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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.663 of 2016

Roshan Gupta, son of Shri B.P. Gupta, aged 46 years, R/o Kesala Road, Katanai Para, Sitapur, District Surguja, Chhattisgarh

---- Petitioner

versus

1. State of Chhattisgarh through the Secretary to the Government of Chhattisgarh, Department of Urban Administration and Development, Mantralaya, Mahanadi Bhavan, Naya Raipur, Raipur, Chhattisgarh
2. The Executive Engineer, Urban Administration and Development Department, Regional Office Ambikapur, District Surguja, Chhattisgarh
3. The Chief Municipal Officer, Nagar Panchayat, Sitapur, District Surguja, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Anurag Dayal Shrivastava, Advocate
For State/Respondents No.1 & 2	:	Shri Yashwant Singh Thakur, Deputy Advocate General
For Respondent No.3	:	Shri Gary Mukhopadhyay, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

Per Deepak Gupta, Chief Justice

18.7.2016

1. By the instant petition, the Petitioner has challenged the action of the Respondents/State in dis-approving/rejecting his tender on the ground that at the time when the tender was submitted by him, his wife was a Councillor in Nagar Panchayat Sitapur, District Surguja. The Petitioner has sought quashing of the Notice Inviting Tender (NIT) dated 20.2.2016.

2. Briefly stated, the facts of the case are that Respondent No.3, the Chief Municipal Officer, Nagar Panchayat, Sitapur issued an NIT for carrying out of number of works. The Petitioner submitted his tender for the works prescribed at Serial No.1 to 7 and 20 of the NIT. It appears that thereafter a notification was issued by the State Election Commission for holding elections in Municipal Corporations/Municipalities/Nagar Panchayats and consequently, the model code of conduct came into force and as a result thereof tenders were not opened and kept in abeyance.

Thereafter, in view of the order passed by this Court in Writ Petition (PIL) No.48 of 2014, the State Election Commission stayed the election programme. Thereafter, Respondent No.3 proceeded to finalise the tender process and the tenders were opened on 21.11.2014. The tender of the Petitioner was approved by the Tender Committee of the Nagar Panchayat Sitapur for items mentioned at Serial No.1 to 5 and 18. The Tender Committee forwarded the same for approval to Respondent No.2, the Executive Engineer, Urban Administration and Development Department, Regional Office Ambikapur, District Surguja.

3. In the meantime, the State Election Commission issued a fresh notification and election programme for the said elections and again a model code of conduct came into force. As a result thereof, the tender process was again halted. The election process completed in January, 2015. Thereafter, on 23.11.2015, Respondent No.3 initiated steps to finalise the tender and wrote a letter to Respondent No.2, the Executive Engineer requesting him to approve the recommendation of the Tender Committee. It appears that Respondent No.2, the Executive Engineer raised some queries and in response to the queries, Respondent No.3 submitted that the wife of the Petitioner was a Councillor in Nagar Panchayat Sitapur before the election process was completed, i.e., she was a Councillor at the time when the NIT was issued, the tender was submitted and even at the time when the tender of the Petitioner was approved by the Tender Committee. After this response, tenders were allotted to all the other successful bidders for other works except for the works mentioned at Serial No.1 to 5 and 18 for which works the most successful bidder was the Petitioner and the tender of the Petitioner was cancelled on the ground that since the wife of the Petitioner was a Councillor in the Nagar Panchayat, he could not be awarded the contract. A tender for the said works has again been re-floated and, therefore, this writ petition.

4. We have heard Learned Counsel appearing for the parties and perused the petition and the documents annexed thereto.

5. On behalf of the Petitioner, it is submitted that neither in the NIT nor in the tender conditions or in any rules/regulations is there any condition that the spouse of a Councillor of a Nagar Panchayat cannot bid for a tender or cannot be awarded a contract by the said Nagar Panchayat. We have specifically asked Learned Counsel appearing for the State/Respondents No.1 and 2 and Learned Counsel appearing for Respondent No.3 about existence of any such condition. They have admitted that there is no such condition, but this healthy practice is adopted to avoid corruption. According to the Learned Counsel, a Councillor can influence award or non-award of a contract and, therefore, this decision was taken.

6. We are clearly of the view that the condition as such cannot be said to be illegal. However, if any such condition had to be imposed, the same should have been clearly mentioned in the NIT or appropriate guidelines should have been issued in this regard that tenders submitted by persons, who are relatives of the officers, employees, Councillor or of other elected office bearers of the Nagar Panchayat will not be accepted. Had such a condition been imposed, we would have no trouble in upholding the same. However, we are clearly of the view that the rules of a game cannot be changed after it has begun. When the NIT was issued, tender was submitted by the Petitioner and his tender was approved by the Tender Committee and forwarded to Respondent No.2, the Executive Engineer for his approval, this condition was neither there nor brought to the notice of any authority or the Petitioner. It is only after the wife of the Petitioner lost the election, the Petitioner was denied the allotment of the works for which he was the successful bidder.

7. We have, therefore, no hesitation in holding that Respondent No.2,

the Executive Engineer took a decision beyond his jurisdiction in rejecting the tender of the Petitioner on a ground which did not find mention either in the NIT or in the tender documents or any of the rules or regulations of the Nagar Panchayat. The decision of rejecting the tender of the Petitioner is accordingly set aside. We direct Respondent No.2, the Executive Engineer to reconsider the case of the Petitioner for award of contract relating to the items mentioned at aforesaid Serial No.1 to 5 and 18. The said reconsideration be done within four weeks from the date of receipt/presentation of a copy of this order.

8. With the aforesaid observations, the writ petition is disposed of.

Sd/-

(**Deepak Gupta**)
CHIEF JUSTICE

Sd/-

(**Sanjay K. Agrawal**)
JUDGE

Gopal