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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 2530 of 2016

1. M/s Cube Construction Engineering Limited A Company Duly Incorporated Under Relevant Provisions Of The Indian Companies Act, 1956, Having Its Registered Office At 1, Chandramani Nagar, Vidya Vihar School Lane, Office- High Tension Road, Subhanura, Vadodara-390023 Represented Through Its Authorized Signatory & Liasioning Officer Shri Dipesh Brahmbhatt, S/o Shri Ghanshyam D Barot, R/o A-13, Bussa Society, Nandevar Char Raasta, Bharuch (Gujarat).
2. Dipesh Brahmbhatt, S/o Shri Ghanshyam D Barot, Aged About 47 Years Liasioning Officer & Authorized Signatory Of Cube Construction Engineering Ltd., Hyderabad, R/o A- 13, Bussa Society, Nandevar Char Raasta, Bharuch (Gujarat), Civil & Revenue District Rajnandgaon, (Chhattisgarh)

---- Petitioners

Versus

1. State of Chhattisgarh Through The Secretary, Ministry Of Public Works Department, Raipur, (Chhattisgarh).
2. The Engineer-in-Chief, Public Works Department, Sirpur Bhawan, Civil Lines, Raipur, (Chhattisgarh).
3. M/s K M V Projects Limited, 4th Floor, Solitare Plaza, Beside Image Hospital, Ameerpeta, Hyedrabad (Andhra Pradesh).

---- Respondents

For Petitioners	:	Shri B.P. Sharma, Advocate.
For Respondent/State	:	Shri J.K. Gilda, Advocate General.
For Respondent No.3.	:	Shri Amrito Das, Advocate.

Hon'ble the Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per, Thottathil B. Radhakrishnan, CJ

06/04/2017

1. The petitioner and the 3rd respondent were considered by the Government in accordance with the qualification criteria fixed by the Public Works Department of the Government of Chhattisgarh for

construction of Medical College Building, allied structures and installations at Rajnandgaon. The issue raised by the petitioner is that the alleged achievements of the 3rd respondent are liable to be excluded from the zone of consideration in terms of qualification criteria No.1 and that he is dis-entitled to contest in the pre-qualification bid itself.

2. We have heard learned counsel for the petitioner and learned Advocate General.

3. At the outset, the learned counsel for the petitioner argued that when the concept of compounding is brought into the system of fixation of rates for the purpose of determination of pre-qualification, it has to be on the basis of the calender year and not the financial year since the compounding is obviously an issue which is something that accrues at the end of the year.

4. Learned Advocate General made reference to the pleadings submitted by the State Government where it is shown that no differential yardstick has been applied in relation to differentiate and the yardstick that has been applied is with reference to the qualification criteria that would apply on the basis of the financial year.

5. To answer this issue, it is apposite to notice clause-1 among qualification criteria in the pre-qualification document which is Annexure P/2 in the writ petition. That clause prescribes the mode to qualify for award of the contract. It prescribes that each prime contractor in the same name and style (tenderer), in its name must have in the last five years, obtained different achievements which are provided in the

alternatives enlisted therein. There are three Notes in that clause. Note-1 provides that the turn over shall be indexed at the compounded rate of 10 % (Ten percent) for each earlier years. Note-2 provides that the value of the completed works shall be updated to the value of current financial year @ compounded rate of 10% (Ten percent) per year from completion year of work. The completion year shall be taken as base year. These two Notes taken together will show that there must be a rational index between the concept of 'current year' and 'completion year' for determination of the value of 'completed work' for being applied in consonance with Note-1 among the prescriptions noted above. That being so, there cannot be two different yardsticks to consider as to what would be the value of completed work and the compounded rate that was applied from the completion year. Note-2 is specific to the effect that the value of completed work shall be updated to the value of the current financial year at compounded rate of 10% per year from completion year of work. Therefore, the concept of 'year' in Note-2 has to be understood as 'accounting year' and not 'calender year'.

6. We are dealing with the realm of contracts in government sector. The accounting year is of utmost importance for the purpose of managing the finances as well as the accounting and auditing, as also the fiscal needs, and regulating the income and expenditure of the government. Therefore, the conclusion that we have arrived on a pure interpretation of Note-2 to clause-1 among the qualification criteria in the pre-qualification document is in order, in terms of matters relating to governance and fiscal management of the State.

7. Apart from the aforesaid, another contention raised, is relatable to the nature of work carried out by the 3rd respondent. This plea now is based on paragraphs 6 and 7 of the rejoinder. We do not see that there is any specific ground raised in the writ petition except in ground No.9.4. That apart, the provisions in Annexure P/2 which is the pre-qualification document, cannot be construed as segregating or classifying the types of works which are predominantly civil works and matters connected therewith, to differentiate as to what are to be called as necessary pre-qualifications. That is not a domain which can be subjected to judicial review, particularly when the expertise of persons who have concluded on the conditions of pre-qualification document is not under challenge. For this reason, the challenge levied by the petitioner on this ground also fails.

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

Sd/- Sd/-

(Thottathil B. Radhakrishnan) (P. Sam Koshy)
Chief Justice **Judge**

inder