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**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 2527 of 2017**

- M/s Ravi Shankar Tripathi Proprietorship Firm, Through Its Proprietor Ravi Shankar Tripathi, S/o Late G. K. Tripathi, Aged About 45, Years, Civil Contractor A Class, R/o H-2/11, Narmada Nagar, Bilaspur Chhattisgarh.

**---- Petitioner****Versus**

1. State Of Chhattisgarh Through The Special Secretary, Urban Administration And Development Department, Naya Raipur, District Raipur Chhattisgarh.
2. Rajya Shahri Vikas Abhikaran, Through The C E O, Naya Raipur, District Raipur Chhattisgarh.
3. Municipal Corporation, Bhilai, Through The Commissioner, Municipal Corporation, Bhilai, District Durg Chhattisgarh.

**---- Respondents**


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| For Petitioner             | : | Shri B.D. Guru, Advocate                                                       |
| For Respondent/State       | : | Shri R. K. Gupta, Additional Advocate General                                  |
| For Respondent/Corporation | : | Shri H.B. Agrawal, Senior Advocate assisted by<br>Smt. Prabha Sharma, Advocate |

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**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice****Hon'ble Shri Sharad Kumar Gupta, Judge****Order on Board****Per, Thottathil B. Radhakrishnan, Chief Justice****07/02/2018**

1. We have heard the learned counsel for the Petitioner, the learned Deputy Advocate General for the State/Respondents No.1 & 2 and the learned Senior counsel for the 3<sup>rd</sup> Respondent – Municipal Corporation.
2. The 3<sup>rd</sup> Respondent – Municipal Corporation invited tender for construction of Multi Storey Building including Internal Water Supply, Sanitary and Internal Electrification etc. The Petitioner was one of the bidders. He and certain others cleared the technical bid. This means that the financial bids of those who had

cleared the technical bid were to be considered. On consideration of the financial bids of those persons who had cleared the technical bid, it was found that the Petitioner was the lowest tenderer and has been identified as L-1. But, it appears that the 3<sup>rd</sup> Respondent, thereafter again opened the technical bid and made a comparative evaluation of the financial bid of those who had lost the technical bid with that of the Petitioner who was at L-1. On such basis, the 3<sup>rd</sup> Respondent took the view that the rates quoted by those who had lost in the technical bid were lower than the financial bid of the Petitioner. On that premise, without awarding the contract to the Petitioner, the 3<sup>rd</sup> Respondent cancelled the tender.

3. Transparency in awarding the public contracts is ensured by evolving a process of open competition. When technical matters are involved, the first assessment will be about the technical qualification. Comparative technical qualification is looked into at the stage of the evaluation of the technical bid by keeping the financial bids closed. It is only when the technical bids are assessed, would the consideration of the bids go to the next stage. The financial bids of those who come successful at the stage of evaluation of the technical bids would then be considered. Such consideration of the competitive rates is called evaluation of financial bid. After evaluating the financial bid and after finding out the lowest tenderer, the authority which invites tenders cannot be permitted to go back by making reference to the financial bid of those who had lost in the technical bid. If that were to be permitted, that would necessarily create an arbitrary situation where comparative evaluation of financial bid is being made by putting those persons who had cleared the technical bid and those who had not cleared the technical bid into the same basket. Considering persons who are unequally placed after the stage of the technical bid as if they form a homogeneous lot, would be clearly violative of Article 14 of the Constitution. Equal treatment of unequals would result in infraction of right to equality in Article 14 of the Constitution.

4. There is no case for the 3<sup>rd</sup> Respondent that the invitation of offers in question had to fail in public interest owing to any other identifiable reason in public domain and was therefore cancelled. All that is said is that the cancellation of the invitation for tenders was made to ensure better competition. That is not a yardstick which can be recognized in law as it would provide a pliable and vulnerable pasture in public sector. It would be counter productive to transparency and fairness in public domain contracts. Such a plea cannot be countenanced on the facts and circumstances of the case, either.
5. For the aforesaid reasons, this writ petition succeeds and the Petitioner is entitled to be awarded the contract in question.
6. In the result, this writ petition is allowed quashing Annexure-P/1 re-tender and directing that the Petitioner shall be issued work order in his favour in terms of the NIT dated 07.07.2017 and the offer made by him in response to that Notice Inviting Tender. No costs.

Sd/-

(Thottathil B. Radhakrishnan)  
**Chief Justice**

Sd/-

(Sharad Kumar Gupta)  
**Judge**