NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on: 28/02/2019

Judgment Delivered on : 08/03/2019

Writ Petition (C) No. 2524 of 2018

M/s Enarch Consultants Pvt. Ltd. (Consulting Engineers, Planners And Architects), A Company Registered And Incorporated Under The Indian Companies Act 1956 Having Its Office At B-66, Sector 63, Noida 201301 (U.P.) Represented Through Mr. Rahul Gupta, S/o. Late Shri Jai Prakash Gupta, R/o. E-56 Sector 41, Noida 201301 (Uttar Pradesh)

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, Raipur Chhattisgarh.
2. The Engineer In Chief, Public Works Department, Nirman Bhawan, North Block, Sector 19, Naya Raipur (Chhattisgarh) 492001
3. Wapcos Ltd. (A Government Of India Undertaking), Project Office At Raipur Through Chief Executive Officer/chief Engineer, House No. A/3, Anand Vihar, Anand Nagar, Raipur Chhattisgarh- 492007

---- Respondents

For Petitioner	: Shri Pankaj Singh, Advocate under the authority of Shri Kishore Bhaduri, Advocate.
For Respondents/State	: Shri R.S.Baghel, Deputy Advocate General.
For Respondent No. 3	: Shri Kapil Gupta and Shri Jai Prakash Shukla Advocates.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Order

Per Ajay Kumar Tripathi, Chief Justice

1. Writ application has been filed by the Petitioner for the primary relief of cancellation of entire tender as also for a direction for issuance of a

fresh tender by laying down strict terms of eligibility as per the first tender call.

2. The Respondent-State authorities invited a tender for selection of a consultant for preparation of a Detailed Project Report (for short, the "DPR') and Project Management Consultancy (for short, the 'PMC') during the construction of new Vidhan Sabha Building at Naya Raipur.

3. The first NIT was issued on 06.11.2017 in which one of the conditions was that the tenderer must have designed, developed including structural design of one Vidhan Sabha or a Raj Bhawan or a government or semi government building with a value of Rs. 200 Crores or more.

4. Petitioner was one such tenderer who was given reasonable weightage on the work he had done in relation to his eligibility but for some reason unknown to him, the first tender was cancelled without assigning any reason on 04.01.2018.

5. Thereafter, a second call was made by the Respondents where the eligibility criteria of construction of a Vidhan Sabha or Raj Bhawan of a value of Rs. 200 Crores was reduced to government and semi government building of a value of Rs. 60 Crores as also the previous criteria of completion of 90% of work with minimum receipt of Rs. 200 Crore was also reduced to Rs. 60 Crores. In the first call, joint venture or a consortium was disallowed whereas in the second call, the same was permitted. Even this second call dated 29.01.2018 was cancelled on 17.05.2018 and a third call of the tender was made on 18.05.2018 in which the Petitioner, alongwith four others were called for Power-point presentation. As per the Petitioner, he made his Power-point presentation on 16.07.2018 and the presentation was impressive.

6. On 16.08.2018, Petitioner alongwith others were called for opening of financial bid. It is pleaded that it was obligatory on the part of the Respondents to disclose the marks which was obtained by the participants in the technical bid evaluation, however, the same was not done before the financial bid was opened. In addition to that, the opening was postponed from 16.08.2018 to 20.08.2018 and on 20.08.2018, after delay of about an hour as to the fixed time, Respondent No. 3 was declared the lowest bidder and was awarded the contract of consultancy work. The request of the Petitioner for disclosure of technical bid marks and return of financial bids in the first two calls was not acted upon. It is his allegation that the tender process was not transparent and the decision making was a sham. It is in this background that the writ application has been filed seeking the prayer for cancellation of entire tender.

7. Return came to be filed both on behalf of the State as well as Respondent No. 3. The stand of the State in their counter-affidavit is that the first notice inviting tender no doubt was issued on 06.11.2017 but even before anybody could submit his bids, the same came to be cancelled on 04.01.2018. This was done on the basis of certain inputs received by the authorities that the terms and conditions in relation to the request for proposal needed certain changes keeping in mind the ground reality. The cost of the project being such and the requirement of completion of 90% of a similar project of Rs. 200 Crores that too for construction of a Vidhan Sabha or a Raj Bhawan, was kind of impractical condition and that joint venture or consortium should be allowed for bidding for such project. Some of the inputs of such kind did seem reasonable. It was argued during the course of hearing of this writ application on behalf of the State that Vidhan Sabhas or Raj Bhawans are not made on a regular basis and therefore, the Respondents

did feel that such requirements will be an impediment in wider participation itself.

8. Certain amendments in relation to those inputs were incorporated in the second notice inviting tender on 29.01.2018 but that too had to be cancelled since some more modifications were suggested by the Engineer-in-Chief under the circumstances which are evident from the letter dated 21.04.2018, a copy of which is Annexure R/2. The second call also had to be cancelled on 17.05.2018 in the interest of larger participation and more options. The second call also did not solicit broad participation. In fact, Power-point presentation made by those who responded to the second call did not impress the committee which constituted such persons as the Speaker of the Vidhan Sabha, the Chief Minister of the State, Leader of Opposition, the Minister and other officials of the State and Vidhan Sabha. From the consensus arrived after the presentation, a comparative study was placed before the said committee and keeping in mind the limited competition and option in relation to the second call, a third call was made to facilitate a better competitive bidding and more options in terms of designs and drawings since it was a prestigious project for the State. Details of those meetings and decisions have also been brought on record as Annexures R/4 to R/6.

9. In this background, the third tender call was made on 18.05.2018 in which the Petitioner also participated. When the bid was opened on 20.08.2018, representatives of the bidders were present except that of the Petitioner for reasons best known to him. Subsequently, he also demanded return of his earnest money in relation to the second tender and without any protest had participated in the third tender. As for the shifting of the dates of opening of the tender is concerned, the State explains it that since the sitting Governor of the State of Chhattisgarh passed away and State had declared mourning, the bids were not opened on 16.08.2018. On 17.05.2018, the

former Prime Minister of the country namely Shri Atal Bihari Vajpayee passed away and therefore, no official business was transacted due to State mourning. There was no mischief or bad play involved as is tried to be portrayed by the Petitioner.

10. It is also the stand of the State that after the Petitioner participated with open eyes as to the terms and conditions and even the reasons for previous cancellation known to him only when he failed to succeed in award of the contract, he has filed the present writ application by not disclosing all the facts and circumstances to protect his commercial interest. Such writ applications, therefore ought not to be entertained and in fact is not entertainable because if the Petitioner had any objections with regard to the third call or the conditions laid down by the Respondents, then he had occasion to assail the same but not having done so, having also participated without any 'ifs' and 'buts', writ application deserves to be dismissed.

11. Respondent No. 3 who has been awarded the tender of Consultancy has also filed return. Their stand is that they are a *Mini Ratna* Public Sector Undertaking under Government of India and they have a very vast experience in design, project management consultancy, execution, planning, development, estimation and structural design etc. etc. They have an impressive track and field record in this area and keeping in mind their completion of prestigious projects, details of which have been provided in their return, coupled with the offer they have made, the high powered tender committee in a fair and open manner decided to award the contract to the said Respondent.

12. Respondent No. 3 has further provided facts in relation to the so-called claim made by the Petitioner about completion of work and the falsity of such claims, for the sake of brevity, all that is not being reproduced

but the assertion and averments made in the paragraphs 1 onwards under the heading 'Reply on Merits' does reveal many a things as to how false claims and declarations had been made by the Petitioner. Obviously the same not being mere allegations, the Petitioner has chosen to be quiet since he did not bother to file any rejoinder or rebut any of those facts.

13. Without going into those factual controversies or allegations, the fact that the Petitioner did participate in the bid, failed to corner the contract and has thereafter tried to assail the decision on half truths, if not lies disentitles him to use a writ court from begetting any benefit or relief.

14. Having heard learned counsel for the parties and on having examined the assertions and evidence, the Court is satisfied that no case for interference with the award of the contract is made out as most of the submissions and averments have been just made rather than made out.

15. It is a motivated writ application filed by a person who has been unsuccessful in the tender after having participated with open eyes. Writ application, therefore, stands dismissed since the same is bereft of any merit.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE

Subbu