

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1620 of 2018**

- Shri Barfani Security Service Registered Address - 1159, Napier Town, District Jabalpur (Madhya Pradesh). Pin Code - 482001 Through Its Proprietor, Ritesh Tandon, S/o Late Shri V.B.S. Tandon, Aged About 41 Years, R/o 1159, Napier Town, District Jabalpur (Madhya Pradesh) Pin Code 482001.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Urban Administration And Development (UADD), Government Of Chhattisgarh Indravati Bhawan, Block-D, 4th Floor, New Raipur, District Raipur Chhattisgarh, Pin Code - 492002.
2. Commissioner, Municipal Corporation, Inside Town-hall, Near Hospital, New Road, Raigarh, District Raigarh (CG) Pin Code - 496001.
3. Call Me Services, C-101/5, First Floor, Tagore Nagar, District Raipur Chhattisgarh, Pin Code - 492001. Through Its Proprietor, Raj Kumar Bothra.

---- Respondents**WPC No. 1623 of 2018**

- Shri Barfani Security Service Registered Address 1159, Napier Town, District Jabalpur (Madhya Pradesh). Pin Code - 482001. Through Its Proprietor, Ritesh Tandon, S/o Late Shri V.B.S. Tandon, Aged About 41 Years, R/o 1159, Napier Town, District Jabalpur (Madhya Pradesh) Pin Code - 482001.

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---- Respondents

For Petitioner	:	Shri K. Rohan, Advocate.
For Respondent No.1	:	Shri Rahul Jha, Government Advocate
For Respondent No.2	:	Shri HB Agrawal, Sr. Advocate with Smt. Iturani Mukherjee, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Ajay Kumar Tripathi, CJ

14/01/2019

1. Petitioner was one of the bidders for supply of manpower to the Municipal Corporation, Raigarh in terms of the Notice Inviting Tender (NIT) dated 19.2.2018. Details and terms & conditions of the NIT are available in Annexure P-2 to the writ application.
2. There were four bidders who qualified and a comparative chart was prepared as to the rate which was quoted by the four. The respondent Corporation after making a comparative study of the offers so made came to a considered opinion that LI was said to be one 'Call Me Services', who was no doubt the lowest tenderer, but since his offer was lower than even the rate for statutory compliance towards EPF & ESI for which necessary break-up was 17.90% (13.75% & 4.15%), therefore, his offer could not be accepted.
3. So far as the present petitioner is concerned, he was no doubt 'L2' and his quotation was 17.90%, but this 17.90% only adds-up to the statutory compliance of two components namely EPF & ESI. If this 17.90% is treated as 'service charge' then additional 17.90% will be required to be added to the offer of the petitioner.

4. Based on the rates so quoted by the four bidders, who were short-listed, the Mayor-in-Council took a decision to place the above outcome of opening of bidding and the analysis before the General Council who in turn decided not to accept the offers and went for a fresh tender incorporating two things, one that the number of people required had been raised and secondly, in Clause 13 components of EPF & ESI had been shown separately in the tender in addition to the wages.
5. In this background writ application came to be filed. While writ application was still pending, a second NIT was issued, therefore, that came to be challenged by way of I.A. No.6/18.
6. Submission of learned counsel for the petitioner is that his offer of 17.90% should be treated as the offer because he is not willing to include any service charge component and therefore it was a case of offer of 'no profit no loss' and he was eligible for being awarded the contract. He further submits that there was no decision taken to cancel first NIT and without such a decision atleast being brought in public domain, a second NIT could not be issued. Therefore, in addition to the initial prayer of a direction for awarding the contract in favour of the petitioner, he also sought quashing of the second NIT.
7. The Court directed the respondent Corporation authorities to file their return and explain their conduct with regard to the decision so taken.
8. A return has been filed wherein they have brought on record the resolution of the General Council along with supporting annexures from where it emerges that the reasons for the respondent authorities to go for second NIT was because of the confusion arising in the rates which were quoted

by the short-listed bidders.

9. A bare reading of the first as well second NIT would indicate that all the statutory requirements were required to be met which were mandatory and not obligatory. In Clause 13 of NIT it was indicated as to how the payment was required to be made once a bill was raised by the successful bidder. It further indicates that the said payment would be required to be made on the basis of biometric attendance of an employee so supplied. The payment is required to be made at the rate notified by the District Collector and payment has to be made between 1st and 7th of the month. In addition to that, by 10th of every month the deposit in the EPF & ESI accounts for such employee at the rate notified by the statutory authority would also require to be made and proof thereof was required to be placed for settlement of the accounts.
10. Since in the previous tender we see that under the head of service charges certain percentage had been quoted by four bidders and when the same was calculated and looked into, the authorities found that L1 did not meet the minimum statutory requirements and that the rate quoted by L2 i.e. present petitioner, indicated 17.90% as his bid figure which was just to meet the statutory requirements.
11. The bid was invited with regard to the service charge and the EPF & ESI components were required to be added over and above the same. That was to be in addition to the wages which such an employee was entitled to as per notification issued by the Collector of the District. Since in the first NIT there was some ambiguity which led to all kinds of arguments being made by short-listed bidders as to what the rate meant, it was decided not to act upon the same and to go for a fresh bid. In the second

NIT the position was amply clarified as to what quoted rates must reflect and the components thereof.

12. In the above factual background, even though the decision so taken and the resolution lacks clarity, but on the totality of examination of the records and the pleadings, we feel that going for second NIT in the above circumstances was warranted and therefore we do not feel that any inference is needed with the second NIT dated 13.6.2018.
13. The writ applications have no merit and the same are accordingly dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-