

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 248 OF 2016

Ashok Kumar Mittal, S/o Shri Pirozilal Mittal, aged about 50 years, occupation – Contractor, R/o HIG-II, M.P. Nagar, Niharika Road, Korba (C.G.)

... Petitioner

Versus

1. The State of Chhattisgarh, through the Secretary, Water Resources Department, Mantralaya, New Raipur (C.G.)
2. The Engineer-in-Chief, Public Works Department, Sirpur Bhawan, Raipur (C.G.)
2. The Chief Engineer, Hasdeo Basin, Water Resources Department, Bilaspur (C.G.)
3. The Superintending Engineer, Water Resources Circle, Bilaspur (C.G.)
5. The Executive Engineer, Kharang Water Resources Division, Bilaspur (C.G.)
6. M/s Raj Construction Co., through its proprietor Dinesh Chauhan, R/o Near Kalibadi, Bangali Para, New Sarkanda, Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Sunil Kumar Soni, Advocate.
For Respondent-State	:	Mr. Prafull Bharat, Additional Advocate General.

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

Order on Board

Per NAVIN SINHA, C.J.

01/02/2016

1. The Petitioner in this writ application questions the rejection of his bid in preference to that of Respondent No.6 pursuant to a Tender Notice dated 27.10.2015 published by the Respondents for the Bhakhridih Anicut Scheme. The probable amount of the contract was specified at Rs. 271.28 Lacs.
2. Learned Counsel for the Petitioner submits that he was a registered Class 'A' contractor eligible to participate in all contracts irrespective of the value thereof and also fulfilled the requirements

prescribed in the criteria for evaluation of the bid under the heading 'physical turn over' during the five years period from 2010-11 to 2014-15 as he continued to remain a Class 'A' contractor during the same. It was only on 12.10.2015 that he was downgraded to a Class 'B' contractor. Rejection of his bid was therefore improper. Furthermore, there was a difference of approximately Rs. 35 Lacs between the bid submitted by him for the works and that offered by Respondent No.6. The official Respondents being the guardian of public funds are required to act in public interest and there must be proper reason and justification for not accepting a lower tender. The action of the Respondents irrespective of their responsibility for protection of public funds is therefore arbitrary and warrants interference by this Court.

3. Learned Additional Advocate General for the State submitted that the tender notice was published on 27.10.2015. Prior to the same, the Petitioner had already been downgraded to category 'B' as a registered contractor on 12.10.2015. The Petitioner wrongly represented himself to be a registered class 'A' contractor notwithstanding the same. The reason for rejection has been communicated to the Petitioner on 14.1.2016 that he had made misleading, incorrect, incomplete and false representation in his statements, affidavits and attachments in proof of qualification requirements and that he had poor record of performance such as abandoning the works, not properly completing the contract, unsatisfactory quality of work, inordinate delay in completion, claim and litigation history or financial failures, none of which have been denied in the pleadings. Merely because a tenderer may be the lowest bidder does not vest any right to him to demand acceptance of his bid irrespective of all other considerations.

4. We have considered the submissions on behalf of the parties and find no merit in the writ application calling for interference in exercise of judicial review under Article 226 of the Constitution.

5. The order of rejection is speaking in nature. The Petitioner stood downgraded to a category 'B' contractor on 12.10.2015 prior to the publication of the Notice Inviting Tender dated 27.10.2015. Nonetheless he represented himself by documents to be a registered Class 'A' contractor. The order of rejection is speaking in nature and also talks of past poor performance amongst other grounds. In the pleadings there is no challenge whatsoever to the grounds mentioned in the order of rejection dated 14.1.2016.

6. The jurisdiction of this Court in exercise of judicial review under Article 226 in matters relating to award of contracts is confined to the decision making process. If the rejection is arbitrary or for reasons beyond the terms and conditions of the notice inviting tender and has been made malafide, the writ court may interfere, otherwise the writ court will be loath to interfere with decision making executive power of the Respondents made within the bounds of their authority. The primary jurisdiction of the Court under Article 226 will first be to restrict it to examine if there were rejection for reasons. If the reasons are irrelevant the Court may interfere. But if the reasons are relevant, germane, cogent and more specifically if there is no denial to them in the pleadings, the question of exercising power of judicial review does not arise.

7. In tender matters, the submission of a lowest bid cannot be sufficient justification to found a cause of action to demand acceptance of it. If the State is the guardian of public funds, it has also the duty and responsibility to ensure that ineligible and inefficient do not participate

on the plea of being the lowest bidder who may ultimately turn out to be incapable or inefficient in performance which may in its turn result in high expenditure of the State ultimately.

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

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

/Sharad/