

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 2173 OF 2015

Ashok Kumar Agrawal, S/o Shri Dilip Chandra Agrawal, aged about 40 years, Proprietor of M/s Ashok Kumar Agrawal, Main Road, Vishrampur, resident of Gurudwara Road, Vishrampur, Post Vishrampur, District Surajpur (C.G.), Civil & Revenue District Surajpur.

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Ministry of Public Health Engineering, Ambikapur Division, Ambikapur, District Surguja (C.G.)

2. The Executive Engineer, Department of Public Health Engineering, Ambikapur Division, Ambikapur, District Surguja (C.G.)

3. Shri R.K. Gendle, Executive Engineer, Department of Public Health Engineering, presently posted in the Engineer-in-Chief, Public Health Engineering Department, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)

4. Tarun Kumar Jaiswal, S/o Shri Kailash Nath Jaiswal, aged about 39 years, R/o near Pratappur Chowk, Ambikapur, District Surguja (C.G.)

... Respondents

For Petitioner	:	Mr. B.P. Sharma and Mr. Hari Agrawal, Advocates.
For Respondent-State	:	Mr. Prafull Bharat, Additional Advocate General, and Mr. U.N.S. Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

20/01/2016

1. The Petitioner was inter-alia a bidder under Tender Notice No. 1288, dated 14.8.2015 published by the Respondents inviting offers of providing, laying, jointing of UPVC Pipes under a Water Supply and Sanitation Scheme. The process was through e-Tender. Respondent No.4 was declared qualified and awarded the works. The Petitioner amongst other bidders was communicated rejection on 4.11.2015.

2. Learned Counsel for the Petitioner submitted that though he was declared ineligible no reasons were specified. The grounds of ineligibility were required to be mentioned in the order itself and cannot be permitted to be explained in the counter-affidavit.

3. Respondent No.3, the concerned Executive Engineer, impleaded by name, had been transferred from Ambikapur to Raipur on 15.10.2015. None the less he proceeded in haste to declare Respondent No.4 as eligible which itself is evidence of malafides. The Notice Inviting Tender (NIT) did not mention anywhere specifically that the bidder was required to state that he would deploy a Graduate Engineer only. The NIT used the word Graduate Engineer/Diploma Holder. The Petitioner had complied with the requirements for deploying a Diploma Engineer. The Respondents cannot rely on any standard agreement form to contend that in award of works over 5 Lacs it was mandatory to furnish details of a Graduate Engineer only for deployment. If the Petitioner, at the time of execution of the agreement failed to assure deployment of a Graduate Engineer, issues would have been different.

4. The Respondents do not deny the certificate of the Executive Engineer in proof of experience dated 12.1.2012. The ground taken in the counter-affidavit that the experience certificate submitted was issued by the Assistant Engineer and thus not acceptable was therefore wrong and is again evidence of arbitrariness and malafides. It was lastly submitted that the original tender notice dated 14.8.2015 annexed to the counter-affidavit had been amended on 1.9.2015, 23.10.2015 and 18.11.2015. It is therefore not correct for the Respondents to contend that the Petitioner was required to submit an affidavit on Rs.50/- stamp paper.

5. Learned Additional Advocate General appearing for the State denied that Respondent No.3 had acted in any haste or passed any orders after handing over charge. Under the NIT, the tender was to be awarded on or after 18.11.2015. It is not the case of the Petitioner that tender was awarded before that date. Allegations of personal malafides against Respondent No.3 had to be specific and not vague that he acted in haste. Respondent No.3 was acting in routine discharge of official duties. It was next submitted that in all government contracts for the value of Rs. 5 Lacs, it was necessary for an intending bidder to mention deployment of a Graduate Engineer. It was not a condition unique to the present NIT or applicable to the Petitioner alone. The Petitioner was a registered government contractor and was thus fully aware of the condition. The experience certificate submitted by the Petitioner purporting to be from the Executive Engineer is a suspicious document for more than one reason. The certificate has been issued by the Surajpur Division which was created on 1.5.2012 and therefore the Surajpur Division Executive Engineer could not have issued a certificate dated 12.1.2012. Moreover, it is not signed by the Executive Engineer but has been issued on behalf of the Executive Engineer, Surajpur. The tender notice dated 14.8.2015 was amended from time to time and all the tender notices were on the web portal. The tender notice dated 14.8.2015 explicitly provided that the experience certificate was to be submitted on an affidavit of Rs. 50/- stamp paper. Contrary to that the Petitioner submitted the affidavit on Rs. 20/- stamp paper and that too not in the original but a photocopy of the same.

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

7. The power of judicial review under Article 226 of the Constitution in examining award of contracts under a tender notice will have to be restricted to the decision making process. The Petitioner being a registered Class-D government contractor engaged in business shall be presumed to be well aware of the general condition in all contracts above five lacs for compulsory deployment of a Graduate Engineer alone had to be made in the bid documents. The Petitioner alone has not been found ineligible. Eight out of ten bidders have been found ineligible.

8. The submission that Respondent No.3 acted in haste after his order of transfer dated 15.10.2015 does not merit any consideration in absence of necessary pleadings with regard to the same and any allegations of malafides. Commercial matters regarding tender have an inherent urgency. There are no allegations that the work was awarded to Respondent No.4 before the scheduled date mentioned in the NIT. There is also no assertion that Respondent No.3 passed any orders after handing over charge. On the contrary, there is no statement on what date charge was handed over by him. The writ petition only states that orders were passed before proceeding on transfer, which makes his actions valid.

9. The experience certificate on which the Petitioner relies has not been issued by the Executive Engineer, but on his behalf. The name, status and designation of the person signing is not disclosed. If Surajpur Division was created on 1.5.2012 after separation from the Ambikapur Division, there was no occasion for an Executive Engineer, Surajpur to have had issued the certificate on 20.1.2012. The contention of the State is that it was a suspicious document.

10. If the tender notice dated 29.11.2015 uploaded in the web portal contained the original tender notice dated 14.8.2015 along with its amendments, we find it difficult to accept the submission on behalf of the Petitioner that the experience certificate was not required to be on a Rs.50/- stamp paper. Even if the contention of the Petitioner be accepted for the sake of argument, the submission of a photocopy can never suffice and it had to be the original which had to be submitted along with the tender documents.

11. In the entirety of the matter, we find no reason to interfere. The Petitioner is not the only disqualified bidder, there are eight others along with him none of whom are complaining.

12. The writ petition is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge