

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 8 of 2019**

- M/s Upalghosh Associates A Partnership Firm, Having Its Office At A-20, Okhla Industrial Area, Phase-1, New Delhi, Delhi. 110020

---- Petitioner**Versus**

1. The Secretary Department of Higher Education Ministry of Human Resource Development, Government of India and Chairman, Board of Government of IIT, Bhilai, 127-C, Shastri Bhawan, New Delhi. 110001.
2. The Indian Institute of Technology Bhilai, Through Its Registrar GEC Campus, Sejbahar Raipur, Chhattisgarh. 492015 Phone And 917712973602
3. The Director The Indian Institute Of Technology Bhilai, GEC Campus, Sejbahar Raipur, Chhattisgarh. 492015
4. Aadharshila Designs Pvt. Ltd. B-4/124, LGF, Safdarjung Enclave, New Delhi-110029, Phone- 011-26100433

---- Respondents

For Petitioner	:	Shri Rajeev Shrivastava, Advocate
For Respondents No. 1 to 3/UOI	:	Shri B. Gopa Kumar, Assistant Solicitor General
For Respondent No. 4	:	Shri Adil Minhaj, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per, Ajay Kumar Tripathi, Chief Justice****28.02.2019**

1. Writ application has been filed by the Petitioner when the Respondent authorities, primarily the IIT of Bhilai, decided to oust the Petitioner from award of contract for development of the Campus of IIT for which expression of interest was invited. It is pleaded in the writ application that overall they were placed the best in terms of their offer when the composite score was calculated, however, still for some extraneous reason they came to be ousted and work has been awarded to Aadharshila Designs Pvt. Ltd (Respondent No.4)
2. When the matter was earlier heard, the Assistant Solicitor General was directed to seek instruction and file his return as to why such a decision has been taken

contrary to the interest of the Petitioner which, *prima facie* seemed to be irrational. The return has been filed now and the return also contains supporting evidence and the circumstances under which the Respondent authorities were compelled to take a decision keeping in mind the fairness of the decision making in award of contract.

3. The following statements have been made in the return which gives the reason for the decision taken by the authorities with due approval of the Board of Governors. The relevant paragraphs are reproduced herein below :

“4. It is earnestly and vehemently submitted that the petitioner was one among the members of the Technical Evaluation Committee constituted by the Institute in the year 2018 for the purpose to technically evaluate the proposals received from architecture/architectural firms who are interested in providing architectural designs and services for development of permanent campus of IIT Bhilai. This itself abundantly proves that all relevant documents and technical know-hows and other financial implications necessary for architectural designing of IIT Campus was known to him.

5. That after knowing fully all the technical requirements and requisites required for the purpose of technical architectural designing, he cannot be a party to propound his business needs and interests. Therefore, on receiving complaints, the award was not given to him rightly, very judiciously and with utmost care and diligence in order to avoid the allegation with regard to conflict of interest.

6. That it is humbly submitted that the decision in not granting award to the petitioner was taken by the Chairman of Board of Governors, who was authorized and legally entitled to take such decisions which only has been done in the present case too. The said decision was also ratified by the Board of Governors, which is therefore, vehemently clear that no lacuna or impropriety has happened in the whole process of awarding to the next bidder.

7. The answering respondents further humbly and specifically state that though the score as per the RFP is highest of the petitioners, but the financial implication of the entire award is much less on account of the award being given to the present awardee i.e. Respondent No. 4. The awarding criteria formulated is explained in tabular form herein below

Name of the Participant	Composite Score	Fee Quotation (Percentage) of Thumb rule cost of Rs 235.50 Crores	Lump sum quotation for additional work (Rs)	Total financial implications
Upalghosh Associates	78.59	2.50% Rs. 5.89 crs	35.00 Lakhs	Rs 6.24 crores
Kanvinde Rai & Chowdhury	72.21	2.96% Rs. 6.97 crs	107.00 Lakhs	Rs 8.04 crores
Aadharshila Designs Pvt Ltd	74.40	1.33% Rs 3.13 crs	17.00 Lakhs	Rs 3.40 crores

On perusal of the above, it is abundantly clear that the technical bid score which was the requirement for awarding the contract was highest of the petitioner but on account of the conflict of interest the contract was awarded to the second highest bid scorer. However, another important point to bring to the notice of this Hon'ble court is that in terms of financial value the present awardee i.e. Respondent No. 4 is the lowest and there is a financial benefit of Rs 3.00 crores (approx.)”

4. Learned Assistant Solicitor General further submits that keeping in mind that one of the partners was a member of the Technical Evaluation Committee and he had all the inputs and information in relation to the project of development of IIT Campus as such. The General Financial Rules, 2017 issued by the Ministry of Finance, Department of Expenditure is very strict in matters of disclosure of conflict of interest in award of contracts or procurements. It is not that the Petitioner partnership firm would not be aware of the participation of one of its partner as a technical member in evaluation which finally culminated into award of contracts.
5. A rejoinder has been filed on behalf of the Petitioner. They take a plea that the fact of participation of one of the partner of the firm Mr. Ujan Ghosh as an expert member was known to the Respondents, still they were allowed to participate in the bid. Only when they turned out to be the best amongst the

various participants in the bid, a via media has been worked out on the ground that there was conflict of interest.

6. A plea was also sought to be taken that the partner of the Petitioner firm participated as a jury member in the Technical Evaluation Committee of the participant of DP-1, but his bidding was not with regard to DP-1 but DP-2 or DP-3.
7. The fine distinction sought to be made out by the counsel for the Petitioner through the rejoinder is not appreciable by us for the reason that the Technical Expert Committee which went into the issue of development of Campus of IIT, Bhilai, obviously were considering the development of the Campus as a whole and participation by any person in such deliberations will give him an inside view into the deliberations, if not, a seat in the first row of such decision making.
8. These days where probity in public life, especially in matters of award of contract etc. in public domain by Government agencies are put under close public gaze, the concept of conflict of interest cannot be said to be lacking in significance, in decision making.
9. The Court also would like to observe that since the Petitioner's firm was a firm of Architects, therefore, the partners or the partner should have been more circumspect and he should have opted out if the firm had any interest in participating in such tenders. That would have been in the interest of things even for the firm as well as their commercial interest. But since participation by one of its partner is not disputed, but is sought to be explained, we are not satisfied that ouster of the Petitioner firm from consideration for award of contract on the ground of conflict of interest was an erroneous decision taken

by the authorities. We see that the decision has been taken from the highest body of the IIT i.e. the Board of Governors after due deliberations.

10. Writ application therefore is dismissed. No interference is warranted with the decision.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge