

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1463 of 2020**

Mohmad Hasan S/o Sheikh Sultan Aged About 45 Years R/o-
Baijnaathpara, Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through- Commissioner, Municipal Corporation, White House Building, Gandhi Chowk, District Raipur, Chhattisgarh
2. The Additional Commissioner(Revenue) District Raipur, Chhattisgarh
3. The Municipal Corporation Raipur Through- Commissioner, Zone No. 2, Raipur, District- Raipur, Chhattisgarh
4. The Town And Country Planning Raipur, Chhattisgarh

---- Respondents

For Petitioner	: Shri Y.C. Sharma, Advocate
For Respondent/State	: Shri Chandresh Shrivastava, Dy. Advocate General
For Respondent-Municipal Corporation	: Shri Pankaj Agrawal, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Parth Prateem Sahu, Judge****09.07.2020**

1. The Petitioner has approached this Court challenging the second tender notification issued on 16.03.2020 by the Respondent-Municipal Corporation for allotment of shops on lease at Jawahar Market, Raipur and such other places. The Petitioner in this petition has sought for following reliefs :

“10.1 That, this Hon'ble Court may kindly be pleased to call for entire record pertaining to the case of petitioner for kind perusal of this Hon'ble Court.

10.2 That, this Hon'ble Court may kindly be pleased

to direct the respondent authorities to set aside the notification dated 16.03.2020 issued by the respondent authorities in respect of Shop No.21, present at First Floor of Jawahar Market, Raipur.

10.3 That, this Hon'ble Court may kindly be pleased to respondents directed to consider the grievances of the petitioner and allot the Shop No.21, present at First Floor of Jawahar Market, Raipur to the petitioner as the petitioner already have a caste certificate which became well/good in the eye of law.

10.4 Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also granted.”

2. The grievance of the Petitioner is that the Petitioner participated in the tender notification dated 04.02.2020 and had submitted his bid for Shop No.21 situated at First Floor, Jawahar Market, Raipur, which was reserved for the candidate belonging to the OBC category. He had submitted all the relevant documents including the OBC caste certificate along with his tender documents. The Petitioner was the only person who submitted the bid for shop No.21 situated at First Floor, Jawahar Market, Raipur. Being the single bidder for the subject shop, he was hopeful about the allotment of shop to him as per the terms mentioned in the tender notification dated 04.02.2020, but no intimation was received from the end of the Respondent-Municipal Corporation, the Petitioner approached to the authorities where he was informed that the bid submitted by him has been rejected/cancelled by the Respondent-Municipal Corporation and a fresh tender has been issued by the Respondent-Municipal Corporation.

3. The learned counsel for the Petitioner submits that once the bid submitted by the tenderer was opened by the Respondent-Municipal Corporation as also the price bid, then the bid ought to have been accepted and Shop No.21 situated at First Floor, Jawahar Market, Raipur ought to have been allotted in his favour. He submits that the action on the part of the Respondent-Municipal Corporation is *per se* illegal and arbitrary.
4. Per contra, the learned counsel representing the Respondent-Municipal Corporation submits that the Petitioner has not submitted the valid OBC certificate along with the tender document, which is one of the requirement under the terms of the tender notification dated 04.02.2020. It is further contended that as the Petitioner failed to submit the valid caste certificate along with the tender form submitted by him, his bid was rejected and fresh tender notification has been issued for allotment of shops including the subject shop much earlier on 16.03.2020. It is further contended that as per the circular issued by the State of Madhya Pradesh on 12.03.1997 for issuing the permanent caste certificate, the prescribed authority has been shown to be District Collector, Deputy Collector and the SDO, whereas the caste certificate submitted by the Petitioner was provisional caste certificate issued by the Tahsildar. The said certificate cannot be treated as a valid caste certificate because the provisional caste certificate has not been followed with the permanent caste certificate, which can be accepted to be a valid caste certificate. It is also pointed out that under the proceedings of the new tender notification dated 16.03.2020, the bid submitted by the tenderers have already been opened on 04.07.2020. He submits that there is no valid ground raised by the learned counsel for the

Petitioner in this petition calling interference in the action taken by the Respondent-Municipal Corporation.

5. We have heard the learned counsel appearing for the respective parties.
6. Perusal of Annexure P/2, which is a tender notification dated 04.02.2020, based on which, the Petitioner participated in the bid proceedings would show that Shop No.21 situated at First Floor, Jawahar Market, Raipur has been shown to be reserved for the OBC category candidate. In bottom of the tender notification in Clause-3, it has been very specifically mentioned that for the reserved category candidate, certified documents be submitted along with the tender form. It is the case of the Petitioner himself that the Petitioner along with the bid had submitted the provisional caste certificate issued in the year 1994 by the Tahsildar. It has not been brought to our notice nor pleaded in the writ petition as to why the Petitioner after obtaining the provisional caste certificate (OBC) have not obtained the permanent caste certificate from the competent authority. The prescribed authority as per the circular issued by the State Government is the SDO for issuing the permanent caste certificate. The permanent caste certificate is required to be issued only after due verification of the caste based on the several other information gathered by the authority from his native residential address supplied by the applicant.
7. Be that as it may, in the writ petition, the Petitioner has not filed any permanent caste certificate issued by the competent authority nor placed on record the so-called provisional caste certificate, which he had submitted along with the tender form with the Respondent-Municipal

Corporation. In absence of any valid document, which is required to be submitted along with the tender document i.e. certified caste certificate as per note No.3 of the NIT, which in the opinion of this Court, the Petitioner has failed to submit. In the tender proceedings, the Courts have very limited jurisdiction to interfere with the decision taken by the authorities. The Court is only required to look into whether the decision making process of the authorities is not arbitrary in nature, irrational, bias or with any malafides.

8. The Hon'ble Supreme Court in the matter of **Tata Cellular v. Union of India** reported in **(1994) 6 SCC 651** has held that the Court should keep restrain in interfering with the tender proceedings and the judicial review and it is permissible only when the action taken by the respondent-employer is when there is arbitrariness in the case of the respondent or there is some favoritism or right to choose the best person or best intention to be an arbitrary power. The Hon'ble Supreme Court in the aforementioned judgment issued guidelines as to in what circumstances the principles of judicial review can be exercised in contract matters, which are as under :

“77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable

tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesday unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* reported in (1991) 1 AC 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

92. In **Sterling Computers Limited v. M & N Publications Ltd.** reported in (1993) 1 SCC 445 this Court observed thus : (SCC p. 455, para 12)

"In contracts having commercial element,

some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of 'play in the joints' to the executive."

9. The requirements of the document under the tender floated by authority is to be considered by the authority floating tender and these interpretations would be final if two views are possible. The Hon'ble Supreme Court in the

matter of **Consortium of Titagarh Firema Alder S.P.A.-Titagarh Wagons Ltd., through Authorised Signatory v. Nagpur Metro Rail Corporation Limited (NMRCL) through its General Manager (Procurement) and Another** reported in **(2017) 7 SCC 486** while dealing with the judgment with regard to the interpretations, the requirements of the tender documents has held thus :

“30.....The Court quoted a passage from *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.*, (2016) 16 SCC 818, wherein the principle that interpretation placed to appreciate the tender requirements and to interpret the documents by owner or employer unless mala fide or perverse in understanding or appreciation is reflected, the constitutional Courts should not interfere. It has also been observed in the said case that it is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given.....”

10. Further, in the matter of **Silppi Constructions Contractors v. Union of India** reported in **2019 SCC Online 1133** Hon'ble Supreme Court has held thus :

“20. The essence of the law laid down in the judgements referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state

instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity.....”

11. In the light of aforementioned law laid down by Hon'ble Supreme Court, if the facts of the case are considered, there is requirement of submission of caste certificate along with tender document. No caste certificate is produced before this Court. The Petitioner as per his claim submitted caste certificate which was a provisional/temporary caste certificate issued in the year 1994. This provisional/temporary caste certificate was not followed by the issuance of permanent caste certificate issued by the competent authority. The competent authority as submitted by the counsel for the Respondent, which remained unopposed is by officer, Sub-Divisional Officer (Revenue) and above. The bid was rejected as no valid certified caste certificate was issued. Certified caste certificate is to be understood as to be certified by the competent authority. The Petitioner has not raised ground of malafides or favoritism.

12. In view of the aforementioned facts of the case and the dictum of the Hon'ble Supreme court, we do not find any arbitrariness or irrationality in the decision making process on the part of the Respondent-Municipal Corporation. The petition being sans merit, is dismissed.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Anu