

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2344 of 2015

- K M C - S K A J V Construction Company Pvt. Ltd. Through- Sunil Agrawal Partner S/o Shri Ramdas Agrawal, Aged About 42 Years, R/o Chandani Chowk, P.S. Kotwali, Raigarh, District Raigarh Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Public Works Department Mahanadi Bhawan, New Mantralay, Raipur Chhattisgarh
2. The Project Director , A.D.B. Project Chhattisgarh P.W.D. District Raipur Chhattisgarh
3. The Project Director. Chhattisgarh State Road Project, A.D.B. Project Chhattisgarh P.W.D. District Raipur Chhattisgarh

---- Respondents

For Petitioner	: Shri Apoorva Tripathi, Advocate
For Respondents/ State	: Shri PN Bharat, Additional AG

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

Per Ajay Kumar Tripathi, Chief Justice

18.09.2018

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. The rejection of the tender bid of the petitioner dated 28.11.2015 and 17.12.2015 Annexure P/1 which was in relation to rehabilitation and up-gradation which is package-17 and 18 of civil works group C namely,

Lormi, Pandariya and Mungeli-Lormi (National Highway) and Ratanpur-Kota-Lormi, has become the cause of action for moving the High Court through this writ application.

3. The reason given in Annexure P/1 dated 28.11.2015 provided by the Office of the Project Director is that the documents submitted vide their letter dated 18.11.2015 were time barred and therefore, the same could not be considered for evaluation or consideration of the offer made against the NIT (Notice Inviting Tender).

4. In the writ application, allegation is made that two different yardsticks had been adopted by the respondent authorities and this was done with an object and purpose to accommodate the beneficiary BEL NC Nahar JV.

5. Instance was pointed out on behalf of the counsel for the petitioner that the person who was declared to be L-1 was allowed to change his bank guarantee. Statement in the writ application is that a forged and fake bank guarantee was used to derive advantage of the tender. However, on closer scrutiny we find that it was the bank which pointed out the typing mistake that had crept into name of the beneficiary in the bank guarantee. Instead of the word 'Director', the word 'Project Manager' was typed and that was allowed to be corrected which is not an alteration but only obvious typing mistake which emerged due to wrong committed by the issuer bank. This act of correction in no manner can be said to facilitate for deriving benefit in the bidding or being the successful bidder since that was not the only factor which decided the award of tender.

6. As for the reason provided by the respondent authorities for rejecting the bid of the present petitioner the explanation is that since it is a joint venture company and an International company, therefore, their audits are done and allowed to be done on a much later date than the last date for the bidding. They had written letters to the authorities seeking time to produce the balance sheet for the year 2014-15. However, without giving them time and opportunity, the tender documents were opened and his claim was rejected as time barred.

7. An alternative argument is also made that there was no requirement to give the audited balance sheet of the year 2014 -15.

8. Both these arguments are after thoughts for the simple reason that the tender documents had indicated that the turn over for the period prior to the NIT was required to be provided, if this company did not have the necessary balance sheet before the cut off date which was fixed in the NIT, then, obviously, they will have to await the completion of the financial year for their balance sheet to be audited and certified but the respondents cannot be made to await such finalisation of their balance sheet before opening the bid.

9. The distinction between failure to provide necessary documentations in time and a correction of the obvious clerical mistake which had crept into bank guarantee tendered by the successful bidder has to be kept in mind and they cannot be equated.

10. In addition to that, the tender has already been awarded in 2016, the awardee has not been made party respondent nor has the award of tender

been challenged by way of any amendment brought about to the present writ application.

11. That also goes to the root of the matter. There is no merit in the writ application. It is hereby dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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