

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**WPC No. 2759 of 2016**

- Ashish Kedia S/o Shri Ashok Kedia, Aged About 33 Years Proprietor M/s Ashish Kedia, Railway Contractor and Order Supplies, Having its Office At Near Shastri Chowk, Akaltara, District Janjgir Champa, Civil And Revenue District Janjgir Champa, Chhattisgarh

---- **Petitioner**

**Versus**

1. State Of Chhattisgarh Through The Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. The Municipal Council, Through Its Chief Municipal Officer, Akaltara, District Janjgir Champa, Chhattisgarh

---- **Respondents**

**WPC No. 2794 of 2016**

- Ashish Kedia S/o Shri Ashok Kedia, Aged About 33 Years Proprietor M/s Ashish Kedia, Railway Contractor And Order Supplier, Having Its Office At Near Shastri Chowk, Akaltara, District Janjgir Champa Civil And Revenue District Janjgir Champa Chhattisgarh

---- **Petitioner**

**Versus**

1. State Of Chhattisgarh Through The Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, Naya Raipur Chhattisgarh
2. The Municipal Council, Through Its Chief Municipal Officer, Akaltara, District Janjgir Champa Chhattisgarh

---- **Respondents**

**WPC No. 2800 of 2016**

- Ashish Kedia S/o Shri Ashok Kedia, Aged About 33 Years Proprietor M/s Ashish Kedia, Railway Costructor And Order Supplies Having Its Office At Near Shastri Chowk Akaltara Distirct Janjgir Champa Civil And Revenue Distirct Janjgir Champa Chhattisgarh

---- **Petitioner**

**Versus**

1. State of Chhattisgarh Thorugh The Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya Naya Raipur Chhattisgarh
2. The Municipal Council, Through Its Chief Municipal Officer, Akaltara, Distirct Janjgir Champa Chhattisgarh

---- **Respondents**

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|---------------------------|--------------------------------------------|
| For Petitioners           | : Shri Vivek Chopda, Advocate              |
| For Respondent No.1/State | : Shri Prasun Bhaduri, Government Advocate |
| For Respondent No.2       | : Shri Vinay Pandey, Advocate              |

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

**Order on Board**

**Per, Ajay Kumar Tripathi, Chief Justice**

**13.11.2018**

1. Repeated issuance of NIT and cancellation thereof without providing adequate reasons in the orders of cancellation has generated litigations. Tenders basically related to beautification of certain ponds lying in different Municipal areas across the State of Chhattisgarh.
2. When the respondent Municipal Council chose not to finalize the tender and also dilute the terms and conditions of the tender in the 3<sup>rd</sup> call that these writ applications came to be filed where even interim orders have been passed.
3. It has come to our notice now that one writ application namely WP(C) No.2614 of 2016 was considered by a Division Bench and an order dated 31.01.2017 was passed, a copy of which has been made available to us.
4. After having heard counsel for the Petitioner, who is common in all the writ applications, the factual matrix seems to be more or less common except for a few variation of dates here and there. The method and methodology adopted in not finalizing the tenders, even though the Petitioner claimed that he was successful bidder and fulfilled all the requirements, was taken note of by the Division Bench. The Division Bench expressed its view in following terms :

“10. The law is well settled that whenever the State or public authority are dealing with contracts, they cannot violate Article 14 of the Constitution. In this behalf reference may be made to the judgment delivered by the Apex Court in *E.P.Royappa v. State of Tamil Nadu & Another* {1974 AIR 555}.

11. It is more than apparent to us that the condition with regard to experience was removed only to ensure that the contract is given to somebody else who may not even have any experience in the work of beautification of the work of pond. This would amount to wastage of public funds. The condition in a tender cannot be tailor-made to suit the official or their favourite contractors. When there was already a condition of experience which is a salutary condition, why should such a condition be removed? We could have understood if no technically qualified person had bid in the tender. Here, the Petitioner who is technically qualified had bid in the first as well as in the second tender and if in the first tender also, his bid has been evaluated, then we see no reason, why in the second bid if he was the sole tenderer, the tender should not have been awarded to him.

12. We therefore dispose of the writ petition with the following directions:

(i) The third notice inviting tenders is quashed and all action pursuant thereto are set aside.

(ii) In case, technical bid of the Petitioner has been evaluated in the first tender and he was the sole technically qualified person in the first tender also, then he shall be awarded the contract in terms of the second tender.

(iii) In case, the Petitioner was not the sole qualified bidder in the first tender or the technical bids were not evaluated, then the Respondents shall be at liberty to float a fresh tender for beautification of this project but they shall include the condition with regard to experience as was there in the first tender.

13. The Respondent No. 2 is directed to file his affidavit within a period of two weeks and shall also produce the entire records of the first tender to show whether the technical bid of the Petitioner was evaluated or not.”

5. Thereafter, the original records were produced and perused and the writ application stood finally disposed off in terms of the same direction which was observed in paragraph 12 of the order dated 31.01.2017 of the writ application.

6. These writ applications, therefore, are also required to be disposed off with an observation that the cancellation of the first tender will not be interfered with which anyway was not subject matter of challenge. So far as second bid is concerned, the directions issued and quoted in the earlier part of the order especially paragraph 12 will be the guiding principle with regard to settlement of bids in question.
7. All the writ applications are disposed off in terms of the above.
8. Learned counsel for the Petitioner in all the tenders has categorically stated before this Court that if tenders are awarded to him, since he is the only successful bidder, he is willing to complete the work on the same rate on which the tenders were initially invited in the year 2016 and will not ask for escalation. The authorities must take note of the said stand of the Petitioner.
9. This submission has been recorded as part of this order to avoid any litigation on this aspect of the matter in performance of the contract.

Sd/-  
**(Ajay Kumar Tripathi)**  
**Chief Justice**

Sd/-  
**(Parth Prateem Sahu)**  
**Judge**