

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1948 of 2019

- M/s N.K. Construction Registered Under Firms And Society Act Chhattisgarh, And As Partnership Firm Under The Provision Section 58(1) of Indian Partnership Act Having Its Office Saidarwar Shrikant Verma Marg, Bilaspur Tahsil And District Bilaspur Chhattisgarh. Through: Mr. Naveen Kumar Singh (Partner) S/o Shri Krishna Singh Aged About 51 Years, R/o Siadwar, Shrikant Verma Marg, Sharda, Nagar, Bilaspur Tahsil and District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. Union of India Through The Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. The Divisional Railway Manager South Eastern Central Railway, Bilaspur Chhattisgarh.
3. Sr. Divisional Engineer (Coordination/ Central) South Eastern Central Railway, Raipur Chhattisgarh.
4. Add1 Divisional Railway Manager South Eastern Central Railway, Bilaspur Chhattisgarh.
5. Vishambhar Dayal Aged About 55 Years R/o Ludeg, Pathalgaon, District Jashpur Chhattisgarh Pin Code 496220

---- Respondents

For Petitioner : Shri Ravi Ranjan Sinha, Advocate
For Respondent/Railways : Shri Abhishek Sinha, Standing Counsel

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

P. R. Ramachandra Menon, C.J.

02.07.2019

1. The prayers raised in this writ petition are in the following terms:

“10.1 That this Hon'ble Court may kindly be pleased to call for entire records pertaining to the case of petitioner for kind perusal of this Hon'ble High Court.

10.2 That this Hon'ble Court may kindly be pleased to direct the respondent authority to consider his credential certificate (certificate of contractual receipt) dated 18/04/2019 (Annexure P-4) and consider work Award in his favour.

10.3 Any other relief, which may be deemed, fit by this Hon'ble Court just and proper in the facts and circumstances of the case may also be provided in favour of the petitioner.”

2. Heard learned counsel for the Petitioner as well as learned standing counsel representing the Respondent/Railways.
3. The grievance is mainly with regard to the course sought to be pursued by the Respondent/Railways in not considering the credentials of the Petitioner in connection with the tender floated by the Respondent/Railways. As per the tender notification, and according to the Petitioner, the Petitioner satisfies all the requirements and accordingly the bid was submitted for consideration. It is stated that the Petitioner has come to understand from reliable sources that the Respondents will not consider the tender submitted by the Petitioner for the reason that one of the requirements as notified in the tender, that documents in support of the claims and credentials should be super inscribed as "Documents supporting the claim of qualifying the laid down eligibility Criteria" as per Clauses 1.2 and 1.4 of NIT dated 22.04.2019; which was omitted to be incorporated in one of the documents. The above clauses are extracted below, for easy reference:

"1.2 The tenderers shall submit a notarized affidavit on a non judicial stamp paper stating that they are not liable to be disqualified and all their statements/documents submitted along with bid are true and factual. Standard format of the affidavit to be submitted by the bidder is enclosed as Annexure-Z. Non submission of an affidavit by the bidder shall result in summarily rejection of his/their bid and it shall be mandatorily incumbent upon the tenderer to identity, state and submit the supporting documents duly self attested by which they/he is qualifying the qualifying criteria mentioned in the Tender Document. It will not be obligatory on the part of the Railway to scrutinize beyond the submitted document of tenderer as far as his qualification for the tender is concerned.

1.4 Only those documents which are declared explicitly by the tenderer as "documents supporting the claim of qualifying

the laid down eligibility criteria” will be considered for evaluating his/their tender. Hence tender must writ clearly on top of the certificate “Documents supporting the claim of qualifying the laid down eligibility Criteria”.

4. According to the learned counsel, the Petitioner omitted to show it in so many words on one document, which was purely an internal communication of the Respondent-Railways' officers and its contents could be verified from the records of the Railways. As such, the non mentioning of the description at the top of the said document, as it is a document which sought to be relied on in support of the claim, is rather hyper-technical and is not having any relevance or the significance to decide the eligibility of the Petitioner. It is in the said circumstance that, interference of this Court is sought for, with the prayers as aforesaid.
5. The learned standing counsel for the Respondent-Railways submits that idea and understanding of the Petitioner as to the nature and scope of the tender clauses is thoroughly wrong and misconceived. It is also stated that the scrutiny of the documents is of utmost importance and the same cannot be watered down so as to suit the convenience of the parties participating in the bid. Similar question has already been considered by this Court and interference has been declined and as such, this writ petition deserves to be dismissed, submitted the learned counsel.
6. It is pointed out by the learned counsel for the Petitioner, that under similar circumstances, the Respondent-Railways had extended benefit to the similarly situated persons. The learned counsel also seeks to place reliance on the materials, whereby such a concession was given by the Respondent-Railways, attempting to assert that the alleged defect is only a 'technical' one. We find it difficult to accept the said proposition. We are not given to

understand as to the factual circumstance when the concession, as alleged, was extended to some others. We are also not aware, if it was a mistake or not. In any view of the matter, the mistake if any committed by the Railways to be perpetuated. We find support from the judgment rendered by the Apex Court in case of **Chandigarh Administration v. Jagjit Singh (AIR 1995 SC 705)**.

7. Coming to the instant case, the verdict passed by the Division Bench of this Court in WPC No. 2482 of 2018 on 09.10.2018 is brought to the notice of this Court by the learned counsel representing the Respondent-Railways. In the said case also, the disputed clause and the result flowing therefrom was almost similar as discernible from the 'first paragraph' of the judgment with reference to stipulation as involved in the present case. The said clause, for convenience of reference, is extracted below as well:-

“1.5. Only those documents which are declared explicitly by the tenderer as “Documents supporting the claim of qualifying the laid down eligibility criteria” will be considered for evaluating his/their tender. Hence tenderer must write clearly on top of the certificate “Documents supporting the claim of qualifying the laid down Eligibility Criteria.”

8. After detailed discussion, the Bench declined interference and the writ petition was dismissed. We find that the issue projected herein is squarely covered by the above verdict. We do not find any tenable ground to take a different view. Interference is declined. The writ petition stands dismissed.

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

Sd/-
(Parth Prateem Sahu)
Judge