manish Upadhyay, Advocate.
For Respondent/State	:	Shri Prafull N Bharat, Additional Advocate General

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

Order on Board**Per Navin Sinha, Chief Justice****20/08/2015**

1. We have heard Learned Counsel for the Petitioner and the Additional Advocate General on behalf of the State.
2. The Petitioner, a registered Class 'A' Contractor submitted his technical bid and financial bid in response to Tender No. 4027 dated 10.4.2015. He is aggrieved by rejection of his technical bid because of which the financial bid has not been opened.

3. Learned Counsel for the Petitioner submits that he fulfills all the requirements specified in the tender notice and there is no justification for the Respondents to have rejected his technical bid. The Petitioner is not aware of the reasons why his technical bid has been rejected. The conduct of the Respondents is therefore arbitrary and they must be called upon to disclose the reasons why they have rejected his technical bid.

4. Learned Additional Advocate General for the State submits that the process for submission of bids is online. The authorities are in process of developing the software by which the reasons for rejection shall also be made available online. He next submits that in the present case, the Petitioner has rushed to the Court without even having approached the authorities or having made an effort to procure information about the reasons why his technical bid may have been rejected. It was next submitted that Clause 4 of the tender document which dealt with submission and opening of tenders itself provided that the tenders would be opened in presence of the tenderers or their authorised representatives, which is a common practice in all tenders to maintain transparency. There is no pleading that the Petitioner or his authorised representative was present when the tenders were opened and reasons were not disclosed. If the Petitioner did not voluntarily participate at the time of opening of the tenders unmindful of protecting his own interests, he cannot come to the Court by filing a writ petition in the form of a roving enquiry to be made by the Court. To maintain a cause of action, the Petitioner is required to challenge a specified action as being arbitrary or illegal. There are no allegations that for what reasons, the tender has been rejected and how the reasons were arbitrary. The Court may not entertain such vague writ petitions. Without prejudice to all of the above, Learned Additional Advocate General submitted that he has received instructions that the tender of the Petitioner and some others has been rejected for reasons recorded in writing by the Tender Evaluation Committee on 30.6.2015.

5. Having considered the contentions on behalf of the parties, we expect that the software for putting the reasons for rejection online which is under process shall be expedited for transparency.

6. If the Petitioner was a tenderer for award of a contract and was also a registered Class 'A' contractor, as a prudent businessman, he was expected and was required to be more alert and vigilant for protection of his own interest. The tender documents itself provided that it shall be opened in presence of the tenderers or their authorised representative. Having bid for a tender of the value of Rs. 464.69 Lacs, if the Petitioner was so casual for protection of his own interest that he did not remain present when the tenders were opened nor deputed any authorised representative, and there are no pleadings to that effect in the writ petition, we are not persuaded to come to his aid in exercise of discretionary jurisdiction under Article 226 by starting a roving enquiry.

7. Had the Petitioner participated in the tender, was not furnished the reasons for rejection, the matter would have been different. Alternately, had he approached the Respondents after coming to know of the rejection of his tender and the reasons were refused to be furnished, he could have again approached the Court. The first principle for issuance of mandamus is demand and refusal of relief. The Petitioner has rushed to the Court directly without even making an effort to obtain any information from the Respondents.

8. We therefore decline to entertain the writ petition. If the Petitioner so desires, he may approach the authorities concerned who will provide him the reasons whereafter the Petitioner would be at liberty.

9. The writ petition is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE