

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 142 OF 2016

1. Mohammad Rafi, S/o Shri Mohammad Jiker, aged about 26 years, R/o Purani Basti Korba, District Korba (C.G.)

2. Mohammad Akhtar, S/o Shri Mohammad Jiker, aged about 22 years, R/o Purani Basti Korba, District Korba (C.G.)

... Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Department of Urban Administration and Development, Mahanadi Bhawan, Naya Raipur, P.S. Rakhi, District Raipur (C.G.)

2. Municipal Corporation, Korba, through Commissioner, Municipal Corporation, Korba, District Korba (C.G.)

3. The Mayor-in-Council, through Mayor, Municipal Corporation, Korba, District Korba (C.G.)

4. The State Officer, Municipal Corporation, Korba, District Korba (C.G.)

... Respondents

For Petitioners	:	Mr. Sudeep Agrawal, Advocate.
For Respondent 1	:	Mr. Prafull Bharat, Additional Advocate General, and Mr. U.N.S. Deo, Government Advocate.
For Respondent 2 to 4	:	Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

20/01/2016

1. The Petitioners were bidders under a Notice Inviting Tender (NIT), dated 4.6.2014 published by the Respondent-Corporation for allotment of vacant Terrace of Subhda Complex to be also developed as part of the commercial complex underneath by constructions of additional Shops. The bids were opened on 8.8.2014 and according to the Petitioners they were declared the highest bidders for Part C and D of the Terrace, respectively.

2. Learned Counsel for the Petitioners submits that after they were declared the highest bidders the Mayor-in-Council as also the General Body of the Corporation recommended it to the State Government, for approval. While the matter was pending approval, the Mayor of the Corporation changed pursuant to Municipal elections. The new Mayor-in-Council and General Body considered the matter afresh and on 31.3.2015 decided to annul the previous NIT and proceed afresh giving preference to existing shop keepers in the complex. This could not have been a valid and reasonable justification to cancel the earlier NIT and ignore the Petitioners whose bid was the highest. The existing Shop Keepers had also participated unsuccessfully under the NIT. Referring to Rule 6 of the Chhattisgarh Municipalities (Transfer of Immovable Property) Rules, 1996 (hereinafter referred to as 'the Rules'), it was submitted that there was no provision for giving preference to any class of bidders and Rule 6(ii) provided that the settlement had to be made with the highest bidder subject to sanction of the State Government under Section 109 of the Chhattisgarh Municipalities Act, 1961 (hereinafter referred to as 'the Act, 1961'). Even if no indefeasible right in the law accrues to a highest bidder, yet denial for award of the works cannot be done arbitrarily and there has to be a reasoned and speaking order why the highest bid was not being accepted. This was necessary to ensure fairness and transparency in the decision making process by a government body, curbing any possibility of arbitrary behaviour.

3. The existing Shop Keepers Association had come to this Court earlier in Writ Petition (C) No. 1507 of 2014 disposed on 11.8.2014. This Court declined to interfere. Subsequently, in view of the resolution dated 31.3.2015 of the new Mayor-in-Council and the General Body, the

State Government has declined approval on 23.6.2015. The rejection of the recommendation was therefore arbitrary based on extraneous and irrelevant reasons.

4. Learned Counsel for the State and the Corporation submitted that there was no communication made to the Petitioners of their being the highest bidders along with a proposal for settlement with them. Therefore no rights have accrued to them and the authorities are justified in cancellation of the NIT which in any event has not been done arbitrarily or for irrelevant reasons. It was next submitted that there was no indefeasible right in the Petitioners merely because they were the highest bidders. Settlement with the highest bidders can also be denied for valid and germane reasons. Referring to Rule 6(ii) it was submitted that the offer of the highest bidder was subject to sanction of the authorities concerned under Section 80 of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter referred to as 'the Act, 1956') if the amount involved was over Rs.50,000/-. If the State Government has declined approval, the Petitioners cannot claim settlement as highest bidder. This Court will only examine if the order of the State Government declining approval is arbitrary or is based on valid and germane reasons. If the reasons can be culled out from the materials on record, mere absence of a separate reasoned order, especially when no communication had been made to the Petitioners is irrelevant. The Petitioners do not stand to be prejudiced in any manner by the fresh resolution dated 31.3.2015 as it only provides for preference to existing Shop Keepers in view of the order of this Court in Writ Petition (C) No. 1507 of 2014. There are no pleadings in support of the submission that the existing Shop Keepers had participated in the earlier bid and were unsuccessful. The last date for submission of tenders under the earlier

NIT was 8.8.2014. The order of the Court was passed on 11.8.2014. The Corporation has the right to obtain the best offers for settlement of Shops in the larger public interest to ensure highest revenue that can be obtained.

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

6. The submission on behalf of the Petitioners that a highest bidder has no indefeasible right to demand settlement in its favour eliminates the need for further discussion of this aspect of the law. In judicial review under Article 226 of the Constitution, our jurisdiction shall be confined to examine whether the decision not to award works to the highest bidder and cancel the NIT is based on arbitrary or valid reasons. If reasons exist the Court will not go into sufficiency of the reasons.

7. Even if the Petitioners were the highest bidders, no settlement could have been made without approval of the State Government, a condition precedent. If consent has been declined no rights whatsoever accrue to the Petitioners. This alone was sufficient to justify cancellation of the NIT. No allegations have been made against the government of having acted malafide or for extraneous considerations.

8. The only question now left for our consideration is with regard to the decision dated 31.3.2015 for cancellation of the earlier NIT and to proceed afresh with 'preference' to existing Shop Keepers. The fact that there may be no provision under Rule 6(ii) for preference in settlement which had to be made with the highest bidder, does not prevent the Corporation from giving 'preference' to existing Shop Keepers who form a class separate from fresh bidders. But, giving of 'preference' does not mean or tantamount to relaxation of the conditions by giving a preferential treatment to one category of bidders. The question of

'preference' arises all other things being equal. The present being a commercial venture of the Corporation, it has a public duty to ensure that it acts in the larger public interest by ensuring that it gets the highest revenue for settlement of the Shops in question whether it be the Petitioners or existing Shop Keepers or any other. If reasons can be culled out from the records, the mere absence of a formal order communicating rejection of the highest bid submitted by the Petitioners becomes irrelevant.

9. The purport and scope of a preference clause was considered in (2006) 6 SCC 474 (State of U.P. v. Om Prakash) observing as follows:-

“16. This Court has consistently held that when selection is made on the basis of merit assessed through the competitive examination and interview, preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred. It does not mean en bloc preference irrespective of inter se merit and suitability.”

10. We therefore find no merit in the writ petition. It is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge