NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1393 of 2020

Manoj Pandey S/o Dev Prasad Pandey, aged about 39 years, R/o Ward No. 7 Gurunanak Ward, Nagar Panchayat Pathariya, Distt. Mungeli (C.G.).

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Public Health Engineering Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Distt. Raipur (C.G.).
2. Engineer in Chief, Public Health Engineering Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Distt. Raipur (C.G.).
3. Chief Engineer, Public Health Engineering Department, Bilaspur, Distt. Bilaspur (C.G.).
4. Executive Engineer, Public Health Engineering Department, Sub Division Mungeli, Distt. Mungeli (C.G.).

---- Respondents

For Petitioner	: Shri Hemant Kesharwani, Advocate
For Respondent/State	: Shri Sudeep Agrawal, Dy. Advocate General

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

Order on Board

Per Parth Prateem Sahu, Judge

22.07.2020

1. The petitioner who is a registered 'B' class Contractor has filed this petition against the action on the part of respondent No.4 in not issuing the blank tender form to the petitioner on the ground

that the petitioner did not submit GST registration and income tax return along with application filed for the blank printed tender form. The petitioner has sought for following relief(s) :

> “10.1 That, this Hon'ble Court may kindly be pleased to issue writ of mandamus directing the respondent authorities to issue petitioner blank tender form in respect of NIT dated 21.05.2020 and allow to participate in tender process.
>
> 10.2 That, this Hon'ble Court may kindly be pleased to issue writ of mandamus for set-aside the all proceeding in respect of the NIT dated 21.05.2020 issued by the respondent No.4.
>
> 10.3 Any other relief which this Hon'ble Court may deem fit and proper also kindly be granted to the petitioner, in the interest of justice.”

2. Shri Hemant Kesharwani, learned counsel for the petitioner submits that respondent No.4 had issued the Notice Inviting Tender (for short, 'NIT') in newspaper on 21.05.2020 inviting bids from the interested participants for the work of running water supply at different Anganbadi Centers of different villages of Block Pathariya, District Mungeli. The last date for making an application for obtaining the tender form was 12.06.2020 till 5.30 PM, last date for issuing of tender form was 16.06.2020 and last date for submission of tender form was 19.06.2020. The opening date of the tender document was 22.06.2020. He further submits that on the prescribed date, the petitioner has submitted an application along with requisite fees/amount for obtaining the

tender form, which is to be issued on 16.06.2020, but when he visited the office for obtaining the tender form, it has been refused on the ground that along with the copy of application, the petitioner has not filed requisite documents as mentioned in the terms and conditions enclosed along with NIT i.e. submission of GST registration, copy of income tax returns from 2017-18 to 2019-20, details of the work at hand in a stamp of Rs.100/- etc. are mandatory. It is contended that tender notification, which has been published in the newspaper, does not mention any such condition or requirement of submission of the documents along with an application for purchase of tender form/document, therefore, petitioner has not submitted the documents, whereas petitioner is a registered 'B' class Contractor and having all the requisite documents as pointed by the concerned officer. He referred to the document enclosed with the writ petition as Annexure P/1 wherein he submitted the registration of the petitioner as 'B' class Contractor, GST registration and income tax returns for the years 2017-18 and 2018-19. He lastly submits that the action on the part of respondent No.4 in rejecting the application for purchase of tender form and not issuing blank tender form for submitting his bid is *per se* wrong, arbitrary and illegal.

3. Per contra, Shri Sudeep Agrawal, learned Deputy Advocate

General representing the State submits that terms and conditions is part of NIT, which is in three parts. First part deals with the dates of application for purchase of tender form, issuance of tender form, submission of tender form and opening of the bids along with description of work. Second part deals with specific Anganbadi Centers where the work is to be executed as mentioned in the first part of the tender notification. In first part of NIT only three works have been assigned and in each work, there are four Anganbadi Centers and the details of which has been given in separate page. He also points out that the third part is of terms and conditions with regard to NIT dated 21.05.2020, which is part and parcel of the said NIT. The terms and conditions is also signed by respondent No.4 on the same date i.e. 21.05.2020 i.e. issuance of tender notification. He further submits that Annexure P/2 which is filed along with writ petition is only one part of the tender notification, which has been published in the newspaper. The entire tender notification along with details of work and terms and conditions was affixed in the notice board of the office, where all the persons who are interested in the work, have visited and perused. He also submits that except the petitioner, all other interested applicants who have applied for tender form, have submitted all the required documents to be enclosed along with the application for obtaining the tender form, which itself shows that the ground taken by the petitioner is not correct. It is contended that after opening of the bids, 'Letter of Acceptance' has been issued to the qualified tenderer/bidder on 01.07.2020, which is Annexure R/3. He points out that as per PWD Manual, subject NIT has been proceeded with full transparency and there is no arbitrariness on the part of respondent No.4.

4. We have heard learned counsel for the respective parties and perused the documents produced by both the parties on record.

5. As per the pleadings made by the petitioner in writ petition that the petitioner has submitted the application on 12.06.2020 for obtaining the tender form, which means he might have visited the office of respondent No.4 for the said purpose. The respondents have very categorically stated that there is requirement of submission of documents as per terms and condition forming part of NIT mandatorily of experience, GST registration, income tax returns, details of the work at hand in a stamp of Rs.100/- etc. with application for tender document. Five persons have submitted their applications and out of five, four persons have been found to be eligible for issuance of tender document as per Annexure R/2. The knowledge of requirement of submission of documents along with application form with four tenderers/applicants itself shows that the complete NIT has been affixed on the notice board of the office of respondent No.4 to

make them aware about the requirements of NIT and if for one or the other reason, the petitioner could not have looked into the notice board, then he himself is at fault for not being vigilant. The petitioner in this petition has filed the documents Annexure P/1 showing that he is having all the requisite documents as pointed out by the officer of his non-compliance at the time of submission of the application for purchase of tender form, which contains class 'B' registration, GST registration and income tax return verification form of 2017-18 and 2018-19. The petitioner has not submitted along with the writ petition for the reason best known to him, the income tax return verification form of the year 2019-20, which is also mentioned in Clause 1.3 of terms and conditions of the NIT to be a mandatory document.

6. In view of aforementioned facts and circumstances of the case, we do not find any good ground to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India calling interference in the subject tender proceedings. The petition being devoid of substance, is liable to be and is hereby dismissed.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	(Parth Prateem Sahu)
CHIEF JUSTICE	**JUDGE**

Yogesh