

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 4221 of 2019**

- M/s Rama Offset Through Partner Mr. Atul Pal, S/o Shri Bhaurao, Aged About 36 Years, R/o 43/637, Kukari Para, Subhash Nagar, Raipur, District Raipur Chhattisgarh.

---- Petitioner**Versus**

- Managing Director Chhattisgarh Textbook Corporation, Chhattisgarh Board of Secondary Education Campus, Pension Bada, Raipur, (Chhattisgarh)- 492001.

---- Respondent

For Petitioner : Ms. S. Harshita, Advocate
 For Respondents : Shri Ashutosh Pandey, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**Per, Parth Prateem Sahu, Judge****28/11/2019**

1. The Petitioner is aggrieved by the conditions mentioned in the tender document Annexure P/1 which has been floated by Respondent No. 1 for the purpose of printing, binding and supply of Text Books by using paper supplied by Respondent No.1.
2. Contention of the learned counsel for the Petitioner is that in Clause No. 2.4 of the tender document, the documents which are required and essential for participating in the tender proceedings have been mentioned. She submits that the Clause 2.4(i), (ii), (iii) and (vii) are arbitrary in nature as they restrict the number of participant in the tender proceedings. She also submits that by imposing condition No. 2.4(i), the permission granted to participate in tender proceedings are from the interested firms or persons who are registered before 31.03.2016, the firms/persons registered thereafter, have been restrained from participation.

3. That the eligibility criteria as and mentioned in 2.4(iii) is also arbitrary inasmuch as it restricts the newly entered firms and the persons in the business / profession of the printing, binding and supply business from participation. She also submits that so far as the aforementioned conditions are concerned, they are arbitrary in nature and will effect the proceeding initiated by Respondent No.1 is to be interfered with.
4. Per contra, the learned counsel for Respondent No.1 submits that the persons or firms engaged in the business of printing, binding and supply are required to be registered and therefore, the registration as sought for, is not with any particular institution or authority but the options have been provided in Clause 2.4(i). He also submits that looking to the nature of the work which has been floated by way of the tender with respect to the printing, binding and supply of the Text Books by the Respondent No.1, they wanted that the firms or persons with whom they will enter into contract must have an experience in the said field and therefore, the conditions mentioned in Clause 2.4 cannot be said to be arbitrary in any manner. He also submits that it is for the Respondent No.1/Corporation who floated tender and prescribed qualification to opt the best person or firm for the purpose of work advertised.
5. We have heard learned counsel appearing for respective parties and perused the records. Clause 2.4 of the tender document (Annexure A/1) prescribes about the essential documents required to be submitted alongwith their bids. Clause 2.4.(i) relates to the submission of registration certificate mentioning that it should be registered prior to 31.03.2016. Clause 2.4.(iii) is a Clause of required period of experience in the work. Both the Clauses which have been challenged by the Petitioner are essential so far as, it relates to entering into a works contract. Registration is one of the first stage for any agency to start a business or entering into any profession. Different kind of business and

profession requires a person or firm to get themselves registered with the particular authority or body formulated by the Government.

6. So far as the date of registration and experience forming part of the tender co-relates to each other and therefore, the date of prior registration has been mentioned specifically. The Clause of experience prescribes that the person/firm having minimum three years experience only will be eligible to participate in the proceedings. Looking to the period of experience as mentioned in Clause 2.4.(iii), the Clause 2.4.(i) cannot be said to be an arbitrary condition mentioned in the tender document or in any manner restricting the number of participant from participating. The Petitioner in his grounds has not made any specific pleading that though he is having three years of experience from the date of advertisement but due to the date of registration mentioned in Clause 2.4.(i) he become ineligible.
7. It is settled law that the Courts cannot enter into the conditions of the tender proceedings in exercise of the power of judicial review as an Appellate Court but the interference can only be made when it is brought to the notice of the Court that the action taken by the firm or the agency floating the tender is arbitrary or malicious. The Supreme Court in the matter of **Michigan Rubber (India) Limited v. State of Karnataka and Others** reported in **(2012) 8 SCC 216** has settled the position as to when and in what circumstances the Courts can exercise the power of judicial review and held thus:

“23. From the above decisions, the following principles emerge:

(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;

(b) fixation of a value of the tender is entirely within the purview of the executive and 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;

(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;

(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

(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.”

The learned counsel for the Petitioner could not able to point out any illegality or arbitrariness in laying down the conditions of qualification or has pointed out in very specific terms that the Clause of date of registration and experience are incorporated with some malafide.

8. Considering the law laid down by the Hon'ble Supreme Court and looking to the facts and circumstance of the case, we do not find that Respondent No.1 has acted in any arbitrary manner in putting the requirement of producing essential documents in Clause 4 of the aforementioned tender document i.e. Annexure-P/1. There is no substance in this petition which is liable to be and is accordingly dismissed. However, liberty is reserved with the Petitioner to approach the Respondent No.1 for redressal of his grievance, if any.

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

Sd/-
(Parth Prateem Sahu)
 Judge