

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (C) No. 2039 of 2017**

Agrawal Stone Crushing Company Through Its Sole Proprietor Mr. Subhash Chandra Agrawal S/o Late Shree Jagannath Prasad Agrawal, Age 54, Having Its Office At Shree Kishan Complex, S-7, Stadium Road, T.P.Nagar, Korba, Chhattisgarh 495677 .

---- **Petitioner**

Versus

1. State Of Chhattisgarh, Water Resources Department, Through The Engineer-In-Chief, Sihawa Bhawan, Civil Lines, Raipur, Chhattisgarh
2. Chief Engineer, Mahanadi Godawari Basin, Water Resources Department, Raipur, Chhattisgarh
3. Executive Engineer, Mahanadi Godawari Basin, Water Resources Department, Raipur, Chhattisgarh
4. Superintending Engineer, Water Resources And Ground Water Survey Circle, Raipur, Chhattisgarh
5. M/s Arya Construction Company, Flat No.102, Shanti Niwas, Cuttack Road, Bhubaneswar 751010, Odisha

---- **Respondents**

For Petitioner	: Shri Rishabh Garg, Advocate
For State	: Shri Prafull N. Bharat, Additional Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****Order On Board****Per Thottathil B. Radhakrishnan, Chief Justice****07/09/2017**

1. Heard learned counsel for the petitioner and learned Additional Advocate General for the State quite in *extensio* in this writ petition filed challenging the rejection of the petitioner's technical

bid in relation to a Notice Inviting Tender (for short, 'NIT') for renovation of an anicut.

2. The work stands awarded to the 5th respondent and he is now carrying on the work.
3. The aforesaid position notwithstanding we have examined the contentions of the petitioner. The Pre-qualification Certificate (for short, 'PQC') is issued by the Engineer-in-Chief of the Water Resources Department of the Government of Chhattisgarh. The NIT is floated by that authority. It is not disputed by the petitioner that the PQC issued on 05/12/2016 does not contained any work which would satisfy the benchmark as to the financial turnover based on similar work/works, in terms of clause 1.2 of Annexure 1 of the NIT. The plea of the petitioner is that in terms of circular dated 06/10/2016, the accountable works for determining the financial turnover carried out after the issuance of the PQC could also be counted and therefore, the work done by the petitioner for the Municipal Corporation, Korba and evidenced by a certificate dated 08/11/2016 issued by the Officer of that Corporation is sufficient evidence which could have been taken into consideration to count the financial capacity of the petitioner.
4. While the plea as aforementioned is projected by the petitioner, the fact of the matter remains that the petitioner had also raised a controversy as to whether the bid was opened on the date fixed for opening the technical bid. The tenders were submitted on line. The official respondents have come on record with materials to show that the technical bids were opened as per schedule. The petitioner, however, points out that there are two envelopes

relating to the technical bid and what is shown to have opened is only envelop-A while envelope-B was opened up only on a later date. Being a matter relating to award of contracts; and having regard to the facts of the case in hand; we think it would be inappropriate for us to dwell on such matters at this distance of time, particularly when the first wrongful event attributed to the department had occurred on 13/04/2017 and it is a deficit in the State Government's activity on that day, which forms the first foundation for this writ petition. That being so, this writ petition instituted on 18/07/2017 i.e. even after the finalization of the financial bid, persuade us to desist from adjudicating on the correctness or otherwise of the award of the contract to the 5th respondent. In our considered opinion, it appears to be a case where the petitioner was sitting on the fence and awaiting the outcome of the financial bid of the 5th respondent, and had turned up with this writ petition only after financial quote of the 5th respondent; which is higher than that of the petitioner, as stated by him; was out of the bag.

5. The aforesaid fact situation has led the petitioner to submit before us through his learned counsel that the PQC issued on 05/12/2016 and the eligibility of other works including that done for Municipal Corporation, Korba for inclusion while determining the pre-qualification for subsequent bids should not be adversely affected by the stand taken by the official respondents in this case, since according to the petitioner the incident in hand is an isolated one because even in the case of the petitioner the work done for the Municipal Corporation, Korba is stated to have been

counted for the purpose of determining the financial turnover for awarding yet another contract. We are sure that this judgment will not stand in the way of the petitioner raising such contention as and when such situation arises. We also leave open any opportunity that the petitioner could have to make appropriate representation to the competent authority among the respondents, particularly the one which issues the PQC.

6. Subject to what is stated in the immediately preceding paragraph, this writ petition fails. In the result, this writ petition is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge