

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2197 of 2017

- Jai Durga Construction, through its Proprietor Arvind Kumar Sharma, S/o Late Shri Yogendra Sharma, aged about 50 years, R/o MIG- 1/95 SVBP Nagar, near Sant Kabir Bhawan, Jamnipali, Korba, District Korba (CG)

---- Petitioner

Versus

1. National Thermal Power Corporation through its General Manager Operation Stage- 3 (1 x 500 mw) NTPC Korba, District Korba, CG
2. Utility Powertech Limited, Office at Krishna Vihar, NTPC Township Jamnipali, Korba, District Korba, CG
3. M/s Pahalwan Construction Agarkhar, Jamnipali, Korba, Dist Korba (CG) Pin- 495 450

---- Respondents

For Petitioner	: Shri Sushobhit Singh, Advocate
For the respective Respondents	: Shri BD Guru, Shri Vinod Deshmukh and Shri KPS Gandhi, Advocates

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

07.09.2017

- 1) This Writ Petition is filed *inter alia* for the following primary reliefs :

"i) That, the Hon'ble Court may kindly be pleased to direct the respondent authorities directing them to provide the tender document for housekeeping for main plant and off site area of stage- 3 (1 x 500 MW) for the year 2017-2018.

ii) That the Hon'ble Court may kindly be pleased to direct the respondents authorities directing them to allow the petitioner to participate in the tender process for the year 2017-18 and the petitioner may be further allow to submit his bid in the tender process."

2) The first respondent- NTPC has farmed out an activity to the second respondent- Utility Powertech Limited (UPL). The second respondent has placed its submissions by way of objections to the Writ Petition. Para- 11 of those objections reads as follows :

"That, petitioner M/s Jai Durga Construction is a running contractor of M/s UPL, Korba (under assignment issued by NTPC, Korba to M/s UPL/Korba) for the work "house keeping for main plant and off site area of stage- 3 (1 x 500 MW) under the for the year 2017-18" initially awarded contract period was for one year from 19.08.2016 to 18.08.2017 which has already expired. For proposed next contract, for the same area, for the same work in the period after 19.08.2017 to 18.08.2018, during tendering process, tender paper was not issued to the petitioner, due to non registration in the vendor list of M/s UPL and also non addition of the petitioner's name by the NTPC in the UPL vendor list during approval of vendors name from the Head Office of M/s UPL"

3) The second respondent is carrying out activities for the first respondent- NTPC. The nature of activity handed over to the second respondent requires the second respondent to maintain a fair degree of vigilance in executing the work because it relates to the main plant and off-site area of stage-3 of NTPC. On the whole we are satisfied that in the light of the reasons given by the second respondent, which we have quoted above from its return, there is no ground to grant any relief to the petitioner. Hence, we cannot, but hold that the respondent had reasons for itself as to why the petitioner was not given the opportunity to participate in the tender.

4) We say the aforesaid notwithstanding the fact that the second respondent has also pleaded that it is not an institution or person which could fall within the scope of the term 'State' in Article 12 of the Constitution of India, though we do not propose to consider that issue deeper.

5) We also notice that the work has already been awarded to another party namely, M/s Pahalwan Construction, Jamnipali, which is stated in para-12 of the return filed by the second respondent.

6) For the aforesaid reasons, we do not find any ground to grant relief to the petitioner in this Writ Petition. In the result, this Writ Petition is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge