

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 3073 of 2017**

- M/s Apper India Company Registered Address Near Marble House, Radhika Nagar, Supela Bhilai, District Durg Chhattisgarh. Through Its Proprietor Shri Vipin Yadav, Son Of Shri T. N. Yadav, Aged About 33 Years, Resident Of Police Line Thana Chavani Power House Bhilai, District Durg Chhattisgarh.

---- Petitioner**Versus**

1. NTPC - Sail Power Company Limited (A Joint Venture of NTPC and SAIL) Formerly Known As "NSPCL") Expansion PP - II Bhilai, Through Its Deputy General Manager Contract And Materials, Having Registered Office At Bhilai East, District Durg Chhattisgarh., Chhattisgarh
2. M/s Metal Scrap Trading Corporation Limited Formely Known As M S T C , Through Its Deputy General Manager E - Commerce Having Registered Office At 225 - C, A.J.C. Bose Road, Kolkata - 700020. , District : Kolkata, West Bengal
3. Shri Ravi Shekhar, Manager MSTC Limited, 3rd Floor, Udyog Bhawan, Telibandha, Ring Road No. 1 Raipur 492006 Chattisgarh., District : Raipur, Chhattisgarh
4. Ms Snighda Mohanty, Area Manager AMMSTC Limited, 3rd Floor, Udyog Bhawan, Telibandha, Ring Road No. 1, Raipur - 492006 Chhattisgarh., District : Raipur, Chhattisgarh
5. M/s Fly Ash Movers India Private Limited Through Its Director, Having Office At L - 2, Khemka House, Vidya Nagar, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Vikram Sharma, Advocate
For Respondent No.1	:	Shri C.R. Sahu, Advocate
For Respondent No.2	:	Shri Animesh Tiwari, Advocate
For Respondent No.5	:	Shri Kshitij Sharma, Advocate

Hon'ble Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Justice Sharad Kumar Gupta****Order on Board****Per Thottathil B. Radhakrishnan, Chief Justice****30.01.2018**

1. This writ petition is filed seeking interference with the e-tender conducted by the 1st Respondent through the 2nd Respondent. The Petitioner is the one who stood excluded at the initial stage itself on account of the fact that the Petitioner's tender did not get through the e-tendering process as it did not conform to the uploading process.

2. In the light of the pleadings of the Petitioner, the 1st Respondent and the 2nd Respondents, we have heard the learned counsel for the Petitioner and the learned counsel appearing for those respondents.
3. Making reference to the judgment of the Apex Court in **Reliance Energy Ltd. and Another Vs. Maharashtra State Road Development Corpn. Ltd. and Others; (2007) 8 SCC 1**, it was argued by the learned counsel for the Petitioner that the fact situation is one where there is a conscious and concerted exclusion of the Petitioner from the zone of competition and that this results in violation of different fundamental rights, particularly, those referable to Article 14, 19(1)(g) and 21 of the Constitution of India. According to the learned counsel fair play in bidding for a public sector contract has been denied.
4. The 2nd Respondent, which had provided the platform for the process of e-tender for fly ash, at the instance of the 1st Respondent, is not charged with malice or malafides. Looking at the pleadings of the 2nd Respondent, it is clear that the entire process is of such nature that the choice of the Personal-ID is made by the person who intends to participate in the tender. The controversies between the parties revolve around the issue where the User-ID registered by the Petitioner with the 2nd Respondent's system was one which was erroneously utilized thereafter by the Petitioner for registering the bid and entering the competition. Discernible from paragraph 8 of the 2nd Respondent's return dated 05.12.2017, is the fact that the Petitioner had provided User-ID for J-type and O-type e-auctions using numerals which were the same. J-type relates to mineral and mining e-auctions and O-type relates to general e-auctions.
5. It is the Petitioner's contention that though it had used the same numerals in both IDs; it also carried separating space-bar tabs in one ID, which showed that the numerals were not in a continuous chain and that is the distinction between the User-IDs registered by him. The sum and substance of this litigation is as to whether the registration of the User-ID got mixed up or was not recognizable

by the system in the matter of registering the further inputs by the Petitioner at the different stages of the bid. Reverting to what the Petitioner has provided along with his rejoinder, it can be seen that the Petitioner, with the assistance of Annexure-P/12, photographs, tries to show that the User-name was locked in. But, we are not sure; nor can it be taken as certain; that the Petitioner had carried out all other requirements including the use of the correct password for the purpose of joining the e-bid competition. It will not be fair to all the parties to carry forward adjudication of such issue in writ jurisdiction. Even if it is a case where the issues raised could be answered on adjudication on the basis of legal evidence and pleadings, in a litigation for damages and the like, it would not be for the writ Court to enter on such an adjudication.

6. Be that as it may, if the Petitioner has any claim for return of EMD. That is the matter for the 1st Respondent to consider on appropriate application of the Petitioner, in accordance with law.
7. Subject to the aforesaid, this writ petition is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge