

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on : 02.09.2020****Judgment Delivered on : 14.09.2020****Writ Petition (C) No. 1076 of 2020**

1. Ganpati Construction a Partnership Firm duly registered under the relevant provisions of the Partnership Act, acting in the premises through its partner Shri Amit Kumar Singh, S/o Shri Prakash Singh, aged about 36 years, C-A/58, Shailendra Nagar, Raipur Chhattisgarh,
2. Amit Kumar Singh, S/o Shri Prakash Singh, Aged About 36 Years Partner-Ganpati Construction, C-A/58, Shailendra Nagar, Raipur Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh Through The Secretary, Panchayat and Rural Development Department, Mahanadi Bhawan, Capital Complex, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh
2. The Chief Executive Officer, Chhattisgarh Rural Road Development Agency, Civil Lines, Raipur Chhattisgarh
3. M/s Pawar Construction Company, Near Bus Stand, Kurud, District Dhamtari Chhattisgarh.
4. Department of Posts through Superintendent of Post Office, Raipur Chhattisgarh

---- Respondents

For Petitioners	:	Shri Atanu Ghosh and Shri Abhishek K. Singh, Advocates
For Respondent No.1	:	Shri Gagan Tiwari, Deputy Government Advocate
For Respondent No.3	:	Shri Harshwardhan Parganiha, Advocate
For Respondent No.4	:	Shri B. Gopa Kumar, Assistant Solicitor General
For Intervenor	:	Shri P.R. Patankar, Advocate

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

1. Rejection of the bid submitted by the Petitioners pursuant to the tender floated by the Respondent-State in connection with the 'Construction and maintenance of rural road i.e. CC Road SH-5, Khodgaon to Anjrail Foth

Hill under System NIT No. 62000 & 504”, stating that it was belated is under challenge; despite the fact that, it was sent about one month ago through 'speed post' and the same was served well within time i.e., at 3.50 pm on 23.04.2020, the last date and time for submitting the bid being 23.04.2020 at 5.00 pm.

2. The prayers are in the following terms :

“10.1. A writ and/or an order in the nature of appropriate writ do issue calling the records from the respondent authorities concerned for perusal of this Hon'ble Court, if thinks fit in the facts & circumstances of case.

10.2. A writ and/or an order in the nature of writ of certiorari do issue quashing action of respondent authority concerned in declaring the petitioners disqualified to participate in tender process in question, as evidence by Annexure P-2, being illegal, arbitrary and effect of malice in law and malice in fact and in effect directing the respondent authorities either to declare the petitioners qualified or consider the document (affidavit) contained in envelope, delivered to the respondent concerned in time i.e. on 23.04.2020, by the Postal Authorities, and thus adopt fair procedure of evaluation of tenders and award the contract in accordance with tender conditions, in the facts and circumstances of case.

10.3. A writ and/or an order in the nature of appropriate writ do issue directing the respondent authorities to award suitable compensation for unnecessarily declaring the petitioner disqualified and not correcting themselves even after submission of eye openers with them.

10.4. Cost of the proceedings.

10.5. Any other writs and directions that may be deemed fit and just in the facts & circumstances of case.”

3. On 22.05.2020, we heard Shri B. P. Sharma (the learned counsel who was appearing for the Petitioners at that point of time), who stated that,

the bid was submitted 'Online' and the supporting affidavit and such other materials were submitted 'Offline' – as prescribed - by 'speed post' on 23.03.2020. By virtue of the delay due to lock-down, it came to be delivered by the Postal Department only on 23.04.2020 at 3.50 pm which was within the stipulated time, as the time limit was up to 5.00 pm on that day. It is contended that the Petitioner has been wrongly ousted from the field and his bid has not been considered.

4. Shri Gagan Tiwari, the learned counsel representing the State submitted that, as per the records of the Respondents, the offline proceedings were delivered only beyond the stipulated time and that they have already sought details from the Postal Department in this regard. It is also stated that, since the tender submitted by the Petitioner firm was belated, it was not considered and after considering the remaining tenders, the proceedings were finalized and the work was awarded to 'M/s Power Construction' on 20.05.2020. Considering the serious nature of the dispute raised and the rival stands taken by the parties concerned, we ordered *status quo* to be maintained, w.r.t. the work order stated as issued, till the next date of hearing and the Petitioners were required to implead the successful bidder in the party array (whose particulars were given by the learned counsel representing the State). It was accordingly that, I.A. No. 2 of 2020 was filed to implead the 3rd Respondent in the party array, which was allowed on 18.06.2020.
5. The stand of the Respondent-State as put forth in the reply dated 27.05.2020 is that the Offline proceedings submitted by the Petitioner firm were received in the 'tender cell' only on 27.04.2020 and since the

Petitioner firm had failed to submit the original affidavit within the prescribed time, the technical bid as well as the financial bid was not opened. It was also pointed out in paragraph 5 of the return, that the statement of the employee in-charge of the Dak Receipt Section/Dispatch Section namely Smt. Nirmala Meshram was recorded, where she denied that she had signed or received the disputed portal article. There was similar denial from the other staff as well, as revealed from Annexure R/2. However, in paragraph 6 of the return, it was stated that Smt. Nirmala Meshram had found one sealed envelope of the Petitioners relating to the NIT No. 504 tender No. 62000, sent through speed post, on the table on 27.04.2020 and that the same was handed over to one Shri Santosh Kumar of the tender cell on the same date. The statement / affidavit of Smt. Nirmala Meshram has been produced as Annexure R/3; whereas the affidavits of the other employees concerned, denying the receipt of the envelope of the Petitioner firm pertaining to the tender concerned, have been produced as Annexure R/4. It is also pointed out that, the Respondent concerned had sent a letter to the Senior Dakpal of the Main Post Office, Jai Stambh Chowk, Raipur in connection with the further steps, but there was no response.

6. This was specifically taken note of by this Court on 18.06.2020, observing that, insofar as there was no dispute that the cover was sent by 'speed post' and not by hand delivery; it could have been delivered only by the Postal Department and by nobody else. It was further noted that such delivery could only be done within the working hours of the Postal Department and since receipt of the cover was conceded, it was

obligatory for the Respondent concerned to explain, with reference to the certificates, if any, obtained from the Postal Department, as to the date and time of delivery. The Respondents were directed to produce necessary materials in support of their version; simultaneously directing the Petitioners to implead the Superintendent of Post Offices to ascertain the true state of affairs.

7. Pursuant to the above order, the Petitioners filed I.A. No. 4 of 2020 to implead the Superintendent of Post Offices in the party array. On 20.07.2020, Shri B. Gopa Kumar, the learned Assistant Solicitor General entered appearance on behalf of the Superintendent of Post Offices (additional 4th Respondent) pursuant to allowing I.A. No. 4 of 2020 filed in this regard. The additional 4th Respondent was required to submit the correct position as to the date and time of delivery of the disputed postal article. Based on the request made by the learned Assistant Solicitor General, the Petitioners were required to serve 'e-copies' of the entire proceedings to the 'Assistant Solicitor General' for getting appropriate instructions on time.
8. Incidentally, it is to be noted that the Respondent-State has filed a further affidavit on 02.07.2020, referring to the letters sent by them pursuant to the order dated 18.06.2020 passed by this Court, seeking clarifications from the Senior Dakpal of the Main Post Office, Jai Stambh Chowk, Raipur. This was followed by the reminders as borne by Annexure R/8 and it was added that there was no response from the part of the Postal Department. Same was the position, despite sending a reminder on 27.06.2020 as well.

9. On 22.07.2020, Shri B. Gopa Kumar, the learned Assistant Solicitor General made submissions on behalf of the Superintendent of Post Offices / Additional 4th Respondent impleaded in the party array, that the postal article sent by the Petitioners on 23.03.2020 could not be delivered earlier because of the nationwide lock-down declared on the next day (i.e. 24.03.2020) and it was lying there. On enquiry made by some representatives of the Petitioners, who came to the post office, the disputed postal article was traced out on 22.04.2020 and the same was delivered by the Postman on 23.04.2020 between 3.00 pm and 4.00 pm, making necessary entries in the relevant records / registers. In the said circumstance, this Court directed the additional 4th Respondent / Superintendent of Post Offices to file an affidavit as to the factual particulars with reference to disputed article sent by the speed post including the particulars of the Post Office where it was registered / booked, the manner of delivery, the date and time of delivery and such other relevant aspects. The version put forth from the part of the State in their reply and the contentions raised by the 3rd Respondent (the bidder to whom the work was stated to be awarded) in I.A. No. 7/2020 were also required to be answered by the additional 4th Respondent in the affidavit.
10. Accordingly, a reply, supported by an affidavit, has been filed by the additional 4th Respondent, wherein it is stated that on receipt of the letter dated 27.06.2020 (Annexure-R/4/1) from the 2nd Respondent / Chief Engineer of the State, an enquiry was conducted through the Assistant Superintendent of Post Offices, Raipur, who submitted a detailed report to the Senior Superintendent of Post Offices, Raipur Division on

21.07.2020, as borne from Annexure-R/4/2. It is asserted in paragraph 4 of the said reply that the disputed postal article sent by the Petitioner firm was booked on 23.03.2020 from Dayanand Nagar Sub Post Office, Raipur and the same was received at the Raipur, GPO in the mailbag having No. EBC0004813215, which contained a total of 225 articles which included the disputed article marked in the list as '137'. In view of some technical issue, the whole articles contained in the mailbag were shifted to a new mailbag having No. EBC0004453222. It is stated in paragraph 6 that, the distribution and delivery pertaining to the disputed postal article was severely affected because of the COVID-19 situation and on 21.04.2020, 'three' articles were delivered to the Office of the Chief Engineer/2nd Respondent against proper seal and signature in the delivery manifest slip on the same date, as borne by the Annexure-R/4/3. On the next date i.e. on 22.04.2020, 'eight' articles were delivered in the same place as disclosed from the seal and signature of the recipient obtained in the delivery slip as disclosed from Annexure-R/4/4. On 23.04.2020, 'three' more articles were delivered in the same way against proper seal / signature of the receiver obtained on the delivery slip as evident from Annexure-R/4/5. It is pointed out that, the same delivery slip would disclose delivery of a postal article to the Office of the Hon'ble Governor addressed to the Under Secretary to the Government, Raj Bhawan, Raipur on that day itself. It is also stated that all the 'three' delivery slips would show that the signature of the recipient State authorities on the three different dates were different, which shows that three different persons had received the articles at the receiving end.

The additional 4th Respondent has also added that, as per the materials brought on record, the disputed postal article was delivered on 23.04.2020 and after effecting the delivery, the time for reporting back was entered as 3.50 pm for delivery updation.

11. The conflicting stands taken by the parties concerned by filing statements and affidavits clearly revealed that some foul play had taken place and that either of the parties concerned was clearly wrong. It had to be ascertained whether the Court was being misguided by the Petitioners or the Officers of the Respondent-State or the additional 3rd Respondent (the beneficiary of the contract) to whom the contract has been awarded or even the additional 4th Respondent. In the light of the entries made in the documents produced by the additional 4th Respondent / Superintendent of Post Offices, the version of only one party can be true and if so, the veracity of the proceedings filed by the others concerned may have to be tested further. Filing of false / casual statement or affidavit in the Court may amount to 'Contempt of Court', which has to be dealt with seriously, in view of the law declared by the Apex Court in ***Dhananjay Sharma vs. State of Haryana and Others*** reported in ***AIR 1995 SC 1795***.
12. When this Court was intending to proceed with further steps in this regard and the matter was listed on 28.08.2020, a strange turn of event came to the notice of this Court. The learned counsel who was representing the Petitioners earlier relinquished his Vakalatnama. A new Lawyer has entered appearance and filed his Vakalatnama dated 24.08.2020 on behalf of the Petitioner firm and its partner. I.A. No. 8/2020 has been

filed seeking for permission to withdraw the writ petition, stating that during the pendency of writ petition, “certain developments” had taken place and hence the Petitioners were not interested to pursue the writ petition. The so-called “certain developments” were not brought to the notice of this Court; under which circumstance, time sought for to file an additional affidavit was granted. Accordingly, I.A.No.10/2020 has been filed by the Petitioners, supported by an affidavit, to the effect that, the financial condition of the Petitioners had worsened due to the impact of the lock-down and that they had failed in their efforts to secure financial aid from appropriate sources; because of which, they were finding it difficult to execute the tender. It was also stated that the Petitioners were under the burden of heavy loan account and hence the Petitioners would be blacklisted, in case the tender was awarded to them and hence not interested in the work.

13. After hearing the learned counsel for the parties concerned and on considering the materials brought on record, we are of the view that the course pursued by the Petitioners is nothing, but an abuse of the process of the Court. The writ petition itself was filed by the Petitioners only on 18.05.2020, much after commencement of the lock-down declared *w.e.f.* 24.03.2020, which was over on 14.04.2020. The Petitioners persuaded this Court, with reference to the pleadings and materials brought on record that, they had a genuine grievance, which required interference of this Court. It was accordingly that, the versions of the Respondents were caused to be brought on record; including by impleading the Superintendent of Post Offices in the party array and getting his affidavit.

Much time and energy of the Court has been wasted by the Petitioners, who simply turn round and say now that they are not interested in the matter because of the financial constraint due to the consequence of the COVID-19 pandemic and the lock-down. We have serious doubt that the Petitioners want to help somebody who has filed wrong/false affidavit /statement before this Court, from being proceeded further. We are of the view that there is apparently no *bona fides* on the part of the Petitioners in pursuing the cause. The course and conduct of the Petitioners cannot but be deprecated in the strongest possible words. Though this Court can proceed with the matter on its own to identify the party concerned and deal with him properly, for attempting to poison the stream of justice by filing wrong/false/casual statements/affidavits, we restrain ourselves from such a course, in view of the present adverse COVID-19 scenario.

14. In the said circumstances, we reject I.A. No.08/2020, seeking permission to withdraw the writ petition. Instead, we dismiss the writ petition with a cost of Rs. 50,000/- (Fifty Thousand only) payable by the Petitioners to the State Legal Services Authority, so as to make use of the said amount for promoting the cause of poor genuine litigants and for readdressal of their grievance.

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

Sd/-
(Parth Prateem Sahu)
Judge