

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 781 of 2019**

- M/s Devnarayan Yadav Through Partner Mr. Devnarayan Yadav, S/o Shri Ram Jag Yadav, Aged About 44 Years, R/o Babupara, Jail Road, Ambikapur Police Station - Kotwali, District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Public Works Department Mahanadi Bhawan, New Mantaralaya Raipur Chhattisgarh.
2. The Engineer In Chief Water Resource Department, District Raipur Chhattisgarh.
3. The Chief Engineer Water Resource Department, Hasdeo Ganga Kacchar Ambikapur, District : Surguja (Ambikapur), Chhattisgarh
4. The Superintending Engineer Water Resource Circle, Shyam Barnai Project Circle, Ambikapur, District : Surguja (Ambikapur), Chhattisgarh
5. The Executive Engineer Water Resource Department Division No. 1, Ambikapur, District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

For Petitioner	:	Shri Apoorva Tripathi, Advocate
For Respondent-State	:	Shri Gagan Tiwari, Deputy Government Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Prashant Kumar Mishra, Judge****Order on Board****Per, P.R. Ramachandra Menon, Chief Justice****08.05.2019**

1. The grievance projected by the Petitioner in this proceeding is with regard to the arbitrary rejection of the 'technical bid' with regard to the tender for construction of Korandha Diversion Scheme, floated by the Respondents herein.
2. Heard learned counsel representing the Petitioner as well the learned Deputy Government Advocate representing the State.
3. The sequence of events are as follows :
 - (i) Way back on 26.05.2018, Annexure-P/3 - Notification was issued by the competent authority inviting competitive tenders prescribing the last date for submission as 28.05.2018. In response to the said Notification, the Petitioner being qualified in all respects, submitted his bid well in time, but on 04.10.2018,

the technical bid submitted by the Petitioner in the cover labelled as 'B' (Envelope 'A' dealing with EMD and other relevant aspects and the Envelope 'C' being the Financial Bid).

(ii) The reason for rejection as discernible from Annexure-P/1 is that the Petitioner does not satisfy the requirements, particularly with regard to the 'bid capacity' and hence his financial bid by way of Envelope 'C' was not liable to be opened, to have an entry to compete with the others. This made the Petitioner to feel aggrieved, who objected the course of action pursued by the Respondents by filing a representation, asserting that he was having sufficient and adequate 'bid capacity' to participate in the process.

4. The learned counsel for the Petitioner submits that quite a lot of correspondence followed; particularly by e-mails had the Petitioner virtually succeeded in asserting and establishing his case as to the technical competence. This virtually was accepted by the Respondents, who conceded that there was a mistake on their part in assessing and quantifying the bid capacity by the Petitioner. However, it was informed as per Annexure-P/10, on 19.02.2019, that they were not in a position to re-roll the matter back. This made the Petitioner to feel aggrieved to approach this Court by filing the writ petition with the following prayers :

“10.A. May, the Hon'ble Court be pleased to direct the respondents to quash the “Disqualification of his technical bid” in system tender No.40313 displayed on the respondents website on 04.10.2018 (Annexure P-1) and the decision of Tender Cell dated 03.01.2019 (Annexure P-10) forwarded to the petitioner on 19.02.2019 through e-mail.

10.B. May, the Hon'ble Court be pleased to direct the respondents to consider the bid of the petitioner as Qualified bidder and open the financial bid of the petitioner.

10.C. May, the Hon'ble Court direct the respondent authorities to issue the work order of the above work in favour of the petitioner in case the petitioner succeeds the financial bid.

10.D. Any other relief which this Hon'ble Court may deem fit in the facts & circumstances of case.

10.E. Cost of the petition may also be awarded.”

5. Learned counsel appearing for the State submits, on the basis of instructions received, that there occurred an inadvertent mistake with regard to the assessment of the bid capacity of the Petitioner, which led to Annexure-P/1. It is also stated by the learned counsel representing the State that, since they had already issued the proceedings, communicating the out come as per Annexure-P/1, they cannot consider the Petitioner's bid, unless permitted by this Court and hence the matter is kept pending.
6. After hearing both the sides, we are of the view that the Petitioner has succeeded in making out a case for interference. When the Petitioner stands technically qualified, as now conceded from the part of the State, the rejection of the technical bid is not correct or sustainable which requires interference. The mistake committed, let it be by the State or anybody else, is always a mistake. It requires to be corrected and rectified at the earliest and cannot be perpetuated, which otherwise would result in total failure of justice. In the facts and circumstances of the case, we find it appropriate to set aside the impugned proceedings, particularly, Annexures P/1 and P/10 and hold that the Petitioner is eligible to be permitted to participate in the bid process treating him as qualified in respect of 'technical bid'. The further consideration and to the right to get the work awarded will be subject to the 'financial bid' submitted by the Petitioner, which could be considered along

with the financial bids submitted by the other qualified persons who are participating in the tender proceedings.

7. In view of the submission that the price bids of the other participants have already been opened, we direct the State Government / Respondents to open the price bid submitted by the Petitioner as well, to conduct a comparative assessment and proceed with further steps for awarding the contract to the most eligible person in terms of the bids submitted by them in accordance with law.
8. The submission made by the learned counsel representing the State / Respondents that the said proceedings would be finalized at the earliest, preferably within one month is recorded.
9. With the aforesaid observation and direction, writ petition stands allowed to the above extent.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Prashant Kumar Mishra)
Judge