

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1010 of 2017**

M/s Nagendra Kumar Pandey through its proprietor Nagendra Kumar Pandey,
S/o Dr. Gayatri Prasad Pandey aged about 51 years R/o Songanga Colony,
Tiraha Post SECL Sipat Road, Police Station Sarkanda, Tehsil and District
Bilaspur (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh Through : Secretary Urban Administration and Development Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)
2. The Municipal Corporation Raipur through the Municipal Commissioner, White House, Kalibadi Raipur District Raipur (C.G.)

---- Respondents

For Petitioner	:	Shri Rahul Jha, Advocate
For State/Respondent No.1	:	Shri Avinash Singh, Panel Lawyer
For Respondent No. 2	:	Shri Pankaj Agrawal, Advocate

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

Order on Board**Per, Thottathil B. Radhakrishnan, Chief Justice****19/04/2017**

1. The Petitioner has challenged a provision of the tender document which is part of Annexure-P/1 issued by the Raipur Municipal Corporation.
2. We have heard the learned counsel for the Petitioner, the learned counsel for the Corporation and the learned State counsel.
3. Raipur, Municipal Corporation issued the tender document for lump sum contract for augmentation of Water Supply Scheme Part II, Raipur under

Amrut Mission. The tender document relates to design, construction, testing and commissioning of 01 No. of overhead service reservoir (for capacity 4900 KL, staging height-25 m) at Ramnagar area under Raipur Municipal Corporation including 12 months of trial run. The estimated costs of the project is Rs.216.35 lakhs. The eligibility criteria prescribed for the bidders include works experience which insist, inter alia that the contractor should have an experience of construction of minimum 2450 KL capacity at 20 m staging in a single contract. It is this prescription as to work experience which the Petitioner challenges, obviously because it does not have material to show that it satisfies the said criteria.

4. As already noted, the volumetric capacity of the overhead service reservoir for which Annexure-P/1 has been issued is 4900 KL while the qualification prescribed is pegged at minimum 2450 KL capacity which is less than the requirement for the proposed structure. The staging height required for the proposed project is 25 m, whereas the work experience required is 20 m. The work experience required is a combination of the volumetric capacity of 2450 KL and the staging height of 20 m in a single contract.
5. The Petitioner has also levied challenge to the tender documents relating to Shyamnagar area where the only difference is that the volumetric capacity and the staging height of the proposed structure and the volumetric capacity and the staging height in terms of the requisite working experience varies from the prescription with relation to overhead service reservoir at Ramnagar area. There also the relevant data disclose that the volumetric capacity and the staging height required in terms of the prescribed experience is lesser than the volumetric capacity and the staging height required for the proposed structure.
6. We have noticed the aforesaid only to assure for ourselves that the authority which has invited tender has not made any prescription much in

excess of what could be reflected by its gauge of requirement.

7. That apart, we cannot ignore the fact that the prescription of the volumetric capacity as well as the staging height of a proposed overhead service reservoir and prescriptions as to qualifications of contractors who could offer, are purely matters within the technical realm and the persons who are dealing with that would have arrived at the requisite conclusion as regards such prescriptions. This is the only manner in which we can look at the issue. We have to presume that official acts in relation to the prescription of qualifications and tender conditions as well as the publication of tender have been duly carried out. There is no plea for the Petitioner that the prescription of the qualification relating to the capacity and the staging height of a single project of a competing contractor has been arrived at on technical issues which can be described as absurd on the basis of scientific data or scientific advice, discernible from the materials on record. Bereft of such materials being available, it would not be permissible for the judiciary to interfere with the finalisation of the tender conditions because unless technical and scientific absurdity is demonstrated to the satisfaction of any competent authority, it would be impermissible for us to hold that the situation in hand is the result of arbitrary exercise of power. It is also not shown by the Petitioner that the irrelevant facts and materials have been taken into consideration or that relevant materials have been excluded from the zone of consideration by the competent authority.
8. With the aforesaid, we also note that it is not within the judicial domain to force the Corporation, which is an independent statutory body and a constitutional institution, in terms of constitutional provisions, to abide by the terms and scales of the decisions taken by the Government or other institutions. The Corporation can have its own prescriptions to suit the requirement for which tender were invited.

9. For the aforesaid reasons, we do not find any ground to interfere with the terms of the impugned invitations for offers. The writ petition, therefore, fails.

10. In the result, the writ petition is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(P. Sam Koshy)
Judge