

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 469 of 2017

- Suraksha Solutions Through Its Proprietor Sayyed Rajjak Ali S/o Shri Sayyed Maksud Ali, Aged About 32 Years Address Ward No. 10, Indu Chowk, Bilaspur District Bilaspur (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Home Department, Mahanadi Bhawan, New Raipur District Raipur (Chhattisgarh).
2. Director General Of Police (Jail), Headquarters Prisons And Correctional Services, Raipur District Raipur (Chhattisgarh).
3. M/s Kothari Sales Corporation, 1st Floor, 104 Maruti Enclave, Near Axix Bank, Tatiband, Raipur (Chhattisgarh).
4. Honeywell Security & Fire, (A Division Of Honeywell International Pvt. Ltd.) Unitech Trade Centre, 5th Floor, Sector 43, Block C, Sushant Lok Phase- I, Gurgaon, 122002 Haryana.

---- Respondent

For Petitioner	:	Shri Anup Majumdar, Advocate.
For Respondents No.1 & 2	:	Shri J.K. Gilda, Advocate General.

Hon'ble The Chief Justice

Hon'ble Shri Justice Pritinker Diwaker

Order On Board by The Chief Justice

23/03/2017

This writ petition is filed challenging the award of a non-statutory

contract by the government to the 3rd respondent.

02. We have heard learned counsel for the petitioner and learned Advocate General on the basis of pleadings and materials on record.

03. The petitioner and the 3rd respondent were competitors on an invitation for offers to supply CCTV and other equipments for the jails in the State. The 4th respondent is the manufacture from whom the petitioner intended to supply. It is an admitted situation that the tender number which is the identification mark of the invitation of offers was not reflected in the document presented by the petitioner. That is attributed to mixing of facts by the 4th respondent and it is stated that the number that was entered was the number of the form which was given by the State.

04. The issue that arises for decision on the basis of pleadings of the petitioner and the State is whether it would be justified for this Court in exercising writ jurisdiction to adjudicate the controversy in hand? For one thing, as already noted, the matter rests in the realm of non-statutory contract, not referable to any statutory function of the State Government. Secondly and more importantly, the question as to whether the State Government should or should not have accepted the technical bid of the petitioner on a ground referable to the admittedly erroneous entry of the tender number in the tender document submitted by the petitioner can be decided only on adjudication of disputed facts on the basis of evidence. Such an exercise cannot be carried out through a writ jurisdiction. Thirdly, it needs to be emphatically noted that the petitioner has an efficacious alternative

remedy if a case of breach of contract or unlawful exclusion from the zone of consideration has been done in violation of any legal right.

5. Having regard to the provisions available in the Specific Relief Act and in the law relating to contract and compensation and also damages, we are of the view that the reliefs sought for cannot be granted in writ jurisdiction as the petitioner has an efficacious alternative remedy.

6. Learned counsel for the petitioner made reference to the decision of the Apex Court in the matter of ***M/s Poddar Steel Corporation Vs. M/s Ganesh Engineering Works and others***, reported in ***AIR 1991 SC 1579***, to point out that there is always a nice distinction maintained between the two categories of conditions of invitation of tender; the mandatory conditions which cannot be eschewed for whatever reasons while the directory conditions where different approaches may be adopted to hold that a contract should or should not fail on account of breach of any of those conditions. Such issue rests entirely on the facts of each case depending upon the materials placed before the Court which adjudicates it. In the case in hand, we are of the view that such an adjudication cannot be carried out in writ jurisdiction.

7. It is further submitted by the learned counsel for the petitioner that his client's plea is not that an erroneous entry has been made, but that there was no requirement for the petitioner to mention any number at all, be it tender number or the form number. The identity of the tender is an inexcusable requirement for any offeree to identify the

tender made by an offerer in response to the invitation of tender in issue. Hence, it cannot be gainsaid that there was no requirement to mention the tender number. That plea is repelled.

8. For the aforesaid reasons, this writ petition fails and is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)

Chief Justice

Sd/-

(Pritinker Diwaker)

Judge