

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (C) No. 1966 of 2016**

Kadambari Tubewells 48- Tifra Industrial Area Bilaspur (Chhattisgarh)
 Through Authorized Signatory (General Power Of Attorney Holder)
 Shri Giriraj Gupta S/o Late Shri Narayan Gupta, Aged About 57 Years
 R/o B- 34 Kranti Nagar, District Bilaspur (Chhattisgarh).

---- Petitioner**Versus**

1. State Of Chhattisgarh Through: Secretary, Public Health Engineering Department, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
2. Engineer In Chief, Public Health Engineering Department, Raipur, District Raipur, Chhattisgarh.
3. Executive Engineer, Public Health Engineering Department, Balod District Balod, Chhattisgarh.
4. Chief Engineer, Public Health Engineering Department, Raipur, District Raipur, Chhattisgarh.

-----Respondents

For Petitioner:	Shri KA. Ansari, Senior Advocate along with Shri Devesh Kela, Advocate.
For Respondent/State:	Shri Prafull N. Bharat, Additional Advocate General.

Hon'ble The Chief Justice**Hon'ble Shri Justice Sanjay Agrawal****Order on Board****Per Deepak Gupta, Chief Justice****19/10/2016**

1. By means of this Writ Petition, the Petitioner – M/s Kadambari Tubewells has basically prayed that the action on the part of the State Government in not taking into consideration its experience as sub-contractor for construction of the 3 MLD at Boriyakala Housing Board Colony, Raipur is totally illegal and therefore its experience should be taken into consideration and it should be held entitled for grant of award of contract to construct 5 MLD capacity water treatment plant.

2. Briefly stated, the facts of the case are that on 13.5.2016, Respondent No.3 issued a notice inviting tenders for construction of 5 MLD capacity water treatment plant, water testing lab etc in Balod town. One of the conditions of the contract was that the person submitting his tender should have done work for 50% of the estimated amount and capacity.

3. The case of the Petitioner is that it had constructed a 3 Million Liter STP plant at Boriyakala Housing Board Colony, Raipur as sub-contractor of M/s Dee Vee Projects Limited and therefore, it is entitled to be considered for grant of tender.

4. On 24.8.2016, when the matter has first come up before us, we had passed the following order:-

“Learned Counsel for the Petitioner submits that they had entered into an agreement with M/s Patel Construction Company Limited and this contained a clause which permits sub-letting of the contract with prior approval of the competent authority.

The State Counsel may inform us by filing an affidavit as to whether any such approval was granted or not. This may be done within a week.

List on 14.9.2016.”

Thereafter, the State filed affidavit stating that the agreement for construction of the Boriyakala Housing Board Colony, Raipur was entered by the Housing Board with one M/s Patel Enterprises Construction Limited. It had also been pointed out that as per the terms of the agreement, the contractor was permitted to sub-contract the constructed work or part thereof. However, in the reply filed by the State, it was clearly mentioned that as far as the Boriyakala Housing Board Colony STP is concerned, no permission had been taken from the State by the contractor for sub-contracting any portion of the contract.

5. As far as the present case is concerned, reliance had been placed by the Petitioner on a circular of the Government dated 18.7.2016 which gives historical background that because of the conditions being laid down in the tenders that every tenderer must have done some minimum quantity of work, there is less competition leading to cartelization. The work done by the contractors even as sub-contractors of private contractors can be taken into consideration while considering their working capacity.

6. In view of this circular, we have no doubt that even the work done as a sub-contractor can be taken into consideration. However, as far the present case is concerned, we do not think that the Petitioner is entitled to any relief. First of all, the contract in favour of the construction of 3 MLD STP at Boriyakala Housing Board Colony, Raipur was awarded in favour of M/S Patel Enterprises, which was merged as M/s Dee Vee Projects Limited. The certificate which has been relied upon by the Petitioner is a certificate issued by Dee Vee Projects Limited. This certificate issued by Dee Vee Projects Limited shows that the work was done by the Petitioner – Kadambari Tube wells. There is a note attached to the certificate signed by Superintending Engineer, Public Health Engineering Department as “physically verified the 3 MLD STP at Boriyakala Housing Board Colony, Raipur”.

7. We have put a pointed query as to how M/s Dee Vee Projects Limited could have given work as sub-contractor to M/s Kadambari Tube Wells without the permission of the State Government. The answer is that this certificate itself indicates that the work was done by Kadambari Tube Wells and since the officials of the State were vested with the entrustment of work, it may be presumed that they had given the contracts sub-contractors. Variations to these contracts have to be notified. Clause 7.1 of the contract entered into for construction of the 3 MLD STP at Boriyakala Housing Board

Colony clearly provided that the contractor could sub-contract the contract or part thereof only with the prior permission of the competent authorities. Admittedly, no such permission was taken. If no such permission was taken, then the sub-contract, if any granted, was in violation of the terms of the contract and such a sub-contract which is in violation of the specific conditions cannot be taken into consideration while assessing the capacity and capability of the Petitioner.

8. As far as the experience certificate read upon by the Petitioner is concerned, the name of M/s Kadambari Tubewells is not even mentioned in the certificate. The certificate was given in favour of Dee Vee Projects Limited and not in favour of the Petitioner – Kadambari Tubewells.

9. We therefore find no merit in the instant Writ Petition, which is accordingly dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE