

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2182 of 2019**

- M/s Yuvraj Singh Babra Proprietor, Prince Babra, S/o Shri Malendra Singh Babra, Aged About 40 Years, R/o Seepat Road, Sarkanda, Bilaspur Chhattisgarh.

----Petitioner**VERSUS**

1. The State Of Chhattisgarh Through - Secretary, Public Health Engineering Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur District Raipur Chhattisgarh.
2. Engineer - In - Chief, Public Health Engineering Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
3. Chief Engineer, Public Health Engineering Department , Bilaspur Zone Bilaspur District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
4. Executive Engineer, Public Health Engineering Department, Public Health And Engineer Division, Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
5. Chief Executive Officer, Chhattisgarh Infotech And Biotech Promotion Society (CHIPS) State Data Centre, Opposite New Circuit House Civil Lines, Raipur District Raipur Chhattisgarh.
6. M/s V. V. Construction, Through Partner, Videsh Kumar Mishra S/o Baldev Prasad Mishra, Aged About 48 Years , R/o Kachehri Complex, Jashpurnagar, District Jashpur Chhattisgarh.

-----Respondents

For Petitioner	:	Mr. A.K. Prasad, Advocate
For Respondent-State	:	Mr. Siddharth Dubey, Deputy G.A.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per P.R. Ramachandra Menon, Chief Justice.****21/08/2019**

1. The illegality committed by the respondents herein in wrongly rejecting the technical bid of the petitioner and denying entry to participate in the tender proceedings with reference to the price bid submitted by him is subjected to challenge in this writ petition.

2. The sequence of events is as follows: Respondent No. 4 issued a tender notification (Annexure P-2) inviting bids in respect of integrated e-Procurement System from qualified persons who were desirous to participate in the proceedings. According to the petitioner, he was satisfying all the requirements who submitted technical bid and also price bid separately, as prescribed. But the technical bid came to be rejected on 27/02/2019, which made the petitioner to file representation/appeal before the Chief Engineer (PHE) projecting his grievance with reference to his credentials. The matter was considered by the Chief Engineer, who issued a letter dated 25-03-2019 (Annexure P-5) and addressed to the Superintending Engineer, to the effect that the petitioner was satisfying all the requirements and was to be declared as eligible to participate in the bid and to have his price bid considered accordingly.
3. Based on Annexure P-5 letter/order of the Chief Engineer, the Respondent No. 4/Executive Engineer addressed the 5th respondent/Chief Executive Officer, as per letter dated 28-03-2019 (Annexure P-6) to roll back the process, so as to treat the petitioner as technically qualified and to have his price bid considered. This was replied by Annexure P-7, issued by the 5th respondent, stating that by virtue of the standing instructions and norms connected with tender, *“such a 'roll back' was not permissible, unless it was specifically ordered by a Court of law”*. This made the petitioner to approach this Court with the following prayers-

“10.1 That, this Hon'ble may kindly be pleased to direct the respondent No. 5 to rollback e-Procurement System in respect of Tender No. 47000 in order to open the price bid of the petitioner.

10.2 That, this Hon'ble may kindly be pleased to quash the impugned order dated 02.05.2019 (Annexure P-7) passed by the respondent No. 5.

10.3 That, this Hon'ble Court may further be pleased

to direct the respondent authorities that if the price bid of the petitioner is found to be lowest, then his tender may be accepted.

10.4 That, this Hon'ble Court may kindly be pleased to grant any other relief as it may deems fit and appropriate.”

4. Learned counsel for the petitioner submits that right from the beginning, there was an attempt to oust the petitioner from the field. The tender proceedings have not been pursued in the proper manner in which it should have been done. Reference is made to Annexure P-8 Circular dated 02-06-2018 to the effect that the tender proceedings had to be video-graphed. By virtue of Annexure P-9, the petitioner has been informed that no such video-graphy was done. The said process is stipulated to maintain utmost transparency and non-compliance of said provision is not answered by the respondents; submits the learned counsel.
5. Learned counsel representing the State submits with reference to the contents of return dated 02-08-2019 filed by the respondents No. 1 to 4, that there was some defect in the tender submitted by the petitioner; particularly with reference to the EMD. In fact, the petitioner had submitted bids in respect of two different items, carrying different amounts of EMD and that the EMDs furnished in the two tenders got interchanged; by virtue of which, in respect of one item, it was below the requisite extent. Contents of the return filed by respondents No. 1 to 4 are sought to be rebutted by the petitioner by filing rejoinder.
6. The above submission does not impress this Court in any manner. The facts and figures have been looked into by the 3rd respondent/Chief Engineer, who has issued Annexure P-5, declaring that the technical bid of the petitioner was rejected wrongly and that he was liable to be considered as a technically qualified hand and to have the price bid considered along with that of other eligible hands.

7. There is no case for the respondents that Annexure P-5 was issued by the 3rd respondent on the basis of any mistake, or that it was set aside or modified later. Even after filing the return, no such proceeding has been filed before this Court to the said effect and no instruction is forthcoming as to whether any action has been taken against the Chief Engineer for having issued Annexure P-5 if it were contrary to the actual facts and figures.
8. Insofar as Annexure P-5 stands, this Court is of the view that there cannot be any dispute with regard to the technical competency of the petitioner and he is eligible to participate in the proceeding, causing the price bid to be considered. We are of the view that the petitioner has made out a case for interference. Accordingly, the respondents, particularly the 5th respondent is directed to treat the petitioner as technically qualified, based on Annexure P-5, and to consider his price bids alongwith the price bids submitted by other eligible hands and finalize the tender in accordance with law; as expeditiously as possible; at any rate, within four weeks from the date of receipt of a copy of this judgment.

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

Sd/-
(Parth Prateem Sahu)
Judge