

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**Writ Petition (C) No. 1738 of 2018**

M/s. Shreejikrupa Project Ltd. A limited company incorporated under Companies Act, 1956 having its registered office at 206, Krishna Complex-2, Near Jaipark Nana Mava Road, Rajkot - 1 (Guj). and represented before the H'ble High Court through its Director and resolved Attorney Holder Mr. Sanjaybhai Mavjibhai Varsani, aged about 45 years, S/o Shri Mavjibhai Varsani R/o MIG 625, Sect. 2, Deendayal UPadhyay Nagar, Raipur, Chhattisgarh.

---- Petitioner

**Versus**

The State of Chhattisgarh, Through-

1. The Secretary, Government of Chhattisgarh, Public Works Department, Mantralaya, Naya Raipur, Chhattisgarh.
2. The Engineer-in-Chief, Chhattisgarh PWD Civil Lines, Raipur, Chhattisgarh.

---- Respondents

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| For Petitioner       | : Shri Ashish Shrivastava and Shri Ashok Kumar Mishra, Advocates |
| For Respondent/State | : Shri Prafull N Bharat, Additional Advocate General             |

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**Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**  
**Hon'ble Shri Pritinker Diwaker, Judge**

**Order on Board**

**Per Ajay Kumar Tripathi, Chief Justice**

**16/07/2018**

1. A notice inviting tender (for short 'the NIT') dated 04.04.2018 was issued by the Respondent-State authorities for construction of a high level bridge across Indravati river in KM 2/4 of Chhindnar Pahurnar Road including approaches for which the present Petitioner was a participant. The envelope of credentials were opened on 26.04.2018 and declared online on 15.06.2018. Only one participant was shown to have qualified whereas the present Petitioner and three other participants were declared disqualified, which the Petitioner has labelled in the writ application as irrational and discriminatory in nature.

2. Plea has been taken in the writ application that in the first NIT, the Petitioner was shown to have qualified but for some strange reasons, the first NIT was not acted upon and a second NIT was issued in which the Petitioner was deliberately discriminated and shown to have not qualified in the technical bid.

3. Submission of the learned counsel for the Petitioner is based on clause 4.4A of the NIT which reads as follows:

"4.4A To qualify for award of the Contract, each bidder should have in the last five years:

(a) Achieved in any one year, a minimum financial turnover (as certified by Chartered Accountant, and at least 50% of which is from Civil Engineering construction works) equivalent to amount given below:

(i) 60% of amount put to bid, in case the amount put to bid is Rs. 200 lakhs and less.

(ii) 75% of amount put to bid, in case the amount put to bid is more than 200 lakhs.

The amount put to bid above would not include maintenance cost for 5 years and the turnover will be indexed at the rate of 8% per year.

If the bidder has executed road/Balance Works under Public Works Department or Pradhan Mantri Gram Sadak Yojana in originally stipulated completion period, the financial turnover achieved on account of execution of road works under PWD and PMGSY shall be counted as 120% for the purpose of this sub-clause.

In Naxal/Left Wing Extremist Affected Districts, the figures of 60% and 75% in (i) and (ii) would be replaced by 50%.

(b) Satisfactorily completed, as prime Contractor or sub-contractor, at least one similar work (Balance Work) equal in value to one-third (one fourth in case of Naxal/LWE affected districts) of the estimated cost of work (excluding maintenance cost for five years) for which the bid is invited, or such higher amount as may be specified in the Appendix to ITB. The value of road work completed by the bidder under the Public Works Department or Pradhan Mantri Gram Sadak Yojna in originally stipulated period of work shall be counted as 120% for the purpose of this Sub-Clause."

4. Special emphasis has been placed on sub-clause (b) of clause 4.4A of the NIT to make out a case that not only at least one work experience of similar kind was required for eligibility but also work experience of construction of roads which may have been completed by the contractor will entitle him to weightage and preference. The Petitioner had brought evidence to show that he has the requisite experience with regard to the construction of road, which at times also, includes construction of culverts and bridges and therefore contrary to clause 4.4A(b), the Respondent authorities have arbitrarily rejected his technical bid.

5. Learned counsel for the State in their return have taken a categorical plea that no evidence has been provided in the technical bid of the Petitioner to show that he had work experience for construction of a high level bridge for which the tender in question was issued. After rejection of the technical bid of the Petitioner, the matter was notified to all persons whose bids were rejected in terms of clause 22.6. Even in the response which was filed by the Petitioner, he had only talked about the work experience he had acquired for construction or widening of roads but no evidence was provided with regard to construction of high level bridges.

6. The Court put a specific query to the counsel for the Petitioner whether they have brought on record any evidence or material to show that they have work experience in the last five years of construction of any high level bridge of similar nature, since the tender in question is primarily for construction of bridge and construction of approach road is incidental to the construction of bridge.

7. In absence of any evidence or material having been demonstrated before us from the pleadings in the writ application, we are satisfied that the reason for rejection of the tender of the Petitioner was not for any *malafide* reason or on extraneous consideration but mere lack of experience of the tendering firm in construction of high level bridge and since such award of contract is of technical

kind, therefore, inexperienced contractors even if they successfully bid on the financial side, cannot be permitted to participate if they fail to demonstrate the work experience having been executed of similar nature.

8. We are not satisfied or impressed by the line of argument of the counsel for the Petitioner that in terms of clause 4.4.A(b), their work for road construction should also be considered to make them eligible.

9. The writ application therefore has no merit. It is dismissed.

Sd/-  
(Ajay Kumar Tripathi)  
**CHIEF JUSTICE**

Sd/-  
(Pritinker Diwaker)  
**JUDGE**