

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 13.11.2019

Order Delivered on 02/12/2019

WPC No. 1741 of 2019

1. Everest Facility Management Services Pvt. Ltd. registered address at A -12, Sector 30, Noida, Uttar Pradesh 201301 Through Its Director Sonika Chhabra, D/o Shri Prem Minocha aged about 44 years, resident of A-12, Sector 30, Noida, U.P. - 201301.

---- Petitioner

Versus

1. Indian Institute Of Management Raipur Through Its Director, IIM Raipur, GEC Campus, Sejbahar, Raipur 492015.
2. Shri Bharat Bhaskar, Director, Indian Institute of Management Raipur, Atal Nagar, P.O.- Kurru, (Abhanpur), Raipur, Chhattisgarh - 493661.
3. Cmdr Pankaj K. Jha (Retd.) Secretary, Board of Governor, Indian Institute of Management Raipur, Atal Nagar, P.O. Kurru (Abhanpur), Raipur (CG) - 493661.
4. Shri C. K. Swain Member, Tender Committee, Indian Institute Of Management Raipur, Atal Nagar, P.O. Kurru (Abhanpur), Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
5. Dr. SK Mittra, Member, Tender Committee, Indian Institute of Management Raipur, Atal Nagar, P.O. Kurru (Abhanpur), Raipur (CG) 493661
6. Dr. Dhananjay Bapat Member, Tender Committee, Indian Institute of Management Raipur, Atal Nagar, P.O. Kurru (Abhanpur), Raipur (CG) 493661.
7. Dr. P.R. Ajit Kumar, Member, Tender Committee, Indian Institute of Management Raipur, Atal Nagar, P.O. Kurru (Abhanpur), Raipur (CG) 493661.
8. Shri Ashwani Bhardwaj Member, Tender Committee, Indian Institute of Management Raipur, Atal Nagar, P.O. Kurru (Abhanpur), Raipur (CG) 493661.
9. M/s Comet Enterprises Through (Prop.) Mr. Praveen Bharti, 23-

A, Bhagwan Nagar, Ashram, New Delhi - 110014.

---- Respondents

For Petitioner	: Mr. Hari Agrawal, Advocate
For Respondent No.1 to 8	: Dr. Shiv Kumar Shrivastava, Advocate
For Respondent No.9	: Mr. Gyan Prakash Shukla, Advocate

Hon'ble Shri P. R. Ramchandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

CAV Order

Per Parth Prateem Sahu, J

1. Rejection of technical bid of the petitioner by the Tender Committee, constituted by the 1st respondent for evaluation of bids submitted by different tenderers pursuant to e-tender floated for providing "housekeeping & facility management" facility in respondent No.1-Institute, has made the petitioner to knock the doors of this Court.
2. Shorn of unnecessary details, the facts giving rise to the present petition are that the 1st respondent floated e-tender on the internet on 4.3.2019 for providing 'housekeeping and facility management services' at the Indian Institute of Management, Raipur for a period of two years, which may be extended for further period of two years on one year extension basis, subject to performance of service provider. Last date & time for downloading bid document was 31.3.2019. Last date for receipt of bid was 1.4.2019 upto 4.05 p.m.. In response to e-tender dated 4.3.2019, total 15 tenderers had participated including the petitioner and submitted their bids/offers along with requisite documents as prescribed in the e-tender. As per

schedule, technical bids were opened on 2.4.2019 at 4.05 p.m. and the Tender Committee comprising of six members had evaluated the bids of all the 15 tenderers for technical suitability and after technical evaluation, found 07 tenderers including the petitioner as 'technically disqualified' for the reasons assigned in the minutes of meeting of the Tender Committee dated 2.5.2019 (Annexure P-2). Reason assigned for declaring the petitioner, who is existing vendor, to be 'technically disqualified' was 'poor quality of service offered by the petitioner during existing contract in comparison with the past two years and high-level dissatisfaction on several parameters of performance including non-compliance of statutory requirements'.

3. Mr. Hari Agrawal, learned counsel appearing on behalf of the petitioner submits that initially in respect of work in question the petitioner had entered into an agreement with the 1st respondent on 27.6.2014 for a period of two years followed by second agreement dated 28.5.2016 for a further period of two years, which was extended firstly for three months, thereafter again for three months and lastly, till May, 2019. The petitioner has been declared disqualified without opening his technical bid and without affording opportunity of hearing as no show-cause notice was issued to him with respect to alleged poor quality of service and for non-complying the statutory requirement, which was made basis for declaring him technically disqualified. He submits that infact the petitioner has been blacklisted without following the principles of natural

justice which requires service of notice coupled with an opportunity of personal hearing to show cause against proposed action. He also submits that the petitioner submitted reply (Annexure P-26) to the letter/notice issued to him, but no decision has been taken by the respondent authorities and the petitioner has been declared disqualified, which is an arbitrary and malicious action on the part of the 1st respondent. He also submits that the petitioner fulfils all the technical criteria as prescribed in Annexure-III of the tender document, but in order to deprive the petitioner from taking part in the tender process in question, he has been targeted and declared disqualified on the false & baseless grounds. He submits that no opportunity was afforded to the petitioner to put forth his version in response to the allegations levelled against him for declaring him as 'technically disqualified' and thereby the respondent authorities have breached the rules of natural justice. On the aforesaid grounds, learned counsel prays to interfere with the decision of the Tender Committee declaring the petitioner disqualified from participating in tender process initiated by the 1st respondent for providing 'housekeeping & facility management services' in the respondent No.1-Institute. Reliance is placed on the judgements in the matter of M/s Erusian Equipment & Chemicals Ltd. vs. State of West Bengal & another reported¹; Southern Painters v. Fertilizers & Chemicals Travancore Ltd. & another² & Gorkha Security

1(1975) 1 SCC 70

2(1994) Supp (2) SCC 699

Services v. Government (NCT of Delhi) & ors³.

4. Dr. Shiv Kumar Shrivastava, learned counsel representing respondents No.1 to 8 submits that services provided by the petitioner under the previous contract for the same work were not found to be satisfactory. Several complaints regarding non-payment of wages in time, deduction from the wages of workers towards penalty imposed by the 1st respondent on the petitioner etc. were received by the respondents. The petitioner knowingly that the services provided by him do not come within the category of 'taxable services' charged 'Goods & Service Tax' in the bills and thereby cheated the 1st respondent. He also submits that several notices were issued to the petitioner in the form of letters specifically mentioning the reasons as to how action on the part of the petitioner is illegal and arbitrary. Notices were issued to the petitioner from time to time. The petitioner in his reply to the letters/ notices dated 19.3.2019 & 27.3.2019 admitted almost all the irregularities levelled against him and therefore there is no question of violation of principles of natural justice. He also submits that the petitioner has misconstrued the decision of disqualification into one of blacklisting. Disqualification to participate in a tender process itself does not amount to blacklisting of a tenderer so long there is no blacklisting order. The petitioner has been only disqualified for a particular tender, which is subject matter of this case, and for which cogent reasons have been assigned. He also submits that it is for the

³(2014) 9 SC 105

authority floating tender to consider a tenderer to be qualified or disqualified looking to his past performance with the owner/ employer. He also submits that respondent No.1 received several complaints from the workers engaged by the petitioner regarding non-payment of wages in time; deduction of wages towards penalty charged against him apart from non-fulfilling other statutory requirements and therefore if the petitioner is permitted to participate in the tender process, it would cause great unrest. Reliance is placed on the judgements of Hon'ble Supreme Court in the matters of Delhi Science Forum & ors v. Union of India & ors⁴; Jagdish Mandal v. State of Orissa & ors⁵; Central Coalfields Limited & anr V. SLL-SML (Joint Venture Consortium) & ors⁶; Municipal Corporation, Ujjain & anr V. BVG India Limited & ors⁷ & Municipal Corporation Neemuch v. Mahadeo Real Estate & ors⁸.

5. We have heard learned counsel for the parties and perused the records.
6. It is not in dispute that since 27.6.2014 the petitioner was providing subject services to respondent No.1 i.e. of housekeeping & facility management services, but during last two years, prior to May, 2019, it has been found that services offered by the petitioner deteriorated in comparison to the past two years and on this basis, the Tender Committee has declared the petitioner as technically disqualified. The Tender

4 (1996) 2 SCC 405

5 (2007) 14 SCC 517

6 (2016) 8 SCC 622

7 (2018) 5 SCC 462

8 Civil Appeal Nos.7319-7320/2019 decided on 17.3.2019.

Committee comprising of six members, after evaluation of past and current performance of the petitioner, declared the petitioner as disqualified in the technical bid evaluation process. The petitioner has not made any allegation of mala fide or bias or ill-will against the members of the Tender Committee.

7. Coming to the submission made by learned counsel for the petitioner that the petitioner has been blacklisted without giving any opportunity of hearing and without issuing any show cause notice to the petitioner. The petitioner has not filed any document / order showing that petitioner firm has been blacklisted for a particular period, except harping upon Annexure P-2 which is the minutes of meeting of the Tender Committee dated 2.5.22019 (held for evaluating technical bids of tender in question) recommending to disqualify the petitioner on account of high-level dissatisfaction on several parameters of performance including non-compliance of statutory requirement by the petitioner, who is existing vendor. Disqualification to participate in a particular tender will itself not amount to blacklisting of the petitioner, unless a specific order to this effect has been passed. Hence, we are not inclined to accept this submission made by learned counsel for the petitioner. Case laws relied upon by the petitioner in support of this submission i.e. Gorkha Security Services's case (supra) & M/s Erusian Equipment & Chemical Pvt. Ltd.'s case (supra) are of no help for the reason that the facts of afore two judgements

are distinguishable from the facts of present case. In both the aforesaid cases, the petitioner/appellant therein were blacklisted, whereas in the case in hand there is no such order of blacklisting the petitioner from participating in future tenders. In fact, the petitioner has been declared disqualified for the purpose of his consideration in the tender in question only on the reasons assigned by the Tender Committee in its meeting dated 2.5.2019 (Annexure P-2)

8. As regards the ground raised by the learned counsel for petitioner that proper notice has not been issued before declaring the petitioner disqualified. We have already held in the preceding paragraph that present is not a case of blacklisting of the petitioner, rather it is a case of disqualification where the petitioner has been declared disqualified to take part in the tender process in question only. Respondent authorities have filed as many as 09 communications/correspondences made with the petitioner since January, 2019 and some of them were made through e-mail (copies whereof have brought on record as Annexure R-5 to the return). On perusal of Annexure R-5, it revealed that several irregularities have been pointed out by the authorities including with respect to recovery of GST; respondent No.1 vide letter dated 25.1.2019 informed the petitioner that he is free to visit IIM, Raipur for discussion. Looking to the correspondences made by respondent No.1 from time to time with the petitioner bringing into the notice of the petitioner point-wise irregularities committed by him and

calling upon him to submit his explanation in that regard, we are of the view that there had been sufficient compliance with the requirements of the principles of natural justice. In other words, letter indicating irregularities or mentioning the specific charge for which any action can be taken against the petitioner, in the opinion of this Court, is sufficient compliance with the requirements of the principles of natural justice. In the matter of Jagdish Mandal's case (supra) Hon'ble Supreme Court while considering the issue of compliance of principles of natural justice, has held as under:-

“22.....Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out.....”

In the case at hand, the tender was issued for 'housekeeping & facility management' for the students studying in the Indian Institute of Management, Raipur (respondent No.1) and on the basis of past performance of petitioner under previous contracts with respondent No.1, if the services rendered by the petitioner were not found to be satisfactory by the respondent authorities followed by issuance of various letters from time to time pointing out irregularities in the services offered by the petitioner, this Court will not interfere with the tender process by invoking its power under Article 226 of the Constitution of India.

9. So far as the argument raised by learned counsel for the petitioner that action on the part of the respondents is arbitrary and therefore the entire proceeding is liable to be interdicted by issuing appropriate writ, as prayed for, is concerned, action on the part of the employer/authority floating tender is to be assessed only on the ground whether the decision making process of the concerned authority is proper or suffers from some infirmity. Hon'ble Supreme Court in the matter of *Sterling Computers Ltd. v. M & N Publications Ltd.*⁹ has held in Para-18 thus:-

“18.While exercising the power of of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the 'decision making process'. By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the state. Courts have inherent limitations on the scope of any such enquiry. But the Courts can certainly examine whether "decision making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.”

10. The Supreme Court taking note of its earlier decision in **Tata Cellular v. Union of India**¹⁰ with regard to scope of judicial review has observed in Jagdish Mandal's case (supra) as under:-

“21.2.....This Court also noted that there are inherent limitations in the exercise of power of judicial review of contractual powers. This Court also observed that the duty to act fairly will vary in extent, depending upon the nature of cases, to which the said principle is sought to be applied. This Court held that the State has the right to refuse the lowest or any other tender, provided it tries to get the best person or the best quotation, and the power to

9 (1993) 1 SCC 445

10 (1994) 6 SCC 651

choose is not exercised for any collateral purpose or in infringement of Article 14."

11. In the matter of Delhi Science Forum's case (supra), Hon'ble Supreme Court has observed that *"any decision taken by such authority or a body can be questioned primarily on the grounds: (i) decision has been taken in bad faith; (ii) decision is based on irrational or irrelevant considerations; (iii) decision has been taken without following the prescribed procedure which is imperative in nature."* Hon'ble Supreme Court further observed that *"the question of awarding licences and contracts does not depend merely on the competitive rates offered; several factors have to be taken into consideration by an expert body which is more familiar with the intricacies of that particular trade. While granting licences a statutory authority or the body so constituted should have latitude to select the best offers on terms and conditions to be prescribed taking into account the economic and social interest of the nation. Unless any party aggrieved satisfies the court that the ultimate decision in respect of the selection has been vitiated, normally courts should be reluctant to interfere with the same."*

In the matter of Central Coalfields Ltd.'s case (supra), Hon'ble Supreme Court has held as under:-

"47..... The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision "that no responsible authority acting reasonably and in accordance with relevant law could have reached" as held in Jagdish Mandal⁹ followed in Michigan Rubber¹³."

12. In JSW Infrastructure Limited & another vs. Kakinada Seaports

Limited & ors¹¹ Hon'ble Supreme Court has reiterated the same principles on the extent of judicial review as laid down in Tata Cellular's case (supra). Para-8 of the said judgment is reproduced below:-

“8.We may also add that the law is well settled that superior courts while exercising their power of judicial review must act with restraint while dealing with contractual matters. A three-Judge Bench of this Court in Tata Cellular v. Union of India held that:

- (i) there should be judicial restraint in review of administrative action;
- (ii) the court should not act like court of appeal; it cannot review the decision but can only review the decision making process
- (iii) the court does not usually have the necessary expertise to correct such technical decisions.;
- (iv) the employer must have play in the joints i.e., necessary freedom to take administrative decisions within certain boundaries.

13. Recently, in the matter of Municipal Corporation Ujjain (supra)

Hon'ble Supreme Court has observed thus;-

“61.The authority concerned is in the best position to find out the best person or the best quotation depending on the work to be entrusted under the contract. If a bidder had faced a number of show-cause notices from various municipal corporations in the matter of non-performance of door-to-door collection of garbage, etc. the court cannot compel the authority to choose such undeserving person/company to carry out the work. Ultimately, the public interest must be safeguarded. The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously and effectively. The public would also be interested in the quality of work undertaken. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in re-doing the entire work.”

Hon'ble Supreme Court further observed that;-

11 (2017) 4 SCC 170

“63.As aforementioned, unless the Court concludes that the decision-making-process or the decision taken by the authority bristles with mala fides, arbitrariness, or perversity, or that the authority has intended to favour someone, the constitutional court will not interfere with the decision-making process or the decision.”

14. When the facts of present case are considered in the light of above principles laid down by Hon'ble Supreme Court, we find that nothing has been brought on record specifically indicating that action on the part of respondent authorities suffers from mala fides or it is arbitrary in any manner. No argument has been advanced by learned counsel for the petitioner with specific name and proof that the action taken by the Tender Committee is only to favour someone. Even otherwise, it is also evident from the minutes of meeting of the Tender Committee, which is part of record as Annexure P-2, that initially there were 15 tenderers in total and after technical evaluation, only 08 were found to be eligible. In this circumstance also, it cannot be said that in order to favour a person of choice, the respondent authorities have declared the petitioner to be disqualified. As held by Hon'ble Supreme Court in the above cited judgements that the authority concerned is in the best position to find out the best person. In the instant case also, there was a report of the competent authority before the Tender Committee reporting high level dissatisfaction on several parameters of performance including non-compliance of the statutory requirements by the petitioner. As the respondent authorities were dissatisfied with the performance of the petitioner in the existing contract, the action taken by the

respondent authorities cannot be branded as mala fide or arbitrary. Past experience of the respondent authorities with the petitioner can be considered to select the best person to enter into contract for performance of work, which is subject-matter of tender in question.

15. For the foregoing reasons, we do not find any ground for exercising the power of judicial review. Writ petition sans merit and is, accordingly, dismissed.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-