

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2042 of 2019**

1. M/s Unissi (India) Pvt. Ltd. 368-389, Basant Building, 2nd Floor, Chaudhary Market, Sultanpur, New Delhi.

Through – H.S. Saini, General Manager, S/o Shri K.L. Saini, aged about 64 years, R/o 24/14, West Patel Nagar, New Delhi – 110008.

---- Petitioner

Versus

1. State of Chhattisgarh, Through – Secretary, Public Works Department, Mahanadi Bhawan, Naya Raipur, Raipur.
2. Chief Engineer, (Central Tender Cell), Office of Engineer-in-Chief, P.W., Atal Nagar, Distt. Raipur.
3. Directorate of Medical Education, Old Nurses Hostel, D.K.S. Bhawan Premises, Raipur, Chhattisgarh.
4. Dean, Late Shri Lakhiram Agarwal Medical College, Government Medical College, Ektal Road, Bendrchuwa, Chhattisgarh, 496001.

--- Respondents

For Petitioner	:	Mr. Saurabh Dangi, Advocate
For State	:	Mrs. Fouzia Mirza, Additional Advocate General

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

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24.06.2019

Sanjay K. Agrawal, J.

1. Heard on question of admission of the writ petition and I.A. No. 01, application for grant of stay.
2. This writ petition (civil) under Article 226 of the Constitution of India has been preferred by the petitioner seeking quashment of subject tender bearing System Tender No. 51104 NIT No. 002/TC/19-20 dated 27/05/2019 issued by respondent No. 2. The petitioner herein has also sought relief that the respondent authorities be directed to issue fresh tender incorporating the general conditions

specified by respondents No. 3 & 4.

3. Mr. Saurabh Dangi, learned counsel for the petitioner submits that respondent No. 1 is absolutely unjustified in deleting the special conditions incorporated by respondents No. 3 & 4 vide Annexure P/8 dated 27/11/2018 which are essential conditions to be incorporated in the tender notice proposed earlier by the said respondents, being the expert parties, and therefore, it deserves to be quashed.
4. Mrs. Fouzia Mirza, Additional Advocate General, while supporting the impugned tender, submits that the petitioner has already participated in the subject tender, though in protest, she also submits that the prescription of qualification is domain of the person inviting tender and the petitioner cannot dictate the terms of the tender. Even otherwise, the petitioner has not questioned the order dated 27/11/2018 (Annexure P/8) by which special conditions specified by respondents No. 3 & 4 have been deleted in the tender. Therefore, no interference is called for in the notice inviting tender in the extraordinary jurisdiction under Article 226 of the Constitution of India.
5. We have heard learned counsel for the parties, considered their rival submissions on the question of admission of this writ petition and perused the records with utmost circumspection.
6. Petitioner's main and principal grievance is with regard to the deletion of certain conditions vide Annexure P/8 by the respondent authorities on their meeting dated 27/11/2018. A careful perusal of the aforesaid resolutions would show that the respondent authorities including respondents No. 3 & 4 have unanimously taken a decision to delete the general conditions and pre-

qualifications after long discussion and deliberation and agreed for the remaining six conditions and thereafter, the notice inviting tender has been issued on 27/05/2019.

7. A careful perusal of the relief clause would show that the petitioner has though questioned the notice inviting tender dated 27/05/2019 in the instant petition in which he has already participated, but not questioned the deletion of conditions vide Annexure P/8 dated 27/11/2018 in order to make the petition competent. It was incumbent on the part of the petitioner to question the resolution dated 27/05/2019 passed by the respondents, if the petitioner feels that the deletion of certain conditions is arbitrary, it could have been assailed in the petition by questioning the same which has not been done for the reasons best known to him. Tender submitted by the petitioner and all other tenderers is under consideration which is apparent from the statement made in the writ petition.
8. Once the petitioner has participated in the subject tender agreeing to the terms and conditions laid down therein, he cannot be allowed to turn back and question the subject tender.
9. The petitioner cannot claim a writ, being a tenderer that certain conditions of tender, which the tendering authorities have after long deliberation deleted from tender stipulations as prescription of terms and conditions are exclusive domain of tendering authorities. It cannot be dictated by the tenderer/petitioner enabling him to suit his technical or other qualification.
10. In a recent pronouncement, in the matter of ***M/s. Icomm Tele Ltd. Vs. Punjab State Water Supply and Sewage Board***¹,

¹ AIR 2019 SC 2682

their Lordships of the Supreme Court have clearly held that terms of invitation to tender are not open to judicial scrutiny as they are in realm of contract unless they are arbitrary, discriminatory or actuated by an alicie.

11. Upon due consideration, we do not find any merit in the instant writ petition questioning the subject tender and are not inclined to interfere with the said proceedings under Article 226 of the Constitution of India.

12. Accordingly, this writ petition (civil) stands dismissed at the motion stage without noticing to the other side. No cost(s).

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

Sd/-
(Sanjay K. Agrawal)
Judge