

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1256 of 2017**

- M/s. Gayatri Construction, Civil Engineer and Government Contractor, through its proprietor Anurag Jaiswal, W/o. Jawahar Lal Jaiswal, aged about 46 years, R/o. Flat No. 307, Vaishali Pride, Minocha Colony, Mungeli Road, Bilaspur (C.G.)

---- Petitioner**Versus**

1. State of C.G. through Secretary Public Health Engineering Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District – Raipur (C.G.)
2. Executive Engineer, Public Health Engineering Division Bilaspur, District – Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Shri C. Jayant K. Rao, Advocate
For State/Respondents	:	Shri J.K. Gilda, Advocate General.

Hon'ble Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****12.05.2017**

1. The writ petitioner submitted an application for issuance of tender document following Annexure-P/2, Notice Inviting Tender (NIT), issued by the Executive Engineer, P.H.E. Department, Division Bilaspur dated 17.02.2017. The last date for issuance of blank tender forms was fixed in that NIT as 09.03.2017. It appears that the said date got altered and ultimately the comparative evaluation of those who had applied for issuance of tender document was formulated and issued on 15.03.2017 through Annexure-P/3. Though that was on 15.03.2017, the petitioner claims that on 16.03.2017 and 17.03.2017 he was not issued the tender document though he was available in the office of the 2nd Respondent. On 17.03.2017 he was ready with the amount of Rs.750/- which had to

be remitted for the issuance of the tender document, contends the Petitioner. Ultimately the work has been awarded to two persons who were not impleaded in this writ Petition. Challenge levied is fundamentally on the premise that the petitioner has been excluded from the zone of consideration by denying him the tender document.

2. We have heard the learned counsel for the Petitioner and the learned counsel for the Respondents on the basis of the pleadings and materials placed by the Petitioner and original records in relation to the tender which have been brought to this Court pursuant to order dated 11.05.2017. The Executive Engineer, P.H.E. Department, Division Bilaspur is present and he has assisted us in going through the relevant papers in the original records.
3. The pointed challenge is on the basis that tender forms were not issued to the Petitioner following his inclusion in Annexure-P/3, list of persons eligible for being issued blank tender forms. This is attributed to the office of the 2nd Respondent where the Petitioner alleges that he was present on 15.03.2017, 16.03.2017 etc. It is seen from the records that those persons who have been awarded the contract were issued the tender document on 17.03.2017. We cannot but draw a permissive presumption in terms of Section 114 of the Indian Evidence Act and the principles contained therein as to the regularity and propriety of the official acts carried out in the office of the 2nd Respondent – Executive Engineer, as regards receipt of Rs.750/- and issuance of the tender form are concerned. The probable amount of contract for the two contracts which are dealt with through Annexure-P/1 is below 20 Lacs and therefore, we are told by the learned Advocate General that online tender process is not resorted. Looking at the allegations of the

Petitioner, which is pointedly on the non-issuance of the blank tender document and receipt of payment for that purpose, we see that if the Petitioner had to voice his grievance, we, in the common course of human conduct of a contractor, would expect the Petitioner to have reacted immediately to the non-receipt of the value of the blank tender form and non-issuance of the blank tender form immediately after 15.03.2017. To our pointed query, there is no material to show that any time in March or even in April, he had made any complaint to any of the higher authorities. This writ petition is instituted on 27.04.2017. We record the submission of the learned counsel for the Petitioner that he has with him a copy of the Advocate's notice before institution of the writ petition. That, in our opinion, is not sufficient to infer that the 2nd Respondent has not carried out the official acts as are called for in the situation. We are also not able to conclude on the basis of the materials, or reasonably presume in accordance with law, that the Petitioner had, in fact, attempted to remit the amount due for blank tender form. We are, therefore, unable to grant any relief in this matter. For these reasons, the writ petition fails.

4. In the result, the writ petition is dismissed.
5. The original records as made available by the Executive Engineer, P.H.E. Department, Division Bilaspur in the presence of the learned Advocate General are returned to the said officer.

Sd/-
(Thottathil B. Radhakrishnan)
 Chief Justice

Sd/-
(P. Sam Koshy)
 Judge