

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2482 of 2018

- Rakesh Kumar Jain S/o Shri Bhagchand Jain, Aged About 55 Years
Railway - Contractor, R/o Renuka, 37/17, Main Road, Opposite Dr. Ghosh
Nursing Home, Tikrapara, Bilaspur Tahsil And District Bilaspur (CG)

---- Petitioner

Versus

1. Divisional Railway Manager (Engineering), South Eastern Central Railway,
Bilaspur.
2. Senior Divisional Engineer (Co-ordination) South Eastern Central Railway,
Bilaspur.

---- Respondents

For Petitioner	:	Shri Somkant Verma, Advocate
For Respondents	:	Shri Abhishek Sinha, Advocate

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Ajay Kumar Tripathi, CJ

09/10/2018

1. Writ application has been filed by the petitioner because his bid has not been considered by the respondents as he did not fulfil the requirement of Eligibility Condition No.1.5 of Clause-4 of the tender document. Condition No.1.5 laid down the following requirement:-

“1.5. Only those documents which are declared explicitly by the tenderer as “Documents supporting the claim of qualifying the laid down eligibility criteria” will be considered for evaluating his/their tender. Hence tenderer must write clearly on top of the certificate “Documents supporting the claim of qualifying the laid down Eligibility Criteria”.”

2. Admitted position is that the endorsement which was required to be made on the documents in support of the claim for qualifying in the laid down eligibility criteria was not done by the petitioner. This position taken in the return of the respondent railways is not being denied. However, the argument or stand of learned counsel for the petitioner is that such a requirement is only directory and not mandatory.
3. The stand so taken in support of the writ application is not supported by either any precedent or any interpretation which may emerge from perusal of the Notice Inviting Tender (NIT). Infact, we are of the opinion that whatever is laid down in the NIT in terms of the eligibility conditions or financial criteria etc., all are mandatory for the reason that the Court would not like to give any discretion to the respondent authorities by bringing in an element of subjectivity in deciding whether the clause is mandatory or directory.
4. In addition to that, if NIT is unambiguous as to how and what is required to be done for successfully participating in the bid then every bidder has an obligation to comply with the directions in letter and spirit and no leeway is required to be given therein, depending upon the view which a tenderer may take, with regard to the requirements which are mandated in the NIT.
5. It is also pointed out in the return of the Railways that the petitioner is not a novice, he has successfully participated in other similar tenders and endorsement which is required under Clause 4.1.5 of tender document has been complied by him, therefore, it is not a case that there was any element of surprise or lack of knowledge in this regard.
6. If there has been omission on the part of the petitioner to carry out the directions given for participation in the tender and if it has admittedly not

been carried out, the rejection by the respondents can never be called to be irrational or arbitrary. The fault lies with the petitioner and this Court will not use its extraordinary power to either dilute the requirement or ignore the same.

7. Accordingly, the writ application stands dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-