

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1200 of 2017**

R.K. Transport & Construction Pvt. Ltd. Reg. No. 015609, Through Its Director, Mr. Amar Agrawal, S/o. Shri Satyanarayan Agrawal, Aged About 48 Years, Having Its Head Office At 65- A, Transport Nagar, Korba 495677, Chhattisgarh.

---- **Petitioner**

Versus

1. State Of Chhattisgarh Water Resources Department, Through The Engineer-In- Chief, Sihawa Bhawan, Civil Lines, Raipur (Chhattisgarh)
2. Chief Engineer, Minimata (Hasdeo) Bango Project, Water Resources Department, Bilaspur (Chhattisgarh)
3. Executive Engineer, Hasdeo Barrage W/ M Divison, Rampur/ Korba (Chhattisgarh)
4. Superintending Engineer, Hasdeo Project Circle, Rampur/ Korba (Chhattisgarh)
5. Superintending Engineer, MIS Cell, Data Centre, Raipur (Chhattisgarh)
6. D. Thakkar Constructions Pvt. Ltd., D T C Chambers, P- 119, Wadi- Hingna Road, Next To Ajmera Tyres, Nagpur (Maharashtra)
7. S E W Infrastructure, Limited, 6-3-871, Snehalata, Greenlands Road, Begumpet, Hyderabad- 500 016. Telengana (India)

---- **Respondents**

For Petitioner	: Shri Kshitij Sharma, Advocate
For State	: Shri J.K. Gilda, Advocate General with Shri Avinash Singh, Panel Lawyer
Respondent No.6	: Shri Sunil Otmani, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****Order On Board**

Per Thottathil B. Radhakrishnan, Chief Justice

16/08/2017

1. This Writ Petition is filed challenging the rejection of the petitioner's technical bid submitted in response to the Notice Inviting Tender (for short, '*NIT*') for construction of Sarweshwar Anicut on Hasdeo river.
2. Heard the learned counsel for the petitioner, the learned Advocate General and the learned counsel for the contesting respondent- 6 which has been awarded the work.
3. The work is part of Minimata (Hasdeo) Bango Project of the Water Resources Department of the Government of Chhattisgarh. It carried a Probable Amount of Contract (for short, '*PAC*') of Rs.53,10,04,628/- that is to say, above Rs.53 Crores and 10 Lakhs.
4. This Writ Petition was instituted on 26/04/2017 alleging that as per Annexure P/2 dated 21/04/2017, the petitioner was informed through e-mail that its bid is rejected. That was on the basis of Annexure P/1, communication dated 19/04/2017 issued by the Chief Engineer, Water Resource Department to various subordinate officers to the effect that the offer made by the petitioner supported by the Pre-Qualification Certificate (for short, '*PQC*') dated 19/12/2016 need not be further proceeded with and that PQC cannot be acted upon, but had to be amended. It appears that the petitioner was earlier issued a show cause

notice against the contents of the PQC which is a document to be compulsorily submitted along with the response to the NIT. The PQC was found to have included certain entries regarding the turn over which included the turn over of some consortium or group by way of joint venture, of which the petitioner was a participant. Obviously, therefore, the department took the stand that the PQC regarding the turnover as submitted by the petitioner along with the bid was not acceptable though the department was prepared to issue to the petitioner a revised PQC by excluding the ineligible quantity which was referable to other participants in the petitioner's consortium or the joint ventures.

5. In its pursuit to reach at materials to support the writ petition, the petitioner has obtained the file notings which are placed on record. We have gone through those material as well, apart from the pleadings and materials produced by all sides.
6. Before proceeding further, we may here and now notice that an interlocutory order was issued by this Court on 28/04/2017 directing this case to be listed on 02/05/2017 to enable the State to file return on relevant aspects. It was also ordered that in the meanwhile, the work order shall not be issued, if not already issued. That situation continued. Certain amendments to the pleadings were brought in. Thereafter, during the course of further consideration, it was found appropriate to see whether any useful purpose will be achieved by carrying forward this adjudication in the wake of the financial bids. An order was

accordingly issued on 10/05/2017 requiring the Chief Engineer concerned to adopt confidential procedure and open the financial bid of the petitioner also and provide to this Court a comparative tabular statement of the gross details regarding the financial bid submitted by the petitioner and such details regarding the bids submitted by the two private respondents, in a sealed cover, for perusal of this Court. It appears that the Government carried this matter before the Hon'ble Supreme Court. That resulted in leaving the parties with liberty to agitate their grounds before the High Court. Thereafter, it was noticed that the confidentiality of the financial bids was no germane. Hence it was directed to open up the the financial bid as well and place all materials. Such data is made available in the form of Annexure D/2 along with I.A. No. 5/2017 filed on behalf of the department. We have perused the said data. It shows among other things, that out of the five bidders, the petitioner and two others were disqualified, while two were found qualified, on evaluation of the technical bid. Thereupon, on comparison of financial bids of the two who succeeded at the technical bid stage, the contesting respondent No. 6 was found to be the one who had quoted the lowest. Just as part of evaluating for ourselves as to the quality of the competitive bidding in so far as the financial bids are concerned, we may note that those three bidders whose technical bids failed had quoted around 18 to 21% below the PAC. While those who had succeeded in the technical bid had quoted between 5 to 8 % above the PAC. The successful respondent No. 6 had quoted

5.51% over and above the PAC. This is how the work was awarded to it.

7. Examining the materials on record and on hearing the learned counsel for the parties in the light of the pleadings, we see that the PQC is relatable to the minimum turnover benchmark that had to be achieved to be admitted to the financial bid stage after clearing the technical bid stage. PQC is a document which has to accompany the Bid submitted in response to the NIT. The specificity of that document is of critical importance. In the case of the petitioner it was ultimately noted that the PQC furnished along with the Bid had included turnovers which were not accountable to the petitioner but were relatable to its business participants in the consortium or joint ventures. The petitioner may be justified in saying that even if those amounts are excluded, it would be within the required benchmark for the PQC for the NIT which we are dealing with. That may be factually correct. Yet, in the realm of adjudications relating to award of contract, it is not advisable to make a choice through judicial intervention in such issues because it is the clear insistence and term of the NIT that the PQC shall be placed along with the Bids and that shall reflect the complete state of affairs. Even if any further modification had to be made to the PQC regarding the turnover, that is not something which can be forced on the Government, which is the bargaining party, to accede to. Judicial order cannot be issued for such a purpose. We say this, more

importantly, because, though the PQC was also issued by the State Government's department, the fact of the matter remains that the basic data for providing such certificate is furnished by the petitioner itself. May be, the department has to cross-check such data. But, that does not turn the table as against the State or the person in whose favour the contract has been awarded. This is because the State Government authorities have followed only what it had prescribed as part of the NIT. The practicality or otherwise of the acceptance of the revised PQC is not an element on which there can be an adjudication and resultant compulsion on the State, which is the contracting party, to enter into a particular contract in preference to another. That would be outside the domain of judicial review.

8. For the aforesaid reasons, we do not see any ground to interfere at the instance of the petitioner and grant any relief as sought for. Since the petitioner is apprehensive that the impugned order may result in its blacklisting, we may record that the clear stand of the official respondents and the submissions of the learned Advocate General on behalf of the State is that the petitioner is not blacklisted, with reference to this particular issue, in relation to any other contract which is now being carried on or for any other contract which may come in future and all such situations will depend upon the revised PQC, to the extent that may be relevant.

9. In the result, subject to what is recorded in paragraph No. 8

above, this Writ Petition fails and it is accordingly dismissed. No costs.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge

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