

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1295 of 2017**

- M/s Nilkamal Limited, through its Regional Manager Arindam Mukherjee, S/o Late Shri S. K. Mukherjee, aged about 47 Years, R/o Shree Sai Bhumi, Flat No. 351, Behind Luthra Temple, Gurunanak Chowk, Torwa, Police Station Torwa, Bilaspur, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Department of Urban Administration, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
2. Bilaspur Municipal Corporation, through its Commissioner, District Bilaspur (Chhattisgarh)
3. M/s Ghanshyam Engineering Industries, Ghanshyam House, 9/ Shrinagar Society, Near Golden Triangle, Opposite Sardar Patel Stadium, Ahmedabad (Gujrat)
4. Superintendent Engineer, Municipal Corporation, Bilaspur, District Bilaspur Chhattisgarh

---- Respondents

For Petitioner	: Shri Sunil Otvani, Advocate
For Respondent No.1/State	: Shri U.N.S. Deo, Government Advocate
For Respondent No.2 & 4 /Corporation	: Shri A.S. Kachhawaha, Advocate
For Respondent No.3	: Shri Abhishek Vinod Deshmukh, Advocate

Hon'ble Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Sharad Kumar Gupta

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****04.07.2017**

1. We have heard the learned counsel for the Petitioner, the learned Government Advocate, the learned counsel for Municipal Corporation and the learned counsel for the contesting private Respondent No.3.
2. The 2nd Respondent proceeded to purchase waste-bins of different colours as part of its idea to provide such containers for the homes to keep the

domestic waste collected for disposal. The Notice Inviting Tender (NIT) was issued. The petitioner was disqualified on the ground that he had not produced the required notarized copies of documents. Ultimately, that NIT was cancelled. Following the issuance of the 2nd NIT, the Petitioner, the 3rd Respondent and another were considered at the stage of technical bid. The Petitioner's technical bid was found to be in order. The 3rd Respondent's technical bid was also found to be in order. But, on the basis of the competitive rates quoted by them, the 3rd Respondent's financial bid was accepted by the 2nd Respondent-Corporation and thereby the 3rd Respondent was treated as LT-1, meaning thereby the tenderer who had quoted the lowest rate. The Petitioner was LT-2 as its tender is 2nd lowest. Petitioner challenges the identification of the 3rd Respondent as LT-1, on the plea that its technical bid ought not to have been cleared.

3. Petitioner's contention is that among the three enumerated documents in paragraph 4 of Annexure-P/5 NIT, issued on 20.02.2017, the tenderers were required to submit notarized copies of those documents, however that; the 3rd Respondent had not given the notarized copies, but had tendered only photocopies of the notarized documents. This is the plea on which the Petitioner seeks to upturn the decision of the Corporation holding that the 3rd Respondent had successfully cleared at the consideration of its technical bid. The learned counsel for the Petitioner pointed out that when the Petitioner did not produce notarized documents in response to the 1st NIT, he was found to be unqualified. According to the learned counsel, applying the same yardstick, the 3rd Respondent should be treated as unqualified because he had not produced the notarized copy of the documents in response of the 2nd NIT, but had only produced photocopies of the notarized documents. We should remember that the Corporation was not dealing with

a statutory contract though it was required in terms of Constitution and the laws to ensure transparency in its transactions and to exclude arbitrariness and hostile discrimination in its actions. Reasonableness of the Corporation in such a matter is a prime concern. The 3rd Respondent had also responded along with the Petitioner to the 1st NIT. It is not in dispute that the 3rd Respondent had submitted the notarized documents in response to the 1st NIT. Those documents were available to the 1st Respondent. Therefore, while submitting the tender in response of the 2nd NIT, the 3rd Respondent submitted to the Corporation the photocopies of the notarized documents which were already in the custody of the 1st Respondent though in connection with the 1st NIT. The Petitioner's learned counsel has pointed out that the 2nd NIT does not contain any clause authorizing the Corporation to dilute the prescriptions contained in Annexure-P/5. That is correct. However, it cannot be treated as principle of law that while dealing with contracts of such nature, the Corporation should be excluded from taking into consideration the documents which are already in the custody of the Corporation; that too in connection with the immediately preceding NIT, which was for the same purpose and when the present NIT was issued because the 1st NIT failed on account of lack of competition.

4. For the aforesaid reasons, we are unable to hold that there is any issue which could be treated as sufficient enough to interfere with the clearance of the 3rd Respondent as eligible at the technical bid stage while dealing with the tender following the 2nd NIT. We record the submission of the learned counsel for the Corporation that certain other aspects which required to be cross-checked, including as regard the quality and production capacity of the 3rd Respondent unit, have been obtained under due certification of the competent authority.

5. With the aforesaid, we do not find any reason to grant relief sought for by the Petitioner. This writ petition, therefore, fails.
6. In the result, the writ petition is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge