

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 15/12/2016****Judgment Delivered on : 30/01/2017****Writ Petition (C) No. 2668 of 2016**

Tejas Constructions & Infrastructure Private Limited, Regd. Office at: C-44, Shrinath Plaza, 2nd Floor, Dnyaneshwar Paduka Chowk, FC Road, Shivajinagar, Pune 411005, through its Project Manager Shri Sudhir Prabhakar Warjekar son of Shri Prabhakar R Warjekar aged about 46 years. Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through its Secretary, Ministry of Urban Administration, Mahanadi Bhawan, Capital Complex, Secretariat, Naya Raipur.
2. Municipal Corporation, Bhilai, Through its Commissioner, Bhilai, District Durg.
3. The Indian Hume Pipe Co. Ltd. Through its Director, Construction House 5, Walchand Hirachand Marg, Ballard Estate, Mumbai 400004.

---- Respondents

For Petitioner	: Shri B.P.Sharma, Advocate.
For Respondent/State	: Shri Arun Sao, Deputy Advocate General.
For Respondent No. 2	: Shri H.B.Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

C.A.V. Judgment**Per Deepak Gupta, Chief Justice**

1. The Petitioner by means of this writ petition has challenged the decision of the Respondents in rejecting the bid submitted by the Petitioner on the ground that it was not technically qualified.

2. Briefly stated, the facts of the case are that Respondent-Municipal Corporation, Bhilai floated a tender for augmentation of water supply scheme Part II, Bhilai. The condition with which we are concerned reads as follows:

S.No	Clause Reference	Corrigendum & Addendum
1.	Technical Pre-qualification criteria	xxx xxx xxx
		READ- Technical Pre-qualification Criteria Package-III Prequalification Capacity (a) 12800 KL AND (b) 1 OHSR of 1600 KL @ 20 m staging (refer notes below) Notes: 1. Joint ventures shall not be allowed for the bidding process. 2. The experience for last five years shall only be considered for prequalification criteria. 3.(i) the contractor must have experience of constructing at least one OHT of 1600 KL with staging height 80% of the maximum staging given in NIT (ii) The contractor should have experience of constructing consolidated storage capacity of 12800 KL”

3. The Petitioner's bid has been rejected by the Respondent-Corporation only on the ground that it does not have experience of construction of overhead service reservoir (hereinafter called 'the OHSR') of 1600 KL at 20 meter staging. The Petitioner contends that the documents supplied by him on record clearly indicate that it has sufficient experience in this regard. The Petitioner claims that it has constructed 12900 KL of OHSR and the details given by it are as follows:

Dhar	3390 KL
Allirajpur	450 KL
Bhokar	810 KL
Maheshwar	1300 KL

Pandhurna	3450 KL
<u>Nandurbar</u>	<u>3500 KL</u>
Total	12900 KL

4. Therefore, the Petitioner contends that it has constructed 12900 KL capacity of OHSR and this has not been considered by the Respondents.
5. The whole dispute revolves around the question whether the “break pressure tank” (hereinafter called 'the BPT') constructed by the Petitioner can be considered to be OHSR or not.
6. The case of the Petitioner is that even the BPT has been constructed at 12 meter staging which means at a height of 12 meters and therefore the BPT should be included in OHSR. It is contended by Shri B.P.Sharma, learned counsel for the Petitioner that a BPT is also constructed as OHSR and therefore this must be taken into consideration.
7. On the other hand, Shri H.B.Agrawal, learned Senior Counsel submits that even as per the certificate enclosed by the Petitioner alongwith its tender form, there were two types of tanks shown. The first was elevated service reservoir (hereinafter called the 'ESR') which were treated to be equivalent to OHSR. He submits that the Petitioner's certificate itself shows that the BPT was of 4.5 Lacs liters capacity with staging of 12 meters. Since the BPT was not shown to be an ESR, the BPT cannot be considered. It is contended by Shri Agrawal that OHSR or ESR had a totally different style of construction than a BPT. The two are not equivalent and experience of one cannot be taken into the experience of another. In BPT the water is collected from Water Treatment Plant and thereafter through pump it is transferred to OHSR whereas in OHSR the water is pumped from ground source and through gravitational force it is supplied to the local residents of the area. In this regard, he has relied upon the definition of service reservoir which is as follows:

“The service reservoirs provide a suitable reserve of treated water with minimum interruptions of supply due to failure of mains, pumps etc. They also enable meeting the widely fluctuating demands when the supply is by intermittent pumping. They are also helpful in reducing the size of the mains which would otherwise be necessary to meet the peak rates of demand. They can serve as an alternative to partial duplication of an existing feeder main as the load on the main increases”.

8. The question whether a BPT should be treated to be the same as OHSR is a technical question, not for this Court to decide. It is for the Respondent-Corporation to decide whether to take this experience into consideration or not.
9. Furthermore, we are of the view that even in the certificate relied upon by the Petitioner, the ESR has been treated separately than a BPT and the two cannot be said to be the same. It has also been contended by Shri Agrawal that the method of construction of OHSR is totally different from a BPT. We therefore are in agreement with the Respondent-Corporation that the experience of the Petitioner in construction of BPT could not be counted while calculating his eligibility criteria.
10. In view of above, we find no merit in the writ petition. It is accordingly dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE