

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1460 of 2018**

Mahamaya Constructions Through Its Proprietor Sandeep Rungta S/o Late G.R. Gungta, Aged About 46 Years, Office Mahamaya Constructions Raipur 231, 2nd Floor, Risabh Complex Mg Road, Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Public Health Engineering, Mahanadi Bhavan Mantralaya, New Raipur Chhattisgarh.
2. Engineer In Chief, Department Of Public Health Engineering, Indrawati Bhavan, Naya Raipur Chhattisgarh.
3. Chief Engineer, Department Of Public Health Engineering, Raipur Zone, Raipur Chhattisgarh.
4. Superintending Engineer, Public Health Engineering Department, Engineering Department, Raipur Circle, Raipur Chhattisgarh.
5. Executive Engineer, Public Health Engineering Department Division, Korba, District Korba Chhattisgarh.

---- Respondents

For Petitioner	: Shri Avinash Chand Sahu, Advocate.
For Respondent/State	: Shri UNS Deo, Government Advocate.

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

Order on Board**02/11/2018****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. Annexure P/1 is a communication dated 11.05.2018 which is an auto-generated mail, by virtue of which, the Techno-commercial evaluation so made was rejected i.e. Envelope "B", on the ground that the bidder i.e. the Petitioner did not meet the eligibility criteria.

3. The Court directed the Respondent State authorities to shed more light as to which eligibility criteria, Petitioner failed to fulfill which warranted such a decision.
4. Not only a return has been filed, but on the basis of the NIT and the requirement in relation to the work experience, which was required to be submitted in Envelope "B", has been pointed out to us, which reads as under:-

**"II. All the Tenders are required to submit Envelope
"B" Online containing the followings:**

1. Experience certificate of successful completion of work of same nature in contractor's/firm's/company's own name indicating agreement no., work order no. and date, amount of contract, stipulated period of completion, & actual period of completion during last five financial year i.e. 2013-2014 to 2017-2018. The certificate should be issued by an officer not below the rank of executive engineer."

5. The stand of Respondents is that a certification showing experience for successful completion of work of the same nature was loaded by the company, which according to the learned Government Advocate speaks for itself. The said certificate is Annexure R/1 to the return filed on behalf of the State. The certificate has been issued by the office of Nagar Parishad, Hatod, District Indore, State of Madhya Pradesh and issued under the signature of the Chief Municipal Officer of the Nagar Parishad. The certificate also indicates that this work was done by M/s. Multiarban Infra Services Private Limited, Nagpur.
6. Argument for the counsel for the State is that obviously such certification does not meet of the requirement of the work experience since the same has to be issued by an Executive Engineer.
7. It is also further urged that the competent authority of the State of Chhattisgarh made communication with the said Municipal Authority of Hatod to find out whether the post of Chief Municipal Officer was equivalent to the post of Executive Engineer. The response and reply sent by the said authority clarifies the position that the said post is Class-C post, whereas the post of Executive Engineer

is Class-I post and also it carries a higher pay scale etc.

8. Even if this exercise of getting information with regard to the Chief Municipal Officer was done for a bonafide reason and if, for the sake of argument, it was established that the post of Executive Engineer was at par with the post of Chief Municipal Officer who had issued the work experience certificate, still it would not have made any difference to the order of rejection.

9. Since the terms and conditions of the NIT are unambiguous as to who the certifying authority should be, without going into this argument, whether the certifying authority i.e. Chief Municipal Officer is equivalent or not, since the company did not furnish the required certification by the authority indicated in the NIT, the reason for rejection of Envelope "B" cannot be said to be an irrational or an arbitrary decision to take.

10. It goes without saying that if terms and conditions of the NIT are not strictly adhered to and some kind of subjectivity is applied, it will surely have a bearing *vis a vis* other bidders and it will mine-field of litigation.

11. Writ application for the said reason has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE