

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 150 of 2015**

1. M/s Apex Products Private Limited, Proprietor of M/S National Printers, Having Its Office At 8H And 8I Industrial Area Namkum, Ranchi 834010 Represented Through Its Director Sri Krishan Kant Kedia S/o Shri Gopi Chand Kedia R/o Lalpur P.O. & P.S. Lalpur District Ranchi 834001 Jharkhand
2. Shri Krishan Kant Kedia S/o Shri Gopi Chand Kedia Director M/s Apex Products Private Ltd. Resident of Lalpur, P.O. & P.S. Lalpur District Ranchi 834001 Jharkhand Civil & Revenue District Ranchi Jharkhand

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Secretary, Ministry of School Education, Mahanadi Bhawan, Mantralaya, Naya Raipur
2. Administrative Officer Cum Indenting Officer, Chattisgarh Education Project Council, Raipur
3. State Project Director, State Project Office, RMSA, 2nd Floor Composite Building Pension Bada, Raipur Chhattisgarh
4. Chhattisgarh Pathya Pustak Nigam, Second Floor, Hari Bhumi Press Prisar, Dhamtari Road, Tikarapara, Raipur, Tahsil & District Raipur (C.G.) 492001

---- Respondents

For Petitioners	:	Shri B.P.Sharma, Advocate.
For Respondent No. 1 to 3:	:	Shri A.S.Gaharwar, Additional Advocate General.
For Respondent No. 4	:	Shri Narendra Kumar Vyas, Advocate.

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board**Per Navin Sinha, Acting Chief Justice.****11/03/2015**

1. The present writ application assails non-consideration of the Petitioner's bid submitted in response to Tender Notice No. P-3/2015-2016 published by Respondent No. 4 for printing, binding and distribution of text books (without

paper) on all India basis for the academic year 2015-2016, on the ground that he had not submitted the Technical bid document.

2. Learned Counsel for the Petitioner submits that earlier Respondent No. 4 had published Tender Notice No. P-2/2015-2016 inviting bids through e-tender. Hard copy of the tender documents had also to be submitted by each bidder. The Petitioner fulfilled the eligibility conditions and submitted his response including the Technical and Financial bid along with all necessary documents. Subsequently, Respondent No. 4 on 24.12.2014 informed, *inter-alia* to the Petitioner that Tender notice No. P-2/2015-2016 had been cancelled and that a second Tender Notice would be published shortly. The communication dated 24.12.2014 explicitly stated that those who had submitted their documents in response to the earlier Tender Notice were not required to resubmit them. The Petitioner legitimately and bonafide, from the representation made by Respondent No.4 understood that he was not required to resubmit the Technical bid again. That the parties were *ad-idem* on the issue was confirmed by communication dated 1.1.2015 from the Respondent stating that the documents submitted by him in response to the fresh Tender Notice had been accepted and he was not required to submit the documents again except if he wanted to bid for more items and the rates with respect to the same. The Petitioner was never informed that it were only documents regarding fulfillment of eligibility conditions which were not required to be submitted again. He was a serious bidder on both occasions. There is no reason why he would have been so negligent in ensuring submission of a proper bid by him on the second occasion. It was only on 7.1.2015 that he was verbally informed of the requirement to submit the Technical bid again and which he promptly did on 8.1.2015.

3. A strong submission was made that the conduct of Respondent No. 4 was outright arbitrary designed to favour local printers who had been verbally

informed to submit fresh Technical bids again designed to discriminate against the Petitioner only because he was the only bidder from outside the State. Reference in this context was made to the pleadings in the counter-affidavit that there was a preference clause for local printers.

4. Learned Counsel for Respondent No. 4 opposing the writ application submitted that the Petitioner appears to have confused eligibility conditions with the requirement for submission of a fresh Technical bid after the first tender was cancelled. The Tender Notice contained eligibility conditions. A bidder who fulfilled the eligibility conditions could alone submit a Technical bid and be considered on the basis of the same. The communications dated 24.12.2014 and 1.1.2015 only stipulated that the documents with regard to fulfillment of the eligibility conditions were not required to be submitted again. It does not contain any statement that no Technical bid was required to be resubmitted. The practice prevalent in the commercial world in this regard should be well known to a person who is bidding for a commercial contract. That was the manner in which the other bidders understood it and submitted their Technical bid documents afresh. If the Petitioner was not commercially vigilant no relief can be granted to him.

5. Denying any allegations of favouritism and discrimination, it was submitted that preference may have been given to a local bidder only in the event of other things being equal. A local bidder had to compete on merits first with outside bidders and only if the two were at par, the question of preference may arise. An outside bidder who did not submit the necessary documents of Technical bid and thus ineligible for consideration cannot allege discrimination. It is wrong to allege that works have been allotted preferentially and exclusively to local bidders. Works have also been allotted to Gyan Offset of Patna, General Offset of Allahabad and Sai Offset of Patna.

6. It was lastly submitted that even prior to filing of the writ application on 22.1.2015, the contract had been awarded to 21 other printers and agreements executed with them on 21.1.2015 and another on 23.1.2015. The dead-line to supply all the books to the schools is 16.6.2015 and the allotted persons have already started publication and made supplies to the Respondent No. 4 for onward transmission to the schools. The writ application stood infructuous on the date of institution. None of those awarded contracts have been made party and neither has any allegation of ineligibility been made against them.

7. We have considered the submissions on behalf of the parties. The present is a purely commercial matter regarding award of a contract. Judicial review shall have to be limited to examining arbitrariness in the decision making process, discrimination or acting de hors the tender notice only. It shall be wholly inappropriate exercise of jurisdiction under Article 226 of the Constitution to interpret the terms of the tender notice as per the understanding of the Court. The terms of the tender notice have to be understood and appreciated in the manner it is done by those engaged in commercial transactions. There are no allegations regarding award of works to the ineligible. The Petitioner himself falls in the category of an ineligible bidder. The judicial restraint to be exercised in commercial matters was considered in (2005) 6 SCC 138 (Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.) referring to (2000) 2 SCC 617 (Air India Ltd. V. Cochin International Airport Ltd.) as follows :-

“15....It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called

for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.”

8. The tender notice contained conditions of eligibility which an intending tenderer was required to fulfill first. A person could thereafter bid by submitting Technical offer to be followed by a financial offer if the former was accepted. A person who did not fulfill eligibility conditions could not have submitted a Technical bid. If the first tender notice was cancelled and Respondent No. 4 only intended that eligibility documents were not required to be resubmitted, it is not possible for us to interpret the notice and read into it that even the Technical bid was not required to be resubmitted again. The tender evaluation process commences after fulfillment of eligibility conditions. If the earlier tender notice was cancelled there had to be fresh submission of bids. That in the commercial world it was well understood by the other bidders that in such circumstances fresh Technical bid was required to be submitted and the fact that other bidders did do so with the exception of the Petitioner and one Yugbodh Offest of Raipur, who were both disqualified, leaves us satisfied that the grievances of the Petitioner merit no consideration.

9. The fact that the Petitioner may have committed a mistake in not appreciating the requirement for submitting a fresh Technical bid with the exception of the eligibility documents and sought to rectify his error becomes apparent when he submitted a fresh Technical bid on 8.1.2015 after the last date for same had expired on 7.1.2015. This conduct of the Petitioner leaves us satisfied that he was more than well aware of the requirement to submit the Technical bid documents again in response to the fresh tender notice. If he did not do so within time, we fail to find any illegality in the non-consideration of his bid due to absence of Technical bid documents.

10. The contention with regard to discrimination does not appeal to us and need not be discussed further in view of the fact that the Petitioner had never in

fact submitted a proper response to the bid offer accompanied by a fresh Technical bid and therefore was wholly ineligible for consideration. The question of discrimination in so far as he is concerned, loses its relevance.

11. The writ petition is dismissed.

Sd/-
ACTING CHIEF JUSTICE

Sd/-
JUDGE