

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 277 of 2016**

Chhattisgarh Contractors (PWD) Association Through : Its President, Brijesh Shukla, S/o Shri Kashi Prasad Shukla, Aged About 54 Years, At Head Office : PWD Office Campus, Sirpur Bhawan, Civil Lines, P.S. Civil Line, District Raipur (Chhattisgarh)

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary Of Public Works Department, Mahanadi Bhawan, New Mantralay, District Raipur (Chhattisgarh)
2. State of Chhattisgarh, Through Secretary Of Industrial Department, Mahanadi Bhawan, New Mantralay, District Raipur (Chhattisgarh)
3. Chhattisgarh State Industrial Development Corporation (CSIDC) Through : Managing Director, Chhattisgarh State Industrial Development Corporation, Industrial Department, District Raipur (Chhattisgarh)
4. The Engineer In Chief, Public Works Department, District Raipur (Chhattisgarh)
5. The Chief Engineer, Public Works Department, District Raipur (Chhattisgarh)
6. The Executive Engineer, Chhattisgarh State Industrial Development Corporation, District Raipur (Chhattisgarh)
7. The Company Secretary, Chhattisgarh State Industrial Development Corporation, District Raipur (Chhattisgarh)
8. The Board of Directors, Chhattisgarh State Industrial Development Corporation, District Raipur (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Apoorva Tripathi, Advocate.
For Respondent/State	:	Shri Prafull N. Bharat, Additional Advocate General.
For Respondent/CSIDC:		Dr. N.K.Shukla, Senior Advocate with Shri Ayaz Naved, Advocate.

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

Order on Board**Per Navin Sinha, Chief Justice****02/02/2016**

1. The Petitioner, registered association of PWD Contractors has filed this writ application in nature of Public Interest Litigation questioning a composite integrated tender notice dated 3.11.2015 published by Respondent N. 3 for

upgradation of infrastructure i.e. road, drainage system and water supply in Sirgitti under Modified Industrial Infrastructure Upgradation Scheme at Sirgitti, Bilaspur. The estimated cost of work is Rs.44.40 Crores. It is also aggrieved by resolutions dated 14.8.2015 and 22.9.2015 passed by Board of Directors of Respondent No.3, by which it has been decided to merge all works of different nature into one unified tender as above.

2. Learned Counsel for the Petitioner submits that these two resolutions are ultra vires the powers of Respondent No. 3 and any decision regarding a contract of more than Rs. 3 Crores requires approval of the State Government. He next submits that because of the composite integrated NIT for more than one work, the bid amount becomes unreasonable for petty contractors to participate and which is therefore arbitrary and it amounts to favouring a class of bigger contractors. It is next submitted that till the date of filing of the writ petition even though according to the schedule, the last date for award of works was 12.1.2016, envelopes A and B have yet to be opened and therefore, the writ petition is not premature. It was lastly submitted that Petitioner has represented on 11.9.2015 followed by a lawyer's notice dated 25.9.2015, which has remained unconsidered. Because of the onerous nature of the tender only 2 out of 18 bidders have been found eligible to be considered.

3. Learned Senior Counsel for Respondent No. 3 submits that power vests in the Managing Director to take decisions with regard to contracts upto 10 Crores. Beyond that, the powers of the Board is unlimited. He next submits that composite integrated contracts have been resolved for more efficient and coordinated management and better execution and monitoring of works combined with other necessary relevant factors with regard to which Respondent No. 3 is alone competent to decide. These are more of policy matters for the Respondents to decide. A policy matter may not be interfered with by the Court unless it is perverse, arbitrary or irrational. None of these circumstances exist

presently. The very magnitude of the work requires experienced hands. Petty contractors have not been shut out from consideration completely by Respondent No. 3 from award of any contracts whatsoever. They remain eligible to participate in other contracts published by the Respondent subject to their fulfillment of the conditions and requirements. The Petitioner has no locus to file the writ petition in absence of any specific pleadings that each and every member of their association has a grievance with regard to the policy. An individual eligible contractor aggrieved in a particular contract for a specified reason would be a different matter.

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

5. Publication of NITs, composite integration of contracts perceived to be for better coordinated management and execution of works are primarily policy matters for the Respondents to decide. The only restriction would be any statutory impediment in the same. Unless the policy decision is arbitrary, irrational, illogical or perverse, the Court will not interfere with the wisdom of the Respondents. Which works will be integrated in composite contracts for functionality, efficiency, inter-relatedness are matters for Respondent No. 3 to decide and which it alone is better suited to decide. The Court has neither the expertise nor knowledge in such matters.

6. The writ petition has been filed by an association. There are no pleadings with regard to the pre-requisites for being registered as member of the association. It is always possible that some members of the association may be competent to participate and may have no cause of action or grievance as presented in the writ petition, yet others may not be interested in the contract or part of the same. There is no pleadings in the writ petition that each and every member of the association stands to be prejudiced. None of the sixteen bidders declared ineligible appear to be complaining. There is no pleading even if they

are members of the Petitioner association or not alike even those selected whose status also is not disclosed.

7. The writ petition states in paragraph 8.12 that till the filing of the writ petition on 29.1.2016, the tenders have not been finalized contrary to the schedule in the NIT. The affidavit in support of the writ petition is ambivalent in support of this fact.

8. In the entirety of the matter, we are not satisfied that the Petitioner has made out a case for interference by the Court in what appears to be essentially a policy matter. If the Petitioner has represented, it is for Respondent No. 3 to consider matters and dispose it expeditiously. The matter calls for no interference by the Court under Article 226 of the Constitution.

9. The writ petition stands disposed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE