

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Order Reserved on 26.02.2020****Order Delivered on 04.03.2020****Writ Petition (C) No.355 of 2020**

Santosh Tibrewal & Co. represented Through Its Partner Mr. Santosh Kumar Tibrewal, Aged About 55 Years, S/o Late Motilal Tibrewal, At- TAS Business Park, Dhimrapur Road, Raigarh, P.S. City Kotwali, Chhattisgarh 496001, District : Raipur, Chhattisgarh

---- Petitioner**Versus**

1. Chhattisgarh State Power Distribution Company Limited Thorough Its Managing Director, Vidyut Sewa Bhawan, Daganiya, Raipur Chhattisgarh.
2. M/s Bhupesh Choubey And Company, C.A, R/o Aditya Kunj, 2/234, Madhuban Nagar, Borsi, Durg Chhattisgarh.

---- Respondents

For Petitioner : Shri Hemant Gupta, Advocate

For Respondent No.1 : Shri Abhinav Kardekar, Advocate

For Respondent No.2 : Shri Shikhar Sharma, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Order****P.R. Ramachandra Menon, Chief Justice**

1. Finalization of the tender proceedings awarding the work to the 2nd Respondent in connection with the audit/accounting works in respect of the office of the Sr. A.O. CSPDCL, Durg from 01.08.2019, is put to challenge in this writ petition stating that, it is contrary to the specific terms notified in the tender and hence, arbitrary in all respects.

2. Heard Shri Hemant Gupta, the learned counsel for the Petitioner and Shri Abhinav Kardekar, the learned counsel appearing for the 1st Respondent as well as Shri Shikhar Sharma, the learned counsel representing the 2nd Respondent at length.

3. The gist of the case pleaded by the Petitioner is that the 1st Respondent notified Annexure P/1 tender on 10.06.2019 inviting online bids from eligible Chartered Accountants for the designated work in the office of the Sr. A.O. CSPDCL, Durg; stipulating the “value of the tender” as Rs.4,99,200/- and the due date and time for submission of the bid as 02.07.2019 up to 15:00 PM. The Petitioner-Firm being qualified in all respects, submitted the bid quoting the rate and also satisfying all the requirements in terms of the tender notified. The Petitioner was given to understand that, the bid submitted by the Petitioner was accepted, but nothing was heard with regard to the further steps in connection with the finalization of the tender. Later, on 11.07.2019, the Petitioner came to know that the tender proceedings were finalized and the work was awarded to the 2nd Respondent. To know the reasons, an application was filed in terms of the Right to Information Act, 2005, but it did not yield any positive result. In the said circumstance, the Petitioner preferred an appeal in terms of the very same statute on 01.09.2019, pursuant to which, he was served with a reply on 26.11.2019 from which, it was revealed that the tender was awarded to the 2nd Respondent on the basis of 'negative rate'; in spite of the clear stipulation in Annexure P/1 tender to the effect that, if any bid was submitted quoting negative rate, it will stand disqualified. Though the Petitioner filed the representation before the 1st Respondent on 12.12.2019, followed by a reminder on 03.01.2020, there was no response, which made the Petitioner to approach this Court by

filing the writ petition seeking to quash the tender awarded in favour of the 2nd Respondent; to direct the 1st Respondent to grant the tender to the Petitioner in terms of the NIT and to allow the writ petition with costs.

4. The 1st Respondent and the 2nd Respondent entered appearance and have filed their separate returns, crux of which is to the effect that, the tender proceedings were finalized by the 1st Respondent in conformity with the tender norms and that, the proceedings were transparent in all respects. It is pointed out that, the work was awarded to the 2nd Respondent considering the competitive bid preferred by him, among the three bids received in response to Annexure P/1 tender. It is also pointed out that, the 2nd Respondent had earlier secured the tenders in his favour in the earlier years and have successfully completed the work to the satisfaction of the Department. It is further brought to the notice of this Court, as per the return filed by the 1st Respondent, that the 2nd Respondent has already started the work in the Respondent-Department from 01.08.2019 and that, it is yearly tender; almost seven months have elapsed and more than half of the work has been completed in respect of the year 2019-20.

5. The amount quoted by the 2nd Respondent being Rs.3,94,800/-, which is much below the rate quoted by the Petitioner at Rs.4,99,200/-, it turned to be the lowest bid and came to be accepted. It is further pointed out that, in the last page of the terms and conditions of the tender, a table has been given in relation to the specification of the tender. It has been mentioned that, Rs.4,99,200/- is the estimated cost of the tender, which indicates that the cost will not increase above that limit and the tender may not be provided above that cost, which denotes that the bid amount could be made only below that estimated cost (value of the tender). The

allegation of favoritism stated as shown to the 2nd Respondent is denied pointing out that, the 2nd Respondent had come out successful and was awarded the tender for one year in the year 2016 as well, for having submitted the lowest bid, which came to be extended for the subsequent period because of the announcement of election to the State Legislative Assembly and since the model code of conduct had come into force. Shortly thereafter, the Parliamentary elections were also announced, bringing back the model code of conduct into operation, by virtue of which, the term of the contract came to be extended and it is not because of any other reason.

6. It is specifically pleaded that a level playing field was set up by the 1st Respondent to all the bidders and that, there is nothing discriminatory in finalizing the process and proceedings. Reference is also made to Clauses 22 and 26 of the terms and conditions of the tender to the effect that, it shall be not obligatory for the Company or its Officers to accept the lowest tender and that the authority to accept the tender rests with the Company, which does not bind itself to assign any reason for declining to consider any particular tender or tenders and further that, the Company reserved the right to accept/reject any tender without assigning any reason thereof.

7. Shri Hemant Gupta, the learned counsel appearing for the Petitioner submits that, by virtue of law declared by the Apex Court in **Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries** reported in **(1993) 1 SCC 71**, even though power is reserved to reject the tender without assigning any reason, there has to be valid reason for such rejection. In the instant case, by virtue of Clauses 7, 19 and 21, it was obligatory for the 1st Respondent to have finalized the proceedings

only in strict terms of the said Clauses where they have gone wrong. The contention of the Petitioner sought to be rebutted by the Respondents as put-forth by their learned counsel with reference to the pleadings raised in the returns filed separately.

8. To understand the case of the Petitioner and to have proper appreciation, we find it appropriate to extract Clauses 7, 19 and 21 of Annexure P/1 as given below :

“7. Make sure to quote base rate in price bid equal to tender amount, Any change in amount will lead to disqualification of bid.

19. The submission of a tender by the tenderers implies that he has read and accepted the instructions, the conditions of the contract etc. and has made himself aware of the scope of the work to be done and local conditions and other factors bearing on the execution of the work.

21. Rates shall be quoted both in words & figures in the price schedule enclosed. Rate quoted shall remain firm throughout the contract period. In case of deviation of rates in figures and words, the rates which are on lower side shall be considered. The negative rate, At par on base rates will not be accepted/considered.”

9. By virtue of Clause 7, it has been insisted that the bidders shall make sure to quote the “base rate” in the price bid, equal to the tender amount and that any change in amount will lead to disqualification of the bid. Clause 19 is to the effect that, the bidder has read, understood and accepted the instructions and conditions of the contract including as to the scope of the work to be done. Under Clause 21, it is stipulated among other things that the negative rate, at par on base rate will not be

accepted/considered. Since the amount mentioned in Annexure P/1 is Rs.4,99,200/- and further since, the 2nd Respondent has quoted Rs.33,900/- per month, it is much less than the base rate and turns to be a negative rate; by virtue of which the bid submitted by the 2nd Respondent ought to have been rejected in terms of Clause 7 read with Clause 21; submits the learned counsel for the Petitioner.

10. Shri Abhinav Kardekar, the learned counsel for the 1st Respondent points out that, different tenders were floated in respect of different places, such as Durg (involved herein), Raipur, Rajnandgaon, Raigarh and Jagdalpur. Except in Durg, it was open tender (Physical); whereas in the case of Durg (involved herein), it was by way of e-bidding system. When the bidding system was stipulated to be online, there occurred some variations from the terms stipulated in the tender for other places as mentioned above. Though it was stated in Clause 7 of Annexure P/1 tender conditions that, the bidder had to quote the 'base rate' in the price bid, equal to the tender amount; what the 'base rate' was never defined or mentioned in Clauses 7 and 21. The term 'base rate' was never mentioned or explained anywhere in Annexure P/1 tender and the amount shown as Rs.4,99,200/- in Annexure P/1 only reflects the "value of the tender" and not the "base rate".

11. The above obscurity was applicable in case of all the tenderers and hence, all the three bidders were held as qualified and their tenders were considered accordingly. Among the three tenderers, the tender quoted by the 2nd Respondent was the lowest and hence, it was more commercially viable and feasible as far as the 1st Respondent is concerned and hence, it was accepted. Since it was through a transparent process, it does not amount to extend any undue favour to the 2nd Respondent, more so,

when the amount quoted by the Petitioner is admittedly much more than the amount quoted by the 2nd Respondent. The learned counsel also points out that, adopting the same principle, being 'L-1' in respect of four other places, such as Raipur, Rajnandgaon, Raigarh and Jagdalpur, the Petitioner has been awarded the tender and hence, no interference is warranted in the instant case.

12. Similar submissions are made by Shri Shikhar Sharma, the learned counsel for the 2nd Respondent, in support of the contention raised by the counsel for the 1st Respondent.

13. After hearing both the sides and on going through the materials on record, though Clauses 7 and 21 of the Annexure P/1 tender notification/conditions make a reference to “base rate” and as to the obligation not to quote any rate below the base rate, lest it should lead to disqualification, it does not mention what the 'base rate' is, but for mentioning the figure of Rs.4,99,200/- as the “value of the tender”. If there is any mistake or obscurity in the tender, should it lead to cancellation and go for re-tender is the only question.

14. Admittedly, the quote of the Petitioner is much higher than the quote given by the 2nd Respondent and the bid of the 2nd Respondent is happens to be L-1, which is more beneficial as far as the 1st Respondent is concerned. When the Petitioner contends on one hand that, as per the mandate of Clause 7, it had to be ensured that the bidder had to quote 'base rate' in price bid equal to tender amount and “any change” in amount will lead to disqualification of bid, it is conceded on the other hand that the amount quoted by the Petitioner is not the exact figure of Rs.4,99,200/-, but admittedly it is with a difference of 0.01 Paisa.

According to the learned counsel, it does not make any difference. We find it difficult to accept the said proposition. Though there is no transaction using any one Paisa coin as on date, One Paisa is having the value of its own and 100 Paise make it One Rupee. The amount quoted by the Petitioner with a difference of 0.01 Paisa is the result of a 'conscious decision' and it is not exactly the same figure as given in "value of the tender", if it were to be the 'base rate'. If the Petitioner's contention that Rs.4,99,200/- was to be treated as the base rate and everybody had to quote the said rate without change, in view of Clauses 7 and 21 of the Annexure P/1 tender, it was never to be a competitive bid, which is not the purpose of floating the bid. This is mentioned here only to show that the figure mentioned as Rs.4,99,200/- as the "value of the tender" is not stated as the "base rate" anywhere in the tender notification/conditions. Since the 1st Respondent has considered the tender submitted by all the three bidders including the Petitioner to find out the successful bidder or the preferred bidder, the Petitioner cannot be heard to say that, his bid alone ought to have been considered.

15. The Petitioner himself has conceded in the writ petition, citing the verdict passed by the Apex Court in **Jagdish Mandal v. State of Orissa and Others** reported in **(2007) 14 SCC 517**, that the scope for judicial interference in contractual matters is very limited and it is always subject to the following questions/requirements :

“(a) Whether the process adopted or decision made by the authority is mala fide or intended to favor someone?

(b) Whether public interest is affected?”

16. Even though, there is some lacuna in Annexure P/1 tender for not mentioning/defining the 'base rate', admittedly, since the rate quoted by

the Petitioner is much above the rate quoted by the other two bidders and further, since the 1st Respondent had accepted the lowest bid quoted by the 2nd Respondent, it cannot be said that it is due to any malafide action or with an intend to favour somebody, nor is it an instance where the public interest has been infringed.

17. As mentioned already, it is pointed out by the learned counsel for the 1st Respondent in the course of arguments that, the Petitioner has been identified as the successful bidder (having quoted the lowest rates for similar works) in respect of four other different places, such as Raipur, Rajnandgaon, Raigarh and Jagdalpur. The learned counsel for the Petitioner submits that, in respect of the above places, it was open tender and no such condition as contained in Annexure P/1 tender referring to the need to quote the 'base rate' was mentioned in the relevant tenders. Since there is no challenge with regard to the tenders finalized by the 1st Respondent in respect of above four places and the Petitioner is enjoying the fruits of the said tenders having been identified as successful bidder, this Court does not find it to be a fit case where the discretionary jurisdiction of this Court is to be exercised to interdict the tender proceedings in respect of Durg and cause it to be re-tendered after stipulating the 'base rate'. This is more so, since both the Respondents have asserted that pursuant to Annexure P/1 tender, the 2nd Respondent had commenced the work from 01.08.2019 and 'seven months' are over as on date. It is also stated that, more than 50% of the work is over and if at all, any fresh tender has to be issued, it will take more time and will be detrimental to the interest of the 1st Respondent.

18. After hearing both the sides, we are of the view that the Petitioner has not substantiated that the “decision making process” pursued by the

1st Respondent is wrong, arbitrary, discriminatory, perverse or that it affects any public interest. We do not find it to be a fit case to call for interference, in view of settled position of law as to the scope of judicial interference in contractual matters.

19. The writ petition stands dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Anu