

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 13.11.2019****Order Delivered on 02/12/2019****CONT No. 504 of 2019**

1. Everest Facility Management Services Pvt. Ltd., through, Sonika Chhabra, D/o Prem Minocha, aged around 44 years (Director), at A-12, Sector 30, Noida, Uttar Pradesh - 201301., District : Noida,

---- Applicant**Versus**

1. Shri Bharat Bhasker, Indian Institute of Management Raipur IIM Raipur, GEC Campus, Sejbahar, Raipur - 492015.
2. Cmdr Pankaj K. Jha (Retd.) Indian Institute of Management Raipur IIM Raipur, GEC Campus, Sejbahar, Raipur - 492015.
3. Shri C.K. Swain, Indian Institute of Management Raipur IIM Raipur, GEC Campus, Sejbahar, Raipur - 492015.
4. Dr. Sk Mittra, Indian Institute of Management Raipur IIM Raipur, GEC Campus, Sejbahar, Raipur - 492015.
5. Dr. Dhananjay Bapat, Indian Institute of Management Raipur IIM Raipur, GEC Campus, Sejbahar, Raipur - 492015.
6. Dr. P.R. Ajit Kumar, Indian Institute of Management Raipur IIM Raipur, GEC Campus, Sejbahar, Raipur - 492015.
7. Shri Ashwani Bhardwaj, Indian Institute of Management Raipur IIM Raipur, GEC Campus, Sejbahar, Raipur - 492015.

---- Respondents

For Applicant : Mr. Hari Agrawal, Advocate
 For Respondents : Dr. Shiv Kumar Shrivastava, Advocate

Hon'ble Shri P. R. Ramchandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

CAV Order**Per Parth Prateem Sahu, J**

1. Applicant has filed this contempt petition alleging that contract in question was awarded in violation of the stay order dated 14.5.2019 passed by the learned Single Judge in WPC No.1741/2019.
2. The facts giving rise to the instant contempt petition are

narrated, in brief, as follows;

3. Applicant has filed a writ petition bearing WPC No.1741/2019 challenging rejection of his technical bid by the Tender Committee, constituted by the Indian Institute of Management, Raipur for evaluation of bids of tenderers submitted pursuant to e-tender floated for providing 'housekeeping and facility management' in the Indian Institute of Management, Raipur. The said writ petition came up for hearing on 14.5.2019 and on that date an interim order was passed in favour of the applicant staying further proceedings of the said tender process, however, during the currency of interim order, the non-applicants have finalized the tender process and awarded contract to a third party.

4. Relevant portion of the order dated 14.5.2019 reads as under:-

“It is ordered that further proceedings will be stayed, subject to final outcome of this petition.”

5. Contention of the learned counsel for the applicant is that this Court vide order dated 14.5.2019 has stayed further proceedings of the tender in question, which was duly communicated to the non-applicants through e-mail; letter dated 20.5.2019 and also by way of other mode of communications, but the non-applicants in violation of the said interim order has awarded contract to one M/s Comet Enterprises, New Delhi. He submits that action of awarding contract to the said company during the currency of interim

order dated 14.5.2019 amounts to contumacious act from the part of the non-applicants and therefore they are liable to be punished for contempt of the Court.

6. At the outset, learned counsel appearing on behalf of the non-applicants, tenders unconditional apology on behalf of non-applicants and submits that the act of awarding tender to M/s Comet Enterprises, New Delhi is not in wilful disobedience or violation of the interim order passed by the Court. On coming to know about the order dated 14.5.2019, the non-applicants had sought opinion from two lawyers practising in the High Court and after mentioning gist of the order passed by the Court, they opined vide Annexure R1-1 that the non-applicants can proceed further with the tender process and only thereafter the non-applicants have finalized the tender process and awarded contract to said M/s Comet Enterprises. He also submits that the non-applicants are having due regard to the orders passed by the High Court and if any act committed by them is contrary to the order passed by the Court on 14.5.2019, then they may be forgiven as their act was bona fide and unintentional. They have acted on the basis of opinion given to them which they have sought from two practising lawyers. There is no wilful disobedience of the Court's order on the part of the non-applicants herein.
7. We have heard learned counsel for the parties and perused the order dated 14.5.2019.

8. In the operative portion of the order dated 14.5.2019, the first part mentions that 'further proceedings will be stayed', but it concludes with a rider 'subject to final outcome of this petition'. Perusal of Annexure R1-1, which are two opinions given by two different lawyers, reveals that in the said opinions, the lawyers after taking into consideration the rider added in the order dated 14.5.2019 i.e. 'subject to final outcome of this petition', have opined that the non-applicants can proceed further with the tender process. In the return filed by non-applicants it has been stated that period of previous contract for the work in question was going to expire on 31.5.2019 and therefore, the non-applicants have finalized the process and awarded contract, but only after obtaining opinion from two lawyers practising in the High Court.
9. Considering the fact that only after receipt of opinions with respect to interim order dated 14.5.2019, the non-applicants have proceeded further with tender process, this Court is of the considered view that the said act on the part of non-applicants cannot be said to be wilful or intentional disobedience to the Court's order dated 14.5.2019. For holding the act of a contemnor to be contumacious to the order passed by the Court, there has to be wilful and deliberate disobedience or violation of the Court's order on the part of contemnor, which is not emerging from the facts and documents available in the instant case.
10. Another aspect of the case is that the non-applicants have

tendered their unconditional apology and specifically pleaded in their reply that the act of proceeding further with tender process after passing of the order dated 14.5.2019 was unintentional and they never intended to disobey or violate the order passed by the Court. Even main writ petition in which the order dated 14.5.2019 was passed, has been heard analogously with this contempt petition and is ordered to be dismissed by this Court.

11. In the given facts and circumstances of the case and in view of the nature of explanation offered by the non-applicants in their reply, we are satisfied that there is no *prima facie* case against the non-applicants for drawing contempt proceeding against them and, therefore, this contempt petition fails and is accordingly dismissed. Contempt proceedings are dropped and the contemnors are discharged.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-