

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2038 of 2016**

- Mahamaya Constructions Through Its Proprietor Sandeep Rungta S/o Late G. R. Rungta, Aged About 44 Years, Office- Mahamaya Constructions Raipur 231, 2nd Floor, Risabh Complex, M. G. Road, Raipur (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Public Health Engineering, Mahanadi Bhavan Mantralaya, New Raipur (Chhattisgarh)
2. Engineer In Chief, Department Of Public Health Engineering, Indrawati Bhavan, Naya Raipur (Chhattisgarh)
3. Chief Engineer, Department Of Public Health Engineering, Raipur Zone, Raipur (Chhattisgarh)
4. Superintending Engineer, Public Health Engineering Department, Engineering Department, Durg Circle, Durg (Chhattisgarh)
5. Executive Engineer, Public Health Engineering Department Division, Rajnandgaon, District Rajnandgaon (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Avinash Chand Sahu, Advocate
For Respondents/State	:	Mr. Y.S. Thakur, Deputy Advocate General

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board**Per Deepak Gupta, Chief Justice****14/09/2016**

1. By way of this petition the Petitioner has prayed for issuance of appropriate writ, order, direction and quashment of the communication/letter dated 24/06/2016 and 25/06/2016 along with decision of the Tender Committee dated 08/06/2016 whereby his tender

has not been considered on the ground that he has given incomplete and incorrect information.

2. At the outset we may refer to the tender condition 1.3 which reads as follows :-

“3. The Duly notarified affidavit regarding the details of works in hand indicating name of work, Agreement no., work order no. and date, amount of contract, period of completion, value of work and balance work in hand with details of work on the date of submission of Tender.”

3. A plain reading of this condition shows that every tenderer was required to submit an affidavit duly notarized by Notary Public. In this affidavit the tenderer was required to submit the details of work in hand indicating name of work, agreement number, work order number and date, amount of contract etc.
4. The stand of the Respondents/State is that the Tender Committee did not consider the tender of the Petitioner on two grounds;
 - (i) that he along with his tender had made no mention about the work of D.I. Pipeline in Bemetara Block having agreement No. 22/DL/2016-17, Work Order Letter No. 2411 dated 25/05/2016.
 - (ii) that with regard to agreement No. 111/DL/2014-15 regarding the execution of work in Jagdalpur area where the Petitioner had stated that he had completed 40% of the work. On enquiry it was found that he had executed only 26% of the work.
5. As far as the first issue is concerned, the stand of the State is that on 07/12/2015 the Petitioner was told that he was the lowest tenderer with regard to their contract and therefore asked to enter into an agreement

within 15 days. It is submitted that he was aware about this offer but himself deliberately kept the matter pending.

6. According to Mr. Y.S. Thakur, the Petitioner deliberately kept this pending as the State has some formula for evaluating bidding capacity and if the value of that was also included then the Petitioner would not have satisfied the criteria of bidding capacity.
7. We are not going into this aspect of the matter. The fact of the matter is that on the last date of submission of tender i.e. 23rd May 2016 no agreement had been entered into. Only an offer had been made by the State that it was willing to award the tender to the Petitioner-Company. In this regard we may also mention that on 25/02/2016 with regard to the contract the State gave three days further time to the Petitioner to enter into the contract and when he has not done so, on 11/04/2016 the tender was cancelled.
8. The Petitioner wrote a letter on 12/04/2016 that the cancellation order may be recalled as he was willing to enter into the agreement. However, no decision on the same was taken before the last date of submission of the tender in the present case and finally on 24/05/2016 a decision was taken to award the contract in favour of the Petitioner. Therefore, on the last date of submission of tender i.e. on 23/05/2016, he was not aware that on 24/05/2016, the State would take decision to recall its earlier order of canceling the tender. Therefore, we do not understand how the Petitioner can be penalized for this specially in view of the fact that no agreement had been entered into.
9. As far as the second aspect of the matter is concerned the stand of the State is patently false and incorrect. We are constrained to observe that

the some of the officials of the State are guilty of trying to falsify the records. The Petitioner along with his petition has enclosed a certificate issued by Executive Engineer, Public Health Engineering Division, Jagdalpur (Bastar) dated 23rd June 2016 which shows that on 23rd May 2016 the Petitioner had completed 22819.20 Meter Pipe Lines against 56644 meter, which works out to be 40.28% and this supports the facts of the Petitioner that he had completed 40% of the work.

10. The State relied upon the certificate dated 06/06/2016 issued by this very officer in which he has stated that as on 11/02/2016 the Petitioner had completed 14848.4 meter which works out to be 26%. We do not understand why the certificate was obtained from the Executive Engineer with regard to 11/02/2016 and not 23/05/2016. Therefore we have no hesitation in holding that the decision of the Tender Committee rejecting the tender of the Petitioner is totally extraneous and irrelevant. The tender of the Petitioner is required to be considered. We however make it clear that while considering the tender the Tender Committee shall follow the formula for bidding capacity and while evaluating the bidding capacity of the Petitioner, it shall take into consideration the contract in question as well as any other contract which may have been awarded to the Petitioner in the meanwhile.

11. With these observations, the Writ Petition is disposed of.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge