

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2520 of 2018**

Banka Constructions Engineers And Contractors A Partnership Firm Registered Under The Partnership Act, Having Its Head Office At 205-B, Trade Corner, Sakinaka Junction, Andheri (East) Mumbai, Through Its Partner Namely Shri Mahendra H. Banka, S/o. Late Shri Hanuman Prasad Banka, Aged About 66 Years, R/o. 48, Neelkanth, J.B. Nagar, Andheri (East) Mumbai 400059

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur Chhattisgarh.
2. Chief Engineer (Central Tender Cell), Office Of Engineer-In-Chief Public Works Department, Raipur, District Raipur Chhattisgarh.
3. Engineer In Chief, Public Works Department, Raipur, Nirman Bhawan (First Floor), Sector 19, Naya Raipur (Chhattisgarh) 492002.
4. Executive Engineer, Public Works Department, Bridge Construction, Division Raigarh, District Raigarh Chhattisgarh.

---- Respondents

For Petitioner	: Shri Manoj Paranjpe, Advocate.
For Respondent/State	: Shri J.K. Gilda, Advocate General.
For Intervenor	: Shri Ashutosh Pandey, Advocate.

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

Order on Board**23/10/2018****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. Vide communication dated 01.08.2018 (Annexure P/1 to the writ application), the tender documents submitted by the Petitioner in response to the Notice Inviting Tender ('NIT') for construction of a Rail Over Bridge ('ROB') on Howrah-Mumbai Main Line has been rejected by the Respondent authorities, which is subject matter of challenge in the present writ application.

3. The Public Works Department, Government of Chhattisgarh issued a NIT, a copy of which is Annexure P/3 to the writ application. The document is rather comprehensive and provides for the requirements in various aspects including technical requirements in construction of the proposed ROB across Howrah-Mumbai Main Line at Kotra Road Level Crossing in the District of Raigarh. The designs and specifications and the essentiality thereof have been incorporated in the NIT, however, certain leeway have also been granted to a successful bidder to provide an alternative design, which would could be accepted subject to approval by any IIT or an NIT but it should not be dehors the essentiality in relation to the technical specification.

4. Page-60 of the NIT lays down the brief discussions of above aspect of departmental designs and specifications. Rest of the technical details are not of significance since the argument is being made or hinges on Clause A, sub-clause 13 of the specification which reads as under:-

13.	Bearing	:	Elastomeric Bearing	POT-PTFE
	Bearing at Common Pier	:	One Side (Towards PWD Portion) Elastomeric Bearing and other side (Towards Railway Portion) POT-PTFE Bearing.	

5. Submissions of the counsel for the Petitioner is that he provided an alternative drawing which supposedly adhered with the requirements with the tender General Arrangment Drawing ('GAD'). However, for a strange reason, the Respondent authorities decided to reject the technical bid, despite a clarification which was offered by the Petitioner-Company in response of the letter dated 20.07.2018 (Annexure P/5 to the writ application) where it was pointed out that for both the portions i.e. PWD Portion as well as Railway Portion, Elastomeric Bearing has been shown in the drawing.

6. The argument is that there was a typing mistake in the drawing and that the Petitioner was willing to comply with any changes or modifications which was

required to be made in terms of the direction which may have been issued by the Respondent authorities. However for reasons best known, they decided to reject the technical bid compelling the Petitioner to approach the High Court.

7. Stand of the counsel for the Petitioner is that in absence of any clause specifically laying down in the NIT that such variation which was subject to rectification would lead to rejection of the tender, the tender ought not to have been rejected. He relies on two decisions of the Hon'ble Apex Court which are cases of **Kanhaiya Lal Agrawal v. Union of India and Others** reported in **(2002) 6 SCC 315** as well as the case of **Delhi Development Authority v. Delhi Cloth Mills Ltd. and Others** reported in **(1991) 3 SCC 277**. The essence of the two decisions being that when an essential condition of a tender is not complied with, it is open to the person inviting tender to reject the same, but whether a condition is essential or collateral, has to be ascertained by reference to the consequences of non-compliance thereto.

8. Learned Advocate General representing the Respondent-State submits that the decision to reject the technical bid of the Petitioner was as a consequence of failure on the part of the Petitioner to adhere to the technical specifications, especially Clause M and N, which related to the kind of structural bearings, which was mandated to be used in the structural design for the PWD Portion as well as Rail Bridge Portion. Since the two types of bearings indicated in the NIT were non-negotiable and essential part of the structural design, therefore, the use of Elastomeric Bearing for both the Portions in the structural design of the ROB went to the root of the matter and such a technical submission of the design offered by the Petitioner could not be negotiated. The only requirement was to reject such an offer since it was not in conformity with the two technical specifications as to the type of structural bearings which was required to be used. The same not being part of alternative, no amendment or alternatives could be accepted.

9. We being satisfied that looking at the nature of the work and the essentiality of use in the drawing provided by a bidder showing the use of two different bearings for the two different Portions was integral to the condition of NIT and therefore, the alternative which was offered by the Petitioner as part of his effort at the bidding, failed on the technical specification. He could not be shown any indulgence by trying to make changes thereto at the cost of any other successful tenderer whose drawing and design did not suffer from lack of such essentiality.

10. In view of the above, the reason for rejection of the technical bid of the Petitioner cannot be termed as either irrational, arbitrary or capricious exercise of power. The submission of the counsel for the Petitioner so made therefore has to fail and even the writ application must fail.

11. The Court is informed that the tender has been finalized and it was due to interim order of the Court that the work has not been awarded. The writ application is dismissed. Respondents are free to proceed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE