**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPC No. 3625 of 2019**

**Judgment reserved on 23.10.2019**

**Judgment delivered on 13.12.2019**

- Rahil Ahmed Khan S/o Shafique Ahmed Khan Aged About 38 Years R/o 36/290, Chotapara, Raipur, District Raipur Chhattisgarh. 492001

**----Petitioner**

**VERSUS**

1. State of Chhattisgarh Through Secretary, Khanij Sanshadhan Vibhag, Mantralay, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh
2. Directorate Geology and Mining Department, Chhattisgarh, Through Its Director, Indravati Bhawan, 1st and 2nd Floor, Block - 4, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.
3. Director Geology and Mining Department, Chhattisgarh, Indravati Bhawan, 1st and 2nd Floor, Block - 4, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.
4. Assistant Mining Officer Mahasamund, District Mahasamund Chhattisgarh.
5. The Collector Mahasamund, District Mahasamund Chhattisgarh.
6. Divya Uppal Through Collector (Mining Branch), Mahasamund, District Mahasamund Chhattisgarh.

-------**Respondents**

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| For Petitioner | : | Mr. Anand Shukla, Advocate |
| For Respondent-State | : | Mr. Vikram Sharma, Dy.G.A. |

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

**Hon'ble Shri Parth Prateem Sahu, Judge**

**CAV Order**

**Per Parth Prateem Sahu, J.**

1. The present writ petition is filed against rejection of the bid submitted by the petitioner in pursuance of the Notice Inviting Tender (NIT) dated 22-08-2019 by the respondents for extraction of mining mineral sand.

2. The relevant facts of the case are that, respondent No. 4 issued Notice Inviting Tender (NIT) on 22-08-2019 in terms of छत्तीसगढ़ गौण खनिज साधारण रेत (उत्खनन एवं

व्यवसाय ) नियम, 2019 [(Chhattisgarh Mining Mineral Ordinary Sand (Quarrying and Trade) Rules, 2019]. As per the requirements of the tender conditions, two envelops are required to be submitted, one for the technical bid and another for financial bid. The petitioner along with other participants submitted their bids and after evaluation of the bid submitted by the tenderers, the technical bid submitted by the petitioner along with few others has been considered to be non-responsive and he has been declared as ineligible to participate in the auction/tender proceedings. This made the petitioner to approach this Court by filing this writ petition with the following reliefs:-

> "10.1) That, this Hon'ble Court may kindly be pleased to call for the entire record of the case for kind perusal of this Hon'ble Court.
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> 10.2) That, the Hon'ble Court may kindly be pleased to set aside the rejection of technical bid wherein the petitioner was declared ineligible and placed at Serial No. 13 dated 19.09.2019 (Annexure P/1) issued by the respondent No. 04.
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> 10.3) That, the Hon'ble Court may kindly be pleased to issue an appropriate writ directing the respondent authorities to consider the price bid submitted by the petitioner.
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> 10.4) That, the Hon'ble Court may kindly be pleased to declare that any step taken by the respondent authorities pursuant to the rejection of the bid vide rejection dated 19.09.2019 is null and void.
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> 10.5) That, Cost of the petition may also be awarded to the petitioner.
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> 10.6) Any other relief or relief(s) which this Hon'ble Court may think proper in view of the facts and circumstances of the case may also kindly be granted."

3. Learned counsel for the petitioner submits that, though in the tender document, there is a clause 7 showing the required documents to be submitted, including the Income Tax Return of last 3 years at clause 7.6 and affidavit declaring that no criminal case is registered against the tenderer at clause 7.7, but in the guidelines dated 27-08-2019 issued by respondent No. 3 -Director, Geology and Mining department, Chhattisgarh, other required

documents have been mentioned but submission of last three years' Income Tax Return as well as the affidavit mentioning that no criminal case is registered against the bidder is not forming part of guidelines. He submits that as the guidelines issued by the 3rd respondent is of subsequent date and is with respect to the procedure to be adopted on receiving the bids, Auction(reverse auction) proceeding initiated by the Collector of the State. Even though, the petitioner is assessed to Income Tax and he is submitting his Income Tax Return since many years but due to the fact that the guidelines are not bearing said clause, he could not able to submit those Income Tax Return of last three years and also the affidavit of having no criminal antededant. He also submits that in view of the guidelines issued by the 3rd respondent, the rejection of the technical bid, so far as, relates to the petitioner to be set aside and appropriate direction to be issued to the respondents to consider the price bid of the petitioner also. The learned counsel submitted that the terms and conditions of the tender document as mentioned in Clause 7.6 and 7.7 are unconstitutional and participants have a right of level playing field. He also submits that the petitioner fulfills both the conditions i.e. 7.6 and 7.7 but as it has not been mentioned in the guidelines issued by the 3rd respondent, same has not been submitted and it is for respondent No. 5 to have taken into consideration the guidelines issued by the 3rd respondent. He also submits that the petitioner has also not submitted the affidavit declaring that there are no criminal antecedents against him but the rejection is only on account of non-submission of Income Tax Return of last three years', which clearly shows lack of proper scrutiny of the documents and therefore submits that proceeding of the tender is required to be interdicted.

4. Per contra learned counsel appearing for the State submits that, requirement of submission of last three years' Income Tax Return as well as submission of affidavit mentioning that there is no criminal antecedents of the tenderer has been specifically mentioned in the tender document which were mandatory in

nature and the petitioner has not fulfilled both the conditions mentioned in the tender document and therefore his bid has rightly been held as non-responsive. He submits that respondent-authority after evaluating the technical bids submitted by the interested tenderers has found as many as 24 tenderers to be eligible out of 58 and when the specific terms and conditions have been mentioned in the tender document then general guidelines issued by any of the authority will not dilute the conditions until and unless it is specifically mentioned by way of corrigendum with respect to that particular auction/tender proceedings. He submits that the rules of 2019 have been framed to bring transparency in the auction proceedings of the mining of mineral as in the present case, in which under Rule 6(1)(b) provides that the bidders must satisfy the terms and conditions prescribed for bidding. He submits that the guidelines issued by the 3rd respondent is only for the authorities as to how and in what manner the auction /tender proceedings is to be conducted in transparent and fair manner. He submits that the Income Tax Return certificate has been held mandatory in the tender document itself so as to assess the credibility of the tender to submit/ deposit the bid amount and Clause 7.7 is only to ascertain that no person having the criminal record should enter into the business of like nature with the State government as in this case. He submits that since both the conditions i.e. 7.6 and 7.7 are not arbitrary or irrational and it is for the employer to fix terms and conditions. Looking to the nature of work involved in the tender/auction proceedings, he places his reliance in the case of ***Central Coalfields limited and another v. SLL-SML(Joint Venture Consortium) and others*** reported in **(2016) 8 SCC 622** & ***Michigan Rubber (India) Ltd. v. State of Karnataka*** reported in **(2012) 8 SCC 216** to buttress his submission.

5. We have heard learned counsel for the parties, perused the records.

6. Perusal of the tender document would show that clause 7 of the tender

document mentions the required document to be produced for participation in auction proceedings in which at clause 7.6, it has been mentioned about last three years' Income Tax Return and the affidavit of not having any criminal antecedent, because if any criminal record is found against the bidder then he will be held as disqualified in participation in the said auction proceedings. At the end of clause 7, it has been specifically mentioned that all the documents as mentioned in clause 7 are required to be submitted mandatorily and non-submission of documents will make the participants technically ineligible. So far as the submissions made by the learned counsel for the petitioner that respondent No. 3 issued guidelines which do not prescribe for submission of the aforementioned two documents as provided in clause 7.6 and 7.7 of the tender document, therefore, he got confused is concerned, requirement of submission of the documents as provided under the terms and conditions of the tender documents will prevail and the guidelines cannot dilute the terms and conditions of the tender document in any manner. Terms and conditions can be relaxed or diluted only by way of corrigendum specifically mentioning the particular clause or terms and conditions to be relaxed in any manner. It is for the employer or the authority issuing tender notification to fix terms and conditions of its choice, looking to the nature of work unless and until it is so arbitrary and irrational.

7. The Hon'ble Supreme Court in the matter of **Michigan Rubber (India) Limited** (supra), had considered that what action can be made to judicial review and considered the fixation of terms and conditions of the tender and held thus:-

> “23. From the above decisions, the following principles emerge:
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> (a) the basic requirement of Article 14 is fairness in action by the State, and non- arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior

> purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;
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> (b) fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;
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> (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;
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> (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and
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> (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government."

8. In the instant case, the conditions of the contract as mentioned in the tender document are in very specific terms and words, the petitioner cannot take the plea that the authorities have issued some guidelines and therefore he submitted his tender document according to those guidelines cannot be accepted as the bidders or tenderers have to fulfill all the terms and conditions as held to be mandatory. It is the case of the petitioner himself that he could not able to fulfill the clause 7.6 and 7.7 of the tender document which is the clause mentioning that what documents to be submitted by the petitioner or tenderer along with his tender document then it is the petitioner who will suffer himself for his deeds or misdeeds and cannot blame the authorities who initiated the proceedings in accordance with the terms and conditions as provided in the tender document. If the tender document provides for a thing to be done in a certain manner then it is to be done in that way only. The Hon'ble Supreme Court in the matter of **Central Coalfields Ltd**.(supra) has

held thus:

> "52. There is a wholesome principle that the courts have been following for a very long time and which was articulated in *Nazir Ahmad v. King Emperor*[1], namely: (SCC OnLine PC)
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> "... where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden." There is no valid reason to give up this salutary principle or not to apply it mutatis mutandis to bid documents. This principle deserves to be applied in contractual disputes, particularly in commercial contracts or bids leading up to commercial contracts, where there is stiff competition. It must follow from the application of the principle laid down in *Nazir Ahmad*[1] that if the employer prescribes a particular format of the bank guarantee to be furnished, then a bidder ought to submit the bank guarantee in that particular format only and not in any other formate. However, as mentioned above, there is no inflexibility in this regard and an employer could deviate from the terms of the bid document but only within the parameters mentioned above."

9. In view of the above discussion and law laid down by the Supreme court, we do not find any merit in the writ petition which is liable to be and is hereby dismissed.

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| Sd/- | Sd/- |
| **(P.R. Ramachandra Menon)** | **(Parth Prateem Sahu)** |
| Chief Justice | Judge |

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1 AIR 1936 PC 253 (2)