

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.522 of 2016

KisanKraft Machine Tools Pvt Ltd organized under The Company's Act of India, having its Registered Office: Sri Huchhanna Tower, # 4, 1st Main, 7 A Cross, Maruthi Layout, Dasarahalli, H.A.F. Post, Hebbal, Bangalore- 560024 (Karnataka) Regional Office At Transport Nagar, Rawa Bhatha, Raipur (Chhattisgarh) through Authorized Signatory, Shri Ramesh Narayan S/o Late J. Narayan, aged about 34 Years, R/o D- 131 Sector 1, Near Hanuman Temple, Devendra Nagar, Raipur, P.S. Ganj Thana, Civil and Revenue District Raipur (Chhattisgarh)

---- Petitioner

versus

1. Chhattisgarh Rajya Beej Avam Krishi Vikas Nigam Limited Through Its Managing Director, "Beej Bhawan", Telibandha, G.E. Road, Raipur, District Raipur (Chhattisgarh)
2. Nextenders (India) Pvt. Ltd. Saket, B- 31, Shailendra Nagar, B- 31, Opposite Gulab Industries, Raipur, District Raipur (Chhattisgarh) - 492001
3. Chhattisgarh Infotech Promotion Society (CHIPS), 3rd Floor, State Data Centre Building, Opp. New Circuit House, Civil Lines, Raipur - 492001 (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri A.K. Prasad, Advocate
For Respondent No.1	:	Shri Vivek Shrivastava, Advocate

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

Order on Board

Per Navin Sinha, Chief Justice

16/3/2016

1. Respondent No.1 published Notice Inviting Tender (hereinafter referred to as "the NIT") dated 14.9.2015 inviting bids from manufacturers/suppliers for supply of various articles relating to agricultural operations.
2. Learned Counsel for the Petitioner submits that it submitted its offer with regard to items 5, 7, 8 and 9 of the items for bidding online. It was accepted by generation of bid hash after submission. The Petitioner

subsequently came to know that its bid was not opening on the portal of Respondent No.1 due to technical problems. Representation was submitted on 17.11.2015 both before Respondent No.1 and Respondent No.2 which was the service provider to the former for the online bidding. Screen-shots of the bid document uploaded by the Petitioner were also submitted in support of the fact that the necessary documents had been uploaded by it.

3. Respondent No.1 on 26.11.2015 wrote to Respondent No.2 for resolving the problem so that the tender document of the Petitioner could be seen on the portal of the former. Respondent No.2 reported that the Petitioner had not submitted hashes for the uploaded documents and also that Respondent No.1 had made those documents non-mandatory in the system because of which the system was allowed to complete re-encryption and therefore the documents were not visible to anyone. In response, Respondent No.1 on 7.12.2015 again requested Respondent No.2 to re-check and resolve the problem with regard to non-visibility of the documents uploaded by the Petitioner. Respondent No.2 responded likewise. On 24.12.2015 the Petitioner wrote to Respondent No.1 that it had submitted all bid documents online under receipt and hash submission receipts. The Petitioner also offered to submit hard copies of the same. If the documents had been uploaded and are not visible due to technical problems on the web portal of Respondent No.1, the Petitioner cannot be penalised for the same by denial of consideration of his bid. Respondent No.1 on 13.1.2016 has also requested Respondent No.2 to look into the similar complaint by Neptune Packing Private Limited.

4. Learned Counsel for Respondent No.1 submits that he has no instructions at this stage and is unable to make any submission on merits.

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

6. It is the contention of the Petitioner that it has uploaded its documents online and bid hash was also generated. The grievance is that if its documents were not visible after uploading on the web portal of Respondent No.1 due to technical problems and it cannot be penalised for the same.

7. At this stage, we are of the considered opinion that there would be a difference in a situation where Respondent No.1 would not have responded at all to such a complaint from an intending bidder and where it would have responded. In the former case, judicial review would step-in by requiring Respondent No.1 to respond to the grievances. But, in the facts of the present case, we find that Respondent No.1 is already alive to the grievance of the Petitioner and has taken necessary steps for consideration of the same by more than one communication to the service provider Respondent No.2.

8. Therefore, the only appropriate order to be passed at this stage is to direct Respondent No.1 to take a final decision with regard to the grievance of the Petitioner before it opens the technical bids submitted in response to the tender so that the Petitioner is not denied consideration without any decision on its grievance.

9. We therefore direct Respondent No.1 to take a decision expeditiously and not render the writ petition infructuous by sheer inaction and passage of time.

10. The writ petition is disposed with the aforesaid directions.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE