

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2645 of 2019**

1. Jindal Infra Structure Partnership Firm, Through Partner, Mukesh Agrawal S/o Shri Pawan Agrawal, Aged About 40 Years,
2. Vishnu Prasad Agrawal S/o Late Shankar Lal Agrawal Aged About 62 Years (Second Partner Jindal Infra Structure Partnership Firm)

All are R/o Office Behind Jabbal and Sons, Nehru Nagar, Bilaspur (C.G.)

---- **Petitioners**

Versus

1. Union of India Through Secretary, National Mineral Development Corporation Limited, Delhi.
2. National Mineral Development Corporation Limited, Through Deputy General Manager, Project N.M.D.C. Third Floor R.M. and AED Building, Mecon Limited, Doranda Ranchi
3. National Mineral Development Corporation Limited, Through Executive Director (Contractor), Contract Department, 5th Floor, 10-3-311/A, Khanij Bhawan, Castle Hills, Masab Tank, Hyderabad.

---- **Respondents**

For Petitioners	:	Shri Awadh Tripathi, Advocate.
For Respondent No.1	:	Shri B. Gopa Kumar, Assistant Solicitor General.
For Respondents No.2 & 3 :	:	Shri Vaibhav Shukla, Advocate.

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

Hon'ble Shri Justice Parth Prateem Sahu, Judge

Order on Board

Per P.R. Ramachandra Menon, Chief Justice

01.08.2019

1. The Petitioners have moved this Court with the following prayers:

“10.1 That, the respondent no. 1 to 3 may kindly be directed to permitted the petitioners to take part in the tender process for work of topping of road on item red basis for 3-0 MTPA integrated steel plant at Nagarnar Near Jagdalpur Chhattisgarh State and receive the hard copy of tender submitted by the petitioner and also directed the respondent to consider the tender document of the petitioners along with the tender document of other tenderers.

10.2 That, any other relief which this Hon'ble Court deems fit and proper may also kindly be granted to the petitioner in the interest of justice along with cost of the petition.”

2. Heard Shri Awadh Tripathi, the learned counsel appearing for the Petitioners, Shri B. Gopa Kumar, Assistant Solicitor General appearing on behalf of Union of India and Shri Vaibhav Shukla, the learned counsel for Respondents No. 2 and 3.
3. The sum and substance of the grievance projected by the Petitioner is that the Petitioner-partnership firm being qualified in all respect pursuant to Annexure P/3 notification participated in the tender by submitting the bid as prescribed. The last date for submission of tender was 10.07.2019. But when the Petitioner offered the documents by hand, in addition to submission of the tender online, at Ranchi, as stipulated in the tender notification, the hard copies were not accepted stating that it was to be submitted at a different place (at Hyderabad). Since the Petitioner was instructed so only on 09.07.2019, the Petitioner sought for two days' time to submit the hard copies at the destination at Hyderabad, which was not acceded to by the Respondent. This made the Petitioner feel aggrieved who is present before this Court seeking for immediate interference.
4. During the course of hearing the learned counsel for the Petitioner made a specific reference to the stipulation forming part of the standard bid document produced as Annexure P/2 (page 23), which reads as follows:

“The tenders shall be submitted as follows:

In case the tender is being submitted by hand, then the tender shall be handed over to the following official of MECON:

Dy. General Manager I/C (Proj. NMDC)
3rd Floor, RM&AED Building,
MECON Ltd.,
Doranda,
Ranchi 834002.

The Tenderer has the option of sending the tender by registered post/courier so as to reach by the date and time indicated in the NIT.

Tenders submitted by telex/telegram/e.mail/fax will not be accepted. Tenders received after the stipulated date and time will not be accepted.”

5. Since the destination was shown as Ranchi, the Petitioner contends that the Petitioner has every right to have it submitted at Ranchi. It was accordingly that the hard copies were offered at Ranchi. The version of the Respondents No. 2 and 5, as put forth by the learned counsel, is that the Petitioner is not correct or justified in placing reliance on the 'standard bid document' insofar as specific conditions were incorporated in the tender floated by the Respondents No. 2 and 5; a copy of which has been produced as Annexure P/2. The relevant Clause 18.1 of the said document reads as follows:

“(i) Copy of Money receipt of purchase of Tender document/Demand Draft towards Cost of tender document,

(ii) EMD/Bid Security for Rs.----- (Rupees-----) as per clause no. 8.0 of ITT,

(iii) Letter of Undertaking in the Pro-forma given as Annexure-1 to ITT and

(iv) Integrity Pact ***(if applicable)*** duly signed. ***In case of associates, the tenderer including all members shall sign the Integrity Pact (Annexure-3)***

(v) The bidder/contractor will abide by the conditions given in the Integrity Pact Document enclosed as Annexure-3 along with the Tender document.”

6. The place and the address where the hard copies of the documents were is to be surrendered is clearly mentioned in Clause 3, which is reproduced below for convenience of reference:

“3.0 Interested Bidders may obtain further information from

*Executive Director (Contracts)
NMDC Limited
Contract Department,
5th Floor, 10-3-311/A,
Khanij Bhavan, Castle Hills,*

Masab Tank, Hyderabad-500028,
Ph: +91-40 23533538
Fax No : +91-40 23538777
Email: steelcontracts@nmdc.co.in

7. A further reference is made to Clause 18 of the tender notification which clearly says that if at all there is conflict between the two sets of instructions, what is provided in the tender notification shall prevail. The said clause is also extract below:

“18.0 The stipulation mentioned in the commercial volume, shall amend and/or supplement the provisions in the Notice Inviting Tender (NIT) of SBD and Instructions to Tenderer (ITT). Whenever there is a conflict, the provisions in the commercial volume shall prevail over those in the NIT of SBD and ITT.”

8. After hearing both the sides, this Court finds that the relevant provisions were clearly stipulated by the Respondents No. 2 and 3 in the tender notification and so far as the parties who were desirous of participating in the bid were let known as to the proper course of action, the Petitioner is not justified in putting any blame upon the Respondents with regard to the consequence resulted because of the failure on the part of the Petitioner. In the said circumstances, we are of the view that this is not a fit case for interference.
9. The writ petition fails. It stands dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge