NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 599 of 2019

- M/s Shyam Construction Company Through Its Proprietor Shri Hitesh Agrawakm Registered Office Ketka Road, Surajpur, District Surajpur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Public Health Engineering Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
2. The Engineer In Chief Public Health Engineering Department, Indrawati Bhawan, New Raipur Chhattisgarh.
3. The Collector Surajpur, District Surajpur Chhattisgarh.
4. The Executive Engineer PHE Department, Surajpur Chhattisgarh.
5. SKG Associates (Contractor And General Order Suplier) Through Proprietor Shiv Kumar Goyal Address Shivnandganpur, P.O. Bishrampur, District Surajpur Chhattisgarh.
6. M/s Gupteshwar Pandey (D Class Civil Contractor) Through Its Proprietor Gupteshwar Pandey, Address - Bhaiyathan Road, Mishra Gali, District Surajpur Chhattisgarh.
7. Rajesh Construction Company Through Its Proprietor Rajesh Kumar Agrawal, Address Nehru Park Road, District Surajpur Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Aman Upadhyay, Advocate.
For State/Respondents No.1 to 4	:	Shri Gagan Tiwari, Deputy Government Advocate

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Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, Judge

Order on Board

Sanjay K. Agrawal, J.

26.06.2019

1. Heard Mr. Aman Upadhyay, learned counsel for the Petitioner and Mr. Gagan Tiwari, learned Deputy Government Advocate for the State / Respondents No.1 to 4.

2. The Petitioner is unsuccessful tenderer. He participated in the NIT floated by the Respondents for expansion of pipeline within the area of Surajpur for providing drinking water to public. He also participated in the tender proceeding and ultimately upon considering pre bid qualification, he was found to be ineligible as

he has not filed the latest income tax clearance certificate as required under Clause 2 of the terms and conditions of the tender stipulations. The competent authority, on scrutiny, rejected the candidature of the Petitioner by declaring him ineligible. Now, this writ petition has been filed, seeking relief that the Competent Authority be directed to cancel the subject tender process and to conduct an enquiry upon the representation of the Petitioner and proper action be taken against the responsible officer.

3. Mr. Upadhyay, learned counsel for the Petitioner, submits that he was fully qualified and eligible and therefore, the Tendering Authority committed an illegality in arbitrarily rejecting his tender document relating to pre bid qualification, therefore, the entire tender process be set aside.

4. Mr. Tiwari, learned Deputy Government Advocate would support the action taken by the State stating *inter alia* that the Petitioner failed to fulfil the requisite specification of the tender relating to submission of latest income tax clearance certificate and therefore, he was found ineligible and hence his tender was rightly rejected while scrutinizing the tender document.

5. We have heard the learned counsel for the parties, considered the rival contentions stated as above and went through the record with utmost circumspection.

6. In the NIT floated by Respondents No.1 to 4 on 07.11.2017, one of the terms and conditions No. 2 which was to be complied with by the tenderers including the Petitioner was not complied with. A careful perusal of the aforesaid provision would show that one of the essential conditions that was to be fulfilled by the tenderer while submitting the tender is submission of the latest income tax clearance certificate along with the true copy of the Pan Card, which admittedly, the Petitioner did not submit, which is apparent from

the list of tenderers submitted by the Petitioner and available at page 19 of the paper book, in which Petitioner stands at Sr.No.34 and he has been declared as ineligible. The Supreme Court in the matter of ***Kanhaiyalal Agrawal vs. Union of India {(2002) 6 SCC 315}*** following its earlier judgment in the matter of ***G.J. Fernandez vs. State of Karnataka (AIR 1990 SC 958)*** has held that when an essential condition of tender is not complied with, it is open to the person, inviting tender to reject the same. Whether a condition is essential or collateral could be ascertained by reference to consequence of non-compliance thereto. If non-fulfilment of requirement results in rejection of the tender, then it would be essential part of the tender, otherwise it is only a collateral term. In the instant case, the submission of latest income tax clearance certificate along with a copy of Pancard was one of the essential conditions to be complied with looking to the object sought to be achieved, which the Petitioner failed to submit. Not only the Petitioner but also eleven other tenderers were declared ineligible on account of non-submission of said certificate, as such the action of Respondent is neither arbitrary nor illegal.

7. We do not find any merit in the writ petition preferred by the Petitioner and the same is deserve to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Sanjay K. Agrawal)**
Chief Justice	**Judge**

Chandra