

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1381 of 2020**

- M/s Avinash Buildcon Infrastructure Private Limited, Through – Ashok Kumar Tiwari, S/o Jagannath Tiwari, aged about 46 years, Address – Shrikant Verma Marg, Vaishali Nagar, Phase – II, Bilaspur (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District Raipur (C.G.)
2. The Engineer-in-Chief (E.N.C.), Tender Uploading Authority, Water Resources Department, Shivnath Bhavan, Sector-19, Atal Nagar, New Raipur, Chhattisgarh.
3. The Chief Engineer, Water Resources Department, Atal Nagar, New Raipur, Chhattisgarh.
4. The Chief Engineer, Water Resources Department, Behind Town Hall, Bilaspur, Chhattisgarh. Pin No. 495-001

---- Respondents

For Petitioner	:	Shri Anshuman Shrivastava, Advocate.
For Respondents/State	:	Shri Vikram Sharma, Deputy Government Advocate.

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

Order on Board**Per P. R. Ramachandra Menon, Chief Justice****09.07.2020**

1. The Petitioner has moved this Court, being aggrieved of the rejection of the technical bid in connection with the tender bearing No. 63291 dated 06.05.2020 pertaining to the "Nawagaon (Salka) Tank Scheme" for construction of Earthen Dam (Bund) from RD. 0 M. to 1200 M. with erection/installation of the different infrastructures/devices as specified.
2. The prayers raised in the writ petition are in the following terms:

"10.1 That, this Hon'ble Court may kindly be pleased
 issue appropriate writ/order to set-aside decision of

rejection dated 09.06.2020 of the respondents communicated to the petitioner *vide* email dated 09.06.2020 by the CG e-PROC SYSTEM TEAM (Annexure P/1);

10.2 That, this Hon'ble Court may kindly be pleased issue appropriate writ/order to the respondents to allow and consider the participation of the petitioner in the price bid opening for the Tender No. 063291;

10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief as it may deems fits and appropriate."

3. Obviously, the grievance appears to be that, the rejection was only with reference to some discrepancies in the names of the Directors as it appears in the PWD certificate and the contents of the relevant Company records, as furnished from the part of the Petitioner.
4. When the matter came up for consideration before this Court on the last occasion *i.e.* on 03.07.2020, the learned counsel for the Petitioner had pointed out w.r.t. the records produced, that initially there were only two Directors, but later, two more Directors came to be inducted and this is reflected from the records maintained by the statutory authorities. Since no opportunity was given to clarify the position, the technical bid came to be rejected. It is asserted that there is no clause in the tender to the effect that the particulars of all the Directors should be furnished along with the tender. This led to an order passed by this Court on the last occasion in the following terms:

"Alleged arbitrarily rejection of technical bid of the petitioner is under challenge.

Learned counsel for the petitioner submits that the rejection of the bid as per Annexure P-1, is only for the reason that there is some inconsistency with regard to the names of the Directors shown in the PWD Certificate and the Company's documents. The learned counsel submits with reference to the tender conditions, that it can never be a ground for rejection of the bid; more so since, when the Company was incorporated in the year 2008, there were initially only two Directors, as disclosed from Annexure-P-1(colly). Subsequently, two more Directors have named and inducted from 15-11-2017, which is

disclosed from Annexure P-3. The learned counsel also points out that there was no doubt for the Respondents at any point of time with regard to the constitution or nature of the petitioner Company and that the petitioner has already been awarded works by the Respondents and still is pursuing the said works as disclosed from Annexure III. The learned counsel submits that, if a chance were given to the petitioner to have the factual position clarified, it would have been made it clear then and there and adds that there was no suppression or any lapse of declaration from the part of the petitioner in any manner.

Mr. Vikram Sharma, learned Deputy Government Advocate representing the State submits that by virtue of the relevant clause as to 'Disqualification', full particulars have to be given, which has not been satisfied by the petitioner at present. It is however to be noted that, the petitioner is a Company, which is a legal entity, who can sue and be sued and insofar as the tender notification does not specifically stipulate that the particulars of all the Directors had to be given; the alleged lapse, prima facie, cannot be a ground to have the technical bid rejected.

Learned counsel representing the State seeks for time to get instructions as to the further course of action.

List the matter for further consideration on 06-07-2020.

No further steps shall be pursued for finalization of the Tender till the next date of hearing."

5. Pursuant to the direction given by this Court to get instructions. Shri Vikram Sharma, the learned counsel representing the State submits, on the base of the instruction received, that the only reason for rejection of the Petitioner's technical bid was in view of the discrepancies noted as to the names of the Directors, as mentioned above. It is also brought to the notice of this Court that the Respondents are ready to consider the 'price bid' of the Petitioner as well and to have the matter finalized accordingly.
6. After hearing both the sides, we are of the view that, insofar as there was no stipulation that the names of all the Directors of the Company had to be furnished alongwith the tender and further since the Company is a legal entity,

who has submitted the bid, the reason mentioned in Annexure P/1 to have the technical bid rejected is not liable to be sustained. Accordingly, Annexure P/1 stands set aside and the Respondents are directed to treat the Petitioner also as qualified and consider the 'price bid' alongwith the price bid submitted by the other qualified participants and to have the proceedings finalized in accordance with law.

7. The writ petition stands allowed. No cost.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge