

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1377 of 2020**

- M/s. Shree Balaji Engicons Pvt. Ltd. Registered Under The Relevant Provisions of Companies Act, 1956 Having Its Registered Office At Belpahar (R.S.) District Jharsuguda (Odisha) Through Its Authorized Signatory Namely Shri Umesh Tiwari, S/o Late D.G.Tiwari, Aged About 55 Years, R/o Masanganj, Bilaspur, District Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. U. P. State Construction And Infrastructure Development Corporation Limited Through Managing Director, T.C.-46, V-Vibhuti Khand, Gomti Nagar, Lucknow (U.P.) -226010.
2. Chief Engineer (C), U.P. State Construction And Infrastructure Development Corporation Ltd. T.C.-46, V-Vibhuti Khand, Gomti Nagar, Lucknow (U.P.) -226010.
3. The Project Manager (M), U.P. State Construction And Infrastructure Development Corporation Ltd. T.C.-46, V-Vibhuti Khand, Gomti Nagar, Lucknow (U.P.) -226010.
4. Kendriya Vidyalaya Sangathan 8, Shaheed Jeet Singh Marg, NRPC Colony, Block B, Qutab Institutional Area, New Delhi, Delhi 110016.

---- Respondents

For Petitioner	: Shri Ankit Singhal, Advocate.
For Respondents No.1 to 3	: Shri Anuj Kudesia and Shri Rajeev Shrivastava, Advocate.
For Respondent No.4	: Ms. Deepali Pandey, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Judgment on Board****Per P. R. Ramachandra Menon, Chief Justice****22.07.2020**

1. The Petitioner has approached this Court with the following prayers:

“10.iThat the Hon'ble Court may kindly be pleased to quash the corrigendum order dated 17.06.2020 (Annexure P/7) as illegal and arbitrary and direct the Respondent No.1 to 3 to complete the tender process with respect to work of construction of Kendriya Vidyalaya, Naya Raipur, Chhattisgarh.

10.ii That the Hon'ble Court may kindly be pleased to quash the NIT no. 157/7-5(4)/E-TENDER/2020-21 dated 17.06.2020 (Annexure P/2) with respect to construction of Kendriya Vidyalaya, Naya Raipur, Chhattisgarh as illegal and the respondents may further be directed not to award the work to any other party and not to enter into an agreement with order party in respect the said work.

10.iii Any other relief, which this Hon'ble court deems, fit in the facts and circumstances may also be granted in favour of the petitioner.”

2. When the matter came up for consideration before this Court on 30.06.2020, the grievance of the Petitioner was noted to the effect that it was the second time, that his tender has been cancelled absolutely for no reason; that too after opening of the price bid of the Petitioner. When it came up for further consideration on 03.07.2020, we passed the following order:

“.....The grievance of the Petitioner is against the alleged arbitrary cancellation of the tender despite his becoming 'L-1' while opening of the price bid of 27.05.2020 and in going for re-tender. According to the learned counsel for the Petitioner, no reason has been stated in Annexure P/1 dated 17.06.2020 for rejecting the tender, but for stating that it is only because administrative reasons.

Shri Anuj Kudesia, the learned counsel appearing for Respondent No.1, supported by Shri Rajeev Shrivastava (through video conferencing) submits that a specific clause is contained in the tender proceedings, which was not there earlier; by virtue of which, additional performance guarantee has to be given, if anybody quotes the rate below the 'cost price'. In the case of the Petitioner, he has quoted the rate 17% below the cost price; which will affect the construction to be carried out and this was considered by the Tender Evaluation Committee, ultimately leading to the rejection of the tender and deciding to go for re-tendering.

Ongoing through the relevant clause, two separate rates are mentioned, as to be satisfied, towards the performance guarantee as shown below :

“a) 0.50% per 1.00% below up to 10% below of BOQ.

b) 1.00% per 1.00% below, above 10%, below of BOQ.

In the case of a quote up to 10% below the cost price, the performance guarantee has to be given at the specified rate under (a), and if it is still below 10%, the rate as mentioned above will get doubled. In the instant case, since the quote of the Petitioner is 17% below, it has to be governed under sub-clause (b) of main clause (C) of Annexure P/2. It has to be ascertained whether there is any

'specific clause' enabling the Respondents to cancel the tender, if it is below 10% of the cost price. If the Petitioner was willing to have it accepted, satisfying the performance guarantee to the requisite extent, as per the notified clause; it becomes necessary to be ascertained whether any clause has been incorporated in the re-tender notification that nobody can quote any rate beyond the specified level below the cost price, for summary rejection of the tender (it is available), apart from the general power conferred upon the Authority to reject the tender, if any. Respondents seek for time to get instructions.

'Status quo' as on date shall be maintained till the next date of hearing.

Further steps in connection with the re-tender shall be kept in abeyance.

Post the matter on 13.07.2020.”

3. As per the said order, the Petitioner having *prima facie* made out the case, we ordered the 'status quo' to be maintained till the next date of hearing. The parties appeared and submissions were made on the next occasion i.e. 13.07.2020. The 4th Respondent-Kendriya Vidyalaya Sangathan, who entrusted the task of construction to the Respondents No. 1 to 3, made a submission that because of the delay and various discrepancies with regard to the floating of the tender, the work assigned to 1st Respondent has already been withdrawn. The matter was adjourned to have the position confirmed. The 4th Respondent-Kendriya Vidyalaya Sangathan has filed reply dated 08.07.2020; which is to the following effect:

“The Kendriya Vidyalaya Sangathan is an autonomous organization registered under the societies Registration Act XXI 1860 and fully financed by the Govt. of India, Ministry of HRD. The chairman of KVS is union Minister of HRD, Vice Chairman is the Additional Secretary, Dept of Education, Ministry of HRD, Govt of India.

The answering respondent Kendriya Vidyalaya Sangathan is beneficiary for which the tender i.e. for construction of building of Kendriya Vidyalay A type, was called by the respondent no.1.

The answering respondent is an educational institution imparting education to children and thus fulfilling the onerous duty of building future of the country. The construction of schools are delayed on account of the entire scenario which has arises due to the irregularities

committed in the tender process and the answering respondent as a beneficiary is infact suffering the loss. Under the facts and circumstances brought on record by the petitioner and respondents herein, the answering respondent was constrained to withdraw the work contract from respondent no.1. Therefore vide memo dated 25/6/2020 the order for withdrawal of work was passed and the same has been communicated to the same. (Copy of the memo dated 25/06/2020 is annexed herewith as **Annexure R/4/1**)”

A copy of the relevant proceeding dated 25.06.2020 issued by the 4th Respondent-Kindriya Vidyalaya Sangathan withdrawing the work from Respondent No. 1 has been produced as Annexure R/4-1.

4. Shri Anuj Kudesia appearing for the Respondents No. 1 to 3 submits that they have already put a representation before the 4th Respondent for re-consideration of the issue.
5. We need not to go into the said aspect, insofar as the work assigned by the 4th Respondent to the 1st Respondent stands withdrawn, there cannot be any further question of proceeding with the tender already notified by Respondents No. 1 to 3. In the said circumstances, we note that the prayers sought for in the writ petition have virtually become infructuous. If at all any further cause of action arises in connection with the above tender, it is open for the Petitioner to pursue appropriate proceedings in accordance with law.

Writ petition is disposed of.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge