

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 538 of 2020**

Raipur Construction Pvt. Ltd. A Company Duly Incorporated Under The Provisions of The Companies Act, 1956 And Having Its Office At 24 Ground Floor, Babla Complex, G.E. Road, Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Urban Administration And Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District- Raipur, Chhattisgarh.
2. Municipal Corporation Durg Through Its Commissioner, Municipal Corporation Durg, District- Durg, Chhattisgarh.
3. Commissioner Municipal Corporation Durg, District- Durg, Chhattisgarh.
4. M/s Om Associates Through The Commissioner, Municipal Corporation Durg, District- Durg, Chhattisgarh.

---- Respondents

For Petitioner	: Shri K. Rohan, Advocate
For Respondent/State	: Shri Vikram Sharma, Deputy Government Advocate
For Respondents No.2 & 3	: Shri Anumeh Shrivastava, Advocate
For Respondent No.4	: Shri Rajkamal Singh, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****P. R. Ramachandra Menon, Chief Justice****05.03.2020**

1. Finalization of the tender proceedings notified as per Annexure P/2 dated 06.01.2020 virtually identifying the 4th Respondent as the successful bidder and to award the work accordingly, is sought to be challenged by

the Petitioner mainly on the ground that different yardsticks were being adopted by the Respondent Authorities in identifying the successful bidder, with intent to have the Petitioner ousted at the outset itself, by disqualifying them in the technical bid.

2. Heard Shri K. Rohan, the learned counsel appearing for the Petitioner, Shri Vikram Sharma, the learned Deputy Government Advocate representing the State, Shri Anumeh Shrivastava, the learned counsel appearing for the Respondent-Corporation and Shri Rajkamal Singh, the learned counsel representing the 4th Respondent.
3. The sequence of events reveals that the Respondents No.2/3 had floated the tender as above, inviting competitive bids from qualified hands for awarding the work in respect of Development and Conservation of Thagda Bandh (Maroda 'C' Tank) Durg, Chhattisgarh. Only two persons i.e. the Petitioner and the 4th Respondent turned up and submitted their bids in terms of the notification. On evaluating the technical bids, the Petitioner's bid came to be rejected as per Annexure P/1 dated 23.01.2020, holding that the Petitioner was not qualified as per the norms notified. At the same time, accepting the bid of the 4th Respondent as technically qualified, further steps were taken with regard to the opening of the price bid and the tender was awarded accordingly. This made the Petitioner to feel aggrieved, who has approached this Court with the following prayers :

“10.1 This Hon'ble Court may kindly be pleased to call for the entire records from respondent No.2 with respect to the impugned tender process for its kind perusal.

10.2 This Hon'ble Court may kindly be pleased to issue an appropriate writ quashing and setting aside the decision dated 23.01.2020 taken by respondent No. 2.

10.3 This Hon'ble Court may kindly be pleased to issue an appropriate writ declaring respondent no.4 as ineligible as per the technical per-qualification conditions under NIT dated 06.01.2020 issued by respondent no. 2.

10.4 This Hon'ble Court may kindly be pleased to issue an appropriate writ directing respondent No. 2 to open the financial bid submitted by the petitioner and thereafter proceed in terms of the tender document for award of work.

10.5 And pass such other order/orders as the Hon'ble Court may deem fit and proper and for this act of kindness, the petitioner as in duty bound shall every pray.”

4. The prayers are sought to be opposed by the Respondents No.2 and 3 by filing return, also producing copies of the relevant materials. The preferred bidder i.e. the 4th Respondent has also filed a return explaining the credentials of the 4th Respondent and seeking to sustain the course pursued by the Respondents No.2 and 3 in technically disqualifying the Petitioner.
5. When the matter came up for consideration before this Court on 05.02.2020, the learned counsel for the Petitioner submitted that the credentials of the Petitioners were evaluated with reference to 'Note (i)' under paragraph-1 dealing with Qualification Criteria of the NIT; whereas

the 4th Respondent was considered under 'Note (ii)' of the very same paragraph, enabling him to have an entry. This made the Court to take note of the submissions as contained in the order passed on that day, which is reproduced below for easy reference :

“Shri Abhyuday Singh, Advocate for the Petitioner.

Shri Siddharth Dubey, Deputy Government Advocate for the State.

Shri Anumeh Shrivastava, Advocate for Respondents No.2 and 3.

Learned counsel for the Petitioner submits that tender submitted by the Petitioner pursuant to Annexure P/2 NIT, technical bid submitted by the Petitioner came to be rejected; whereas the technical bid of the 4th Respondent has been accepted, adopting a differential treatment. It is the case of the Petitioner that the scrutiny has been made in the case of the Petitioner with reference to the Note (i) under paragraph-1 dealing with Qualification Criteria of NIT, whereas the 4th Respondent has been considered under Note (ii) of the very same paragraph, enabling him to have a green card.

Shri Anumeh Shrivastava, the learned counsel appearing for the 2nd and 3rd Respondent-Corporation submits that, as per instructions received over telephone, consideration of the Petitioner has been done with reference to Note (ii) itself, but the shortcoming is in respect of non-satisfaction of the requirements with reference to the garden development, landscaping, jogging

park, play equipments and floating fountain etc. The learned counsel seeks for time to get specific instructions as to the credentials in respect of the Petitioner and the 4th Respondent.

Issue urgent notice to the 4th Respondent by Speed Post. In addition, *Dasti* service is also permitted.

Post the matter for further consideration on 10.02.2020.”

6. Shri K. Rohan, the learned counsel appearing for the Petitioner points out that, as per the Qualification Criteria, the Petitioner had satisfied all the requirements with regard to completion of 'similar work' as defined under paragraph-1(b)(i), also placing reliance on 'Note (iii)' as to the words “Similar Works Means”-as given therein. The grievance projected by the Petitioner, as highlighted by the learned counsel, is that the Respondents No.2 and 3 have rejected the certificate produced by the Petitioner with regard to the experience and such other aspects, to hold that the Petitioner did not satisfy the requirements under Component No.(II) of the meaning given to the terms “Similar Works Means”; whereas a different yardstick was adopted in the case of the 4th Respondent. Even though the Component No.(II) was consisting of 'five different sub-components' and in spite of the fact that the 4th Respondent had satisfied only two or three of the said Components, full credit has been given to him. This amounts to 'differential treatment' and hence, it is contended that the Respondents No.2 and 3 ought not to have rejected the technical bid of the Petitioner or should have given entry to both the Petitioner as well as the 4th

Respondent; setting a level-playing field. The learned counsel also submits that the five different sub-components mentioned in respect of Component No.(II) have to be read conjointly and not disjointly. The contention does not appear to be of much weight to us, insofar as the notification does not say that the party should have experience in respect of each of the five sub-components. On the other hand, Component No.(II) consisting of the different components could be taken together as a conglomerate and if 20% is satisfied in any of them or all together, it is enough to declare the person as qualified, as per the notification, insofar as no stipulation to the contrary is mentioned in the tender notification.

7. The learned counsel representing the Respondents No.2 and 3 submits with reference to the materials brought on record that the idea and understanding of the Petitioner is thoroughly wrong and misconceived. It is stated that both the Petitioner and the 4th Respondent were considered with reference to 'Note (ii)' under paragraph-1 dealing with Qualification Criteria of NIT and not with reference to Note (i). Proper evaluation has been made in respect of three different Components i.e. (I) Building Works; (II) Garden Development, Landscaping, Jogging Track/Pathway, Play Equipment's & Floating Fountain; and (III) Earth Work/Excavation, which were carrying the minimum extent as specified therein. The evaluation revealed that the certificate produced by the Petitioner, particularly, the experience certificate did not contain the satisfactory requirement of any work as carried out in respect of the Component No.(II) i.e. Garden Development, Landscaping, Jogging Track/Pathway, Play Equipment's & Floating Fountain; except the certificate dated 21.11.2019.

The said certificate, though describes the scope and extent of work as inclusive of 'land development' and landscaping work, no segregation was given with regard to the quantum of such work or as to whether the amount involved in respect of such land development and landscaping work constituted '20%' of the PAC amount (which is mentioned in Clause (1) i.e. Rs.1621.38 Lacs). This was the reason why the Petitioner was declared as technically not qualified.

8. The learned counsel also placed reliance on the particulars given in the tabulated form as contained in Annexure P/2 with specific reference to Column No.2 dealing with the project name and also the remarks in Column No.9. The entries therein do not reveal anything as to the assignment or satisfaction of any work by the Petitioner in respect of Component (II) i.e. Garden Development, Landscaping, Jogging Track/Pathway, Play Equipment's & Floating Fountain, but for the Building Works or Earth Works/Excavation and the like.
9. In the case of the 4th Respondent herein, the experience certificate produced is the one dated 30.12.2019 issued by National Projects Construction Corporation Limited. The total value of the work is shown as Rs.14,35,87,063.42. The split up figures have been given as to the quantity of work executed, which is reproduced below for ready reference :

Earthwork/Execution and Structural Roofing Work	-	Rs. 1,58,52,993.63
Building Work	-	Rs. 10,32,33,799.77
Development, Jogging Track, Pathways	-	Rs. 3,01,27,653.25
External Electrification		Rs. 78,21,245.35

10. The above entries clearly show that the Earth Work was having the value of Rs.1,58,52,993.63, Building Work was having the value of Rs.10,32,33,799.77 and Development, Jogging Track and Pathway Work was consisting the value of Rs.3,01,27,653.25. The said figures being more than the 20% of the PAC amount, the 4th Respondent was declared as eligible, satisfying all the requirements and hence technically qualified. It was accordingly, that the Respondents No.2 and 3 proceeded with further steps to open the price bid. The proceedings have been finalized and it is stated as forwarded to the State Government for further steps.
11. The learned counsel for the 4th Respondent submits that the factual particulars have been brought on record in crystal clear terms from the part of Respondents No.2 and 3 and also from the part of the 4th Respondent by filing separate returns. The 4th Respondent supports the contentions made by the learned counsel appearing for Respondents No.2 and 3.
12. Shri Vikram Sharma, the learned counsel representing the Government submits that the Government is still to take a decision on the basis of the process finalized by Respondents No.2 and 3.
13. With regard to the nature of challenge involved as to the alleged discrimination pointed out by the Petitioner, the Qualification Criteria stipulated under Clause (1) are to the following effect :

“1 To qualify for award of the Contract, each Prime contractor in the same name and style(tenderer), in its name must have in the last five years

(a) Achieved in "**any one financial year**" a financial turnover(in all classes of civil engineering construction works) of construction work of at least 60% (Sixty percent) of the probable amount of contract for which bid has been invited.

(b) (i) Satisfactorily completed at least one similar work equal in value 50%(fifty percent) of the probable amount of contract as on date of submission of financial offer.

OR

(ii) Satisfactorily completed at least two similar works each costing minimum 40%(forty percent) of the probable amount of Contract for which the tender is invited as on date of submission of financial offer.

OR

(iii) Satisfactorily executing at least one similar work having received payment of value not less than 60%(Sixty percent) of the value of probable amount of contract as on date of submission of financial offer.”

14. Note (iii) which defines the term “Similar Work Means” is extracted below for having a clear idea as to the dispute raised :

“(iii) Similar Work Means:- 1. Work comprising three components as per Scope of work i.e.(I) Building works (minimum 20% of PAC Amount), (II) Garden Development, Landscaping, Jogging track/Pathway, play Equipment's & Floating Fountain(Minimum 20% of PAC Amount), (III) Earth Work/Excavation or Construction of Building with unished roofing(Minimum 10% of PAC Amount).”

15. From the above, it is clear that the term 'similar work' is to take in 'three' different components; the first one being Building Works with a minimum 20% of the PAC amount, the second component being Garden Development, Landscaping, Jogging Track/Pathway, Play Equipment's & Floating Fountain with a minimum 20% of PAC amount and the third one being Earth Work/Excavation or Construction of Building with unished roofing with a minimum 10% of the PAC amount. In other words, completion of the work having 50% of the equal value of the PAC amount is segregated into the above three components carrying separate minimum of 20 + 20 + 10. Even though the Component No.(II) is sub-divided into 'five' different sub-components, such as Garden Development, Landscaping, Jogging Track/Pathway, Play Equipment's & Floating Fountain, the conglomerate figure under the said Component No.(II) is only 20%. Insofar as the tender notification does not say that each of the sub-component shall carry 20% or that each of the sub-component shall carry a relative or proportionate extent of 20%, what is intended can only be the total of the above sub-components put together, to constitute 20%.
16. In the instant case, the 4th Respondent has given the figures, as borne by the experience certificate, to the effect that he has satisfied the work of Rs.3,01,27,653.25 in respect of land Development/Jogging Track/Pathway. This being the position, Respondents No.2 and 3 have found him as satisfying all the requirements as notified and accordingly, the 4th Respondent has been declared as technically qualified; whereas the Petitioner, for not showing the segregated figures as to the satisfaction of 20% of PAC amount of the Component No.(II) has been ousted, as

technically not qualified.

17. Considering the course pursued by Respondents No.2 and 3, it is quite evident that the 'decision making process' done by the Respondents No.2 and 3 is not liable to be termed as arbitrary in any manner. It has been demonstrated by the Respondents concerned, that the exercise pursued is strictly in conformity with the terms as notified, particularly in relation to the Qualification Criteria.
18. We do not find any tenable ground to call for interference. The writ petition fails and it is dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Anu