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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1121 of 2016

M/s. Tiwari Construction, A registered Class-A contractor, A partnership firm registered under the Indian Partnership Act, 1932 having its registration No.162/2013-14, having its registered Head Office at Bouripara, Ambikapur, District Surguja, through its Partner namely Shivshankar Tiwari, S/o Rajendranath Tiwari, aged about 33 years, R/o Bouripara, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (C.G.)

---- Petitioner

Versus

1. Union of India, through its Secretary, Central Public Works Department, Nirman Bhawan, CPWD, New Delhi

2. Chief Engineer, CZ(V), Central Public Works Department, Raipur, District Raipur (C.G.)

3. Executive Engineer, Raipur Project Division, Central Public Works Department, Raipur, District Raipur (C.G.)

4. M/s. Dubey and Goyal Company, Kavita Nagar, Raipur, District Raipur (C.G.)

---- Respondents

Writ Petition (C) No.1122 of 2016

M/s. Tiwari Construction, A registered Class-A contractor, A partnership firm registered under the Indian Partnership Act, 1932 having its registration No.162/2013-14, having its registered Head Office at Bouripara, Ambikapur, District Surguja, through its Partner namely Shivshankar Tiwari, S/o Rajendranath Tiwari, aged about 33 years, R/o Bouripara, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (C.G.)

---- Petitioner

Versus

1. Union of India, through its Secretary, Central Public Works Department, Nirman Bhawan, CPWD, New Delhi

2. Chief Engineer, CZ(V), Central Public Works Department, Raipur, District Raipur (C.G.)

3. Executive Engineer, Raipur Project Division, Central Public Works Department, Raipur, District Raipur (C.G.)

4. M/s. Dubey and Goyal Company, Kavita Nagar, Raipur, District Raipur (C.G.)

5. M/s. Aryan Builders, Subhash Chandra Bose Stadium Complex, Civil Lines, Raipur (C.G.)

---- Respondents

AND

Writ Petition (C) No.1123 of 2016

M/s. Tiwari Construction, A registered Class-A contractor, A partnership firm registered under the Indian Partnership Act, 1932 having its registered Head Office at Bouripara, Ambikapur, District Surguja, through its Partner namely Shivshankar Tiwari, S/o Rajendranath Tiwari, aged about 33 years, R/o Bouripara, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue Disrict Surguja (C.G.)

---- Petitioner

Versus

1. Union of India, through its Secretary, Central Public Works Department, Nirman Bhawan, CPWD, New Delhi

2. Chief Engineer, CZ(V), Central Public Works Department, Raipur, District Raipur (C.G.)

3. Executive Engineer, Raipur Project Division, Central Public Works Department, Raipur, District Raipur (C.G.)

4. M/s. Dubey and Goyal Company, Kavita Nagar, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Manoj Paranjpe, Advocate.
For Respondents No.1 to 3/Union of India: - Mr. N.K. Vyas, Assistant Solicitor General and Mr. Bhupendra Singh, Central Govt. Standing Counsel.
For Respondent No.4: None present.

Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

ORDER (C.A.V.)

Sanjay K. Agrawal, J

01/08/2016

1. Invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner herein namely M/s. Tiwari Construction, a partnership firm registered under the provisions of the Indian Partnership Act, 1932 and a registered Class-A contractor having its registration No.162/2013-14, has filed above-stated three writ petitions questioning legality, propriety and validity of order Annexure P-1 by which the technical bid of the petitioner in each of the writ petitions has been rejected finding that the petitioner has failed to upload the certificate of registration for sales tax or VAT and up-to date acknowledgement as required by the terms and conditions of the notice inviting tender.

2. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to notice following facts: —

2.1) The petitioner is a partnership firm and a registered Class-A contractor registered under the relevant provisions of the Indian Partnership Act, 1932 having its registered office at Ambikapur. The Government of India through the Office of the Executive Engineer, Raipur Project Division, Central Public Works Department (CPWD) Raipur, issued a notice inviting tender bearing NIT No.02/EE/RPD/2016-17 on 5-4-2016 for construction of 105 Nos. Residential quarters (56 Nos. Type-II quarters, 40 Nos. Type-III quarters, 8 Nos. Type-IV quarters and 1 No. Type-V quarter) for 38^{th} Battalion ITBP Kharora at Raipur. Last date of submission of tender was 18-4-2016. The bids were to be uploaded on-line on or before the said date at 3 O' clock in the afternoon and documents were required to be uploaded on the date of submission of the on-line tender. According to the petitioner, he submitted his technical bid(s) and has uploaded all the requisite documents vide Annexure P-4. It is the case of the petitioner that he has also uploaded the Tax Clearance Certificate issued by the Chhattisgarh Commercial Tax Department dated 22-6-2015 in lieu of the certificate of registration for sales tax or VAT. It is the further case of the petitioner that the tenderers were required to submit certificate of registration for sales tax / VAT and the acknowledgement of up-to date return filed. The petitioner not only submitted all the documents substantially complying with the requirements by uploading the required documents, but he has also uploaded the Tax Clearance Certificate issued by the Chhattisgarh Commercial Tax Department on 22-6-2015 which certifies that M/s. Tiwari Construction bearing No.22965006788 is not in arrears of any dues on account of tax, interest and penalty under the Chhattisgarh Value Added Tax Act, 2005 / the Central Sales Tax Act, 1956 / the Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976. The said certificate was issued for a period of one year commencing from 22-6-2010. According to the petitioner, he had substantially complied with the terms and conditions and instruction for contractors for e-tendering, but the petitioner was surprised to learn that the petitioner's technical bid(s) has been rejected on the ground that he has not uploaded the certificate of registration for sales tax/VAT and acknowledgement of up-to date return so filed. The petitioner's representation has been rejected on 25-4-2016 by the respondents relying on clause 10 of the NIT read with relevant clause of the CPWD Manual.

3. Feeling aggrieved against the said order by which the petitioner's technical bid(s) has been rejected, the instant petitions have been filed challenging the impugned order as unsustainable and bad in law stating inter alia that the

petitioner has substantially complied with the said requirement of uploading the tax clearance certificate in lieu of the certificate of registration for sales tax or VAT. Therefore, the impugned order(s) be set aside and the respondents be directed to open the technical bid(s) of the petitioner.

4. On being noticed, respondents No.1 to 3 have filed return stating inter alia that the on-line bid of the petitioner has been rejected on the ground that the petitioner has not uploaded the registration certificate of sales tax or VAT and the acknowledgement of up-to date return filed. It has also been submitted that the works contract of Public Works Department is governed by the CPWD Works Manual which has binding force. Section – 20A.10(ii) of the CPWD Works Manual 2014 provides that the contractor should upload all the documents including service tax registration / VAT registration / sales tax registration as stipulated in the bid document. It has also been pleaded that clear cut information and instruction for contractors for e-tendering in NIT on page-7 of the NIT has been provided that the document should be scanned and uploaded within the period of bids submission which includes (v) Certificate of Registration for Sales Tax/VAT

and acknowledgement of up to date filed return if required. Clause 10 of the NIT also provides that the bid shall become invalid if the bidder does not upload all the documents (including service tax registration/VAT registration/Sales Tax registration) as stipulated in the bid document. Therefore, the petitioner has failed to submit documents as required in the NIT as well as in the CPWD Manual which is essential condition of a tender and which has binding force and as such, the respondents have no option but to reject the technical bid(s) of the petitioner as well as his representation(s). Thus, the writ petitions deserve to be dismissed with cost(s).

5. No rejoinder has been filed on behalf of the petitioner.

6. Mr. Manoj Paranjpe, learned counsel appearing for the petitioner, would submit that the petitioner has substantially complied with the condition of uploading the certificate of registration of sales tax / VAT and acknowledgement up-to date by uploading the Tax Clearance Certificate which would satisfy the requirement of the respondents of furnishing the certificate of registration. A bare perusal of the Tax Clearance Certificate would show that the petitioner firm is duly registered for sales tax / VAT and no tax is due as on date. He would further submit that such a

condition being the non-essential condition / ancillary condition can always be waived and the bid of the petitioner cannot be rejected on the said ground of non-uploading the certificate of registration for sales tax / VAT and therefore, the writ petitions deserve to be allowed and rejection of the petitioner's bids Annexure (P-1) and Annexure (P-5) – order rejecting the representation, in all the three writ petitions deserve to be quashed.

7. Mr. N.K. Vyas, learned Assistant Solicitor General appearing on behalf of the Union of India / respondents No.1 to 3, would submit that uploading the certificate of registration for sales tax / VAT and up-to date acknowledgement is required by Section 20A.10(ii) of the CPWD Works Manual 2014 as well as by the NIT instructions and list of documents to be scanned and uploaded which is an essential requirement for valid bid. He would further submit that consequence of non-uploading such certificate has also been provided in the tender document itself which goes to show that such a condition is essential condition of the tender and therefore due to non-compliance of such an essential condition, the petitioner's bid as well as his representation has rightly been rejected by the respondents and no interference is

warranted by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

8. Since parties in all the above three writ petitions are same and subject matter of controversy is identical in all the three petitions, they are being disposed of by this common order taking W.P.(C)No.1121/2016 as lead case.

9. We have heard learned counsel for the parties, given thoughtful consideration to their rival submissions made herein and gone through the records critically and extensively.

10. The Government of India through the Office of the Executive Engineer, Raipur Project Division, CPWD Raipur issued notice inviting tender for construction of 105 residential quarters for 38th Battalion ITBP Kharora at Raipur with an estimated cost of Rs.16,05,76,062/-. Information and instructions for contractors for e-tendering forming part of NIT and to be posted on website is also annexed with the e-tender. List of documents to be scanned and uploaded within the period of bid submission contains various documents and last but not the least document which we are concerned in this batch of writ petitions, is as under: -

> “V. Certificate of Registration for Sales Tax/ VAT and acknowledgement of up to date filed

return if required."

11. Likewise, the notice inviting tender issued by the Government of India, CWPD Raipur also states that bids shall become invalid if the bider does not upload all the documents (including service tax registration/VAT registration/Sales Tax registration) as stipulated in the bid document including the copy of receipt deposition of original EMD. Clause 10 of the NIT states as under: —

> "10. The bid submitted shall become invalid if:
>
> (i) xxx xxx xxx
>
> (ii) xxx xxx xxx
>
> (ii) The bidder does not upload all the documents (including service tax registration/VAT registration/Sales Tax registration) as stipulated in the bid document including the copy of receipt deposition of original EMD.
>
> (iii) xxx xxx xxx"

12. A conjoint reading of clause (V) of the first instruction i.e. list of documents and clause 10(ii) of the second instruction i.e. the NIT would show that the tenderer/ contractor is mandatorily required to upload the certificate of registration for sales tax/VAT and the acknowledgement of up-to date return filed, and if the same are not uploaded then the bid shall become invalid, as the consequence has already been provided in the clause itself invalidating the bid if requisite documents are not uploaded.

13. Clause 10(ii) of the CPWD Works Manual 2014 issued by the Central Public Works Department, Government of India, Annexure – 20A.12, also contains the similar provision which reads as under: -

> “10. The bid submitted shall become invalid and e-Tender processing fee shall not be refunded if:
>
> (ii) The bidder does not upload all the documents (including service tax registration/ VAT registration/Sales Tax registration) as stipulated in the bid document including the undertaking about deposition of physical EMD of the scanned copy of EMD uploaded.”

14. Thus, uploading of the certificate of registration of sales tax / VAT and acknowledgement of up-to date return is not only required as per the NIT, but is the condition precedent and essential for submission of valid bid also flowing from the CPWD Manual issued by the Government of India in this behalf.

15. This brings us to the facts of the case as in the instant case, there is no dispute that the petitioner did not upload the sales tax / VAT registration certificate and up to date return so filed to the website on due date. It is the case of the petitioner that he uploaded the tax clearance certificate in lieu of sales tax / VAT registration certificate which was required to be uploaded and uploading of that document – substantially complies with the requisite tender conditions.

It is appropriate to reproduce the said certificate which is as under: -

"CHHATTISGARH COMMERCIAL TAX DEPARTMENT

T.CC No.:1179/2015/01063 Granted On : 22 Jun- 2015

FORM 73

[See Rule 78 (2)]

<u>Tax Clearance Certificate</u>

Certified that Mr./Mrs. SHIV SHANKAR TIWARI Partner of the firm known as Tiwari Construction (22965006788) Karta of the family whose principal place of business situated at Bouripara, Ambikapur, Distt. Surguja (C.G.) within the jurisdiction of the Commercial Tax Officer of AMBIKAPUR circle is not in arrears of any dues on account of tax, interest and penalty under the Chhattisgarh Value Added Tax Act, 2005/*the Central Sales Tax Act, 1956/*the Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976.

The Tax Clearance Certificate granted under clause (a) of sub-rule (2) shall be valid for a period of one year from the date of issue, if not cancelled.

Print Date 22-Jun-2015

Place Circle : AMBIKAPUR

Note: This is System generated copy does not require any signature."

16. By a careful perusal of the aforesaid certificate, it could not be gathered that the petitioner firm is registered under the Central Sales Tax Act, 1956; the Chhattisgarh Commercial Tax Act, 1994; and the Chhattisgarh Value Added Tax Act, 2005. It simply certifies that the petitioner firm is not in arrears of any tax and said certificate has been issued

under Rule 78(2) of relevant State Rules.

17. Before proceeding further, it would be appropriate to consider the scope of judicial review in contractual matters. The scope of judicial review in contractual matters that too in tender matters is very well delineated by the Supreme Court in umpteen number of cases right from **Tata Cellular v. Union of India**[1] in which Their Lordships of the Supreme Court have held that State should be given some more play in the joints and held as under: - (SCC pp. 675-78, paras 70, 74 & 77)

> "70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.
>
> 74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

1 (1994) 6 SCC 651

> 77. The duty of the court is to confine itself to the question of legality. Its concern should be:
>
> > (1) Whether a decision-making authority exceeded its powers?
> >
> > (2) committed an error of law,
> >
> > (3) committed a breach of the rules of natural justice,
> >
> > (4) reached a decision which no reasonable tribunal would have reached, or
> >
> > (5) abused its powers.
>
> Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:
>
> > (i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-maker power and must give effect to it.
> >
> > (ii) Irrationality, namely *Wednesbury*[2] unreasonableness.
> >
> > (iii) Procedural impropriety."

18. In a decision in the matter of **<u>Heinz India Private Limited and another v. State of Uttar Pradesh and others</u>**[3], Their Lordships of the Supreme Court have held that the power of judicial review is neither unqualified nor unlimited. It has its own limitations and observed as under:

> "60. The power of judicial review is neither unqualified nor unlimited. It has its own

2 Associated Provincial Picture Houses Ltd. v Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)

3 (2012) 5 SCC 443

limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of “judicial review” one is instantly reminded of the classic and oft-quoted passage from Council of Civil Service Unions v. Minister for the Civil Service[4], where Lord Diplock summed up the permissible grounds of judicial review thus: (AC pp. 410 D, F-H and 411 A-B)

> "... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. ...
>
> By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable.
>
> By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. ...

4 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)

> I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

19. In a recently pronounced judgment in the matter of **Rishi Kiran Logistics Private Limited v. Board of Trustees of Kandla Port Trust and others**[5], Their Lordships of the Supreme Court have reiterated the law laid down in **Tata Cellular** (supra) and also followed the judgment rendered in **Tejas Constructions and Infrastructure (P) Ltd. v. Municipal Council, Sendhwa**[6] in which **Raunaq International Ltd. v. I.V.R. Construction Ltd.**[7] was relied upon and it was held as under: -

> "**In Tejas Constructions and Infrastructure (P) Ltd. v. Municipal Council, Sendhwa**, the Court was dealing with the case of challenge to the awarding of contract to the second respondent in the writ petition on the ground that he had not complied with eligibility requirements in NIT. Para 17 of that case reads as follows: (SCC p. 470)
>
> > "17. In Raunaq International Ltd. v. I.V.R. Construction Ltd. this Court reiterated the

5 (2015) 13 SCC 233
6 (2012) 6 SCC 464
7 (1999) 1 SCC 492

principle governing the process of judicial review and held that the writ court would not be justified in interfering with commercial transactions in which the State is one of the parties to the same except where there is substantial public interest involved and in cases where the transaction is mala fide."

20. In the matter of **G.J. Fernandez v. State of Karnataka and others**[8], Their Lordships of the Supreme Court have pointed out the distinction between essential and non-essential conditions of eligibility as under: -

> "15. Thirdly, the conditions and stipulations in a tender notice like this have two types of consequences. The first is that the party issuing the tender has the right to punctiliously and rigidly enforce them. Thus, if a party does not strictly comply with the requirements of para III, V or VI of the NIT, it is open to the KPC to decline to consider the party for the contract and if a party comes to court saying that the KPC should be stopped from doing so, the court will decline relief. The second consequence, indicated by this Court in earlier decisions, is not that the KPC cannot deviate from these guidelines at all in any situation but that any deviation, if made, should not result in arbitrariness or discrimination. It comes in for application where the non-conformity with, or relaxation from, the prescribed standards results in some substantial prejudice or injustice to any of the parties involved or to public interest in general. ...."

21. Similarly, in the matter of **Poddar Steel Corporation v. Ganesh Engineering Works and others**[9], the Supreme Court following the law laid down in **G.J. Fernandez**

8 (1990) 2 SCC 488
9 (1991) 3 SCC 273

(supra) again pointed out the distinction between essential conditions of eligibility and non-essential conditions of eligibility. Relevant paragraph states as under: -

> "6. ...... As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories – those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal complaints of the condition in appropriate cases. This aspect was examined by this Court in G.J. Fernandez v. State of Karnataka[1] a case dealing with tenders. ......"

22. Thereafter, in the matter of **West Bengal State Electricity Board v. Patel Engineering Co. Ltd. and others**[10], the Supreme Court has held as under: -

> "The appellant, respondent Nos.1 to 4 and respondent Nos.10 & 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfill pre-qualification alone are invited to bid, adherence to the instructions cannot be given a go-bye by branding it as a pedantic approach otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the Rule of law and our constitutional values. The very

10 (2001) 2 SCC 451

> purpose of issuing Rules/instructions is to ensure their enforcement lest the Rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubt in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the Rules, it has to be done strictly in compliance with the Rules. We have, therefore, no hesitation in concluding that adherence to ITB or Rules is the best principle to be followed, which is also in the best public interest."

23. Likewise, the Supreme Court following the judgment of **G.J. Fernandez** (supra) in the matter of **Kanhaiya Lal Agrawal v. Union of India**[11] held as under: -

> "It is settled law that when an essential condition of tender is not complied with, it is open to the person inviting tender to reject the same. Whether a condition is essential or collateral could be ascertained by reference to consequence of non-compliance thereto. If non-fulfillment of the requirement results in rejection of the tender, then it would be essential part of the tender otherwise it is only a collateral term. This legal position has been well explained in G.J. Fernandez v. State of Karnataka & Ors."

24. In a very recently pronounced judgment in the matter of **Om Prakash Sharma v. Ramesh Chand Prashar & Ors.**[12], Their Lordships reiterated and followed the law laid

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11 (2002) 6 SCC 315
12 AIR 2016 SC 2570

down in **Poddar Steel Corporation** (supra) with approval and maintained the distinction between the essential conditions of eligibility and those which are ancillary or subsidiary with the main object to be achieved.

25. After considering the same, the Supreme Court held in **Om Prakash Sharma** (supra) that the requirement of annual financial turnover was not an inevitable condition of the contract in the facts and circumstances of the case and was not a mandatory condition which would make the bid liable for rejection.

26. Thus, Their Lordships of the Supreme Court have clearly laid down that non-compliance of only essential conditions of tender would make the tender liable for rejection and if the condition violated is non-essential, but is collateral or ancillary, the tender shall be acceptable.

27. As far as present case is concerned, the essential condition is uploading of registration certificate of sales tax/ VAT certification and updated return within the stipulated time.

28. In the facts and circumstances of the case, we are clearly of the view that above-stated pre-condition of eligibility in notice inviting tender i.e. uploading the certificate of registration of sales tax/VAT and acknowledgement of up

to date return filed, is an essential condition for the following reasons: -

(i) That, Section 7 of the Central Sales Tax Act, 1956 and the Rules made thereunder namely the Central Sales Tax (Registration and Turnover) Rules, 1957; Section 16 of the Chhattisgarh Value Added Tax Act, 2005; and Section 22 of the Chhattisgarh Commercial Tax Act, 1994 and the Rules made thereunder provide for registration of dealers. The registering authority after obtaining necessary particulars of the firm i.e. who is proprietor of the firm, address duly verified the details as per the prescribed proforma; after due enquiry of the firm issues registration certificate in Form B under Rule 3 of the Rules of 1957 and similar certificates are issued under the State Rules. The certificate of registration issued under the Rules of 1957 requires various information as prescribed in Form B [See Rule 6(1)] – Certificate of Registration of the Rules of 1957. It is well settled that registration confers certain benefits, privileges and concessions. The object of insisting for registration certificate is also to secure the existence of firm. It is pertinent to mention here that the authority under the Central Sales Tax Act, 1956 and the Act of

2005, issue registration certificate after conducting enquiry with regard to the details / particulars given in the firm as such in case of any illegality committed by the firm in execution of contract with the authority granting tender, that authority can take assistance of the particulars given in the registration form for taking action against the person who is in-charge of the firm, if required. Whereas, the Tax Clearance Certificate simply certifies the fact that tax is not due to the said firm and no where it provides details as is furnished in the registration certificate issued under the Central Rules of 1957 and under the State Rules.

(ii) Notice inviting tender and its annexed documents require uploading of sales tax registration/VAT registration. Thus, uploading sales tax registration includes uploading of the certificate of registration issued under the CST Act, 1956 as well as the State Act i.e. the Chhattisgarh Commercial Tax Act, 1994, whereas the Tax Clearance Certificate filed by the petitioner no where gives details of registration under both the Acts and thus, it cannot be held that the petitioner has complied with said condition of the tender document.

(iii) That, clause 10(ii) of the CPWD Works Manual 2014 as well as clause 10(ii) of the tender document clearly provides that bid submitted shall become invalid, if the bidder does not upload the requisite document including service tax registration/VAT registration, as the consequence of non-loading itself is provided not only in the NIT but also in the instructions issued by the CPWD in that behalf making the condition essential for valid bid.

29. Thus, applying the law laid down by Their Lordships of the Supreme Court in afore-cited cases and in view of the findings recorded herein-above that the pre-condition of eligibility in the NIT requiring the petitioner to upload the VAT/sales tax registration certificate was essential condition which the petitioner has failed to upload within the time prescribed and the tax clearance certificate cannot be said to be substantially complied and the condition requiring uploading of the VAT or registration certificate cannot be said the ancillary or subsidiary condition, which could be waived off. Therefore, the respondent authorities are absolutely justified in rejecting the technical bid of the petitioner for non-compliance of clauses (V) and 10(iii) of the NIT and further justified in rejecting the representation

of the petitioner by Annexure P-5.

30. As a fall out and consequence of the aforesaid discussion, we hold that the respondent authorities are perfectly justified in rejecting the technical bid(s) and representation(s) of the petitioner for want of compliance of the valid eligibility conditions, as such, W.P.(C) Nos.1121/2016, 1122/2016 and 1123/2016 deserve to be and are accordingly dismissed leaving the parties to bear their own costs.

Sd/-	Sd/-
(Deepak Gupta)	(Sanjay K. Agrawal)
Chief Justice	Judge

Soma