

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 664 OF 2016

- M/s B.B. Verma, a partnership firm, through its partner Naresh Kumar Verma, S/o R.C. Verma, aged 29 years, HIG-9, C1-C2, Near Niharika, Korba (C.G.)

... Petitioner

Versus

1. Chhattisgarh State Industrial Development Corporation Limited, a Government of Chhattisgarh undertaking through its Managing Director, 1st Floor, Udyog Bhawan, Ring Road No.1, Telibandha, Raipur (C.G.)
2. Executive Engineer, Division No.1, Chhattisgarh State Industrial Development Corporation Limited, 1st Floor, Udyog Bhawan, Ring Road No.1, Telibandha, Raipur (C.G.)
3. Raipur Construction Pvt. Ltd., Shop No.24, Babla Complex, G.E. Road, Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. Rajeev Shrivastava, Advocate.
For Respondents 1 & 2	:	Dr. N.K. Shukla, Senior Advocate, along with Mr. Anumeh Shrivastava, Advocate.

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

Order on Board

Per NAVIN SINHA, C.J.

15/03/2016

1. The Petitioner inter-alia was a bidder under Notice Inviting Tender (hereinafter called 'NIT') dated 3.11.2015 by the Respondents for up-gradation of infrastructure in Sirgitti under Modified Industrial Infrastructure Up-gradation Scheme at Sirgitti, Bilaspur. It is aggrieved by the rejection of its technical bid and consequent denial to open its financial bid.
2. Learned Counsel for the Petitioner submits that its technical bid has been rejected arbitrarily without any valid justification much less communication of the reasons for rejection. It is evident from the

counter-affidavit that the reasons urged therein for rejection are non-est. The Petitioner had furnished proof regarding its eligibility under Clause 51 of the NIT inter-alia by possession of transit mixer of 6 Cum capacity and also mechanical paver for concrete road and mechanical paver of BT road. The Petitioner had also furnished due certification from the Executive Engineer as required, of the availability with him of the aforesaid items. The rejection of its technical bid on non-est grounds is but evidence of arbitrary conduct. The next submission was that the Respondents have relied on certain information obtained by them from the Executive Engineer, Maniyari Water Resources Division, Mungeli, to the prejudice of the Petitioner without any opportunity of defence much less to explain the same.

3. Learned Senior Counsel for the Respondents denied that there had been any arbitrariness or that rejection was based on non-est grounds. Contending fairness and transparency in the decision making process it was submitted that a three member committee had been constituted to examine the technical specifications of bidders. The reasons for rejection of the technical bid of the Petitioner are explicit in the recommendation of the committee dated 3.3.2016. The Petitioner had not furnished the necessary certificate with regard to possession of required plant and machinery, including concrete paver and which had been described as a transit mixer. The Petitioner in support of its eligibility had furnished materials based on experience certificate from the authorities at Mungeli. The Respondents only made enquiries regarding the same from the authorities at Mungeli. It cannot be said that the Respondents collected information behind the back of the Petitioner. The Respondents committed no error in satisfying themselves by further enquiry of the efficiency for performance by the

Petitioner. The nature of the works being of public character involving public money, the Respondents cannot be denied the right to select the most efficient to their satisfaction and which includes the capacity for performance to be assessed by timely completion of other works.

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

5. The award of works under a tender is primarily an executive function. Judicial review shall be confined to errors in the decision making process. The Court cannot sit in judgment over the Respondents to assess the suitability or competence of an intending bidder. It is only in cases such as where a valid tender has been shut out from consideration arbitrarily or materials are relied upon behind the back of a bidder, the decision is actuated by malafides, are but some of the limited grounds on which the Courts may interfere in appropriate cases. In the present case, the offer submitted by the Petitioner under Clause 51 of the NIT has been scrutinised by a three member committee of technical experts called the technical evaluation committee. The Court has neither the knowledge nor capability to sit in judgment over the wisdom of the technical experts. There is no challenge to the report of the technical evaluation committee. No allegations of malafide have been urged. The report of the technical evaluation committee is speaking in nature. The Court cannot examine the sufficiency of the reasons. If the Petitioner is of the opinion otherwise and wishes to persuade the Respondents that it does possess the valid equipments and machinery as stipulated under Clause 51 of the NIT, the remedy lies in approaching the Respondents alone.

6. If the Petitioner had furnished information with regard to other works done by it in proof of its capability to perform, that did not preclude the Respondents from obtaining necessary information from the concerned. But if any information was obtained by the Respondents and it was proposed to be relied upon to the prejudice of the Petitioner, fairness and reasonableness required the Respondents to disclose the same to the Petitioner and obtain its explanation. Only then could such material be relied upon. The question is not whether the Petitioner would have a valid explanation or that the explanation would be acceptable to the Respondents. The only issue is with regard to the opportunity required to be provided to the Petitioner before a decision prejudicial to it is taken based on materials.

7. The writ petition is therefore disposed with the observation that if the Petitioner so desires it may represent before the authorities on both aspects. It is expected that the Respondents will dispose the same expeditiously and will not render the representation infructuous by sheer delay in the decision making process. Nothing in this order may be construed as any opinion or observation on merits of any such proposed representation.

8. The writ petition is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge