

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1529 of 2020**

- M/s Radheshyam Agrawal, through its proprietor Bajrang Agrawal, having its registered office at Shri Shyam Tower, Kavita Nagar, Avanti Vihar, Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary, Department of Urban Administration and Development, Atal Nagar, Bilaspur, Chhattisgarh
2. Bilaspur Smart City Limited, through its General Manager, 3rd Floor Vikas Bhawan, Nehru Chowk, Bilaspur, Chhattisgarh
3. Chhattisgarh Infotech & Biotech Promotion Society, through its CEO, State Data Centre, Opp. New Circuit House, Civil Lines, Raipur, Chhattisgarh - 492001
4. Bilaspur Municipal Corporation, through its Commissioner, Nehru Chowk, Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Manoj Paranjpe and Shri K. Rohan, Advocates
For Respondent No.1/State	:	Shri Sudeep Agrawal, Deputy Advocate General
For Respondent No.2	:	Shri Mateen Siddiqui, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per, P. R. Ramachandra Menon, Chief Justice****20.07.2020**

1. Non-consideration of the application for extension of time to submit the Tender, because of the alleged defect in the Server on the last day for submitting the Bid, made the Petitioner to approach this Court by filing writ petition with the following prayers :

“10.1. It is prayed that this Hon'ble Court may kindly be pleased to issue appropriate writ directing the Respondents to allow the Petitioner to participate in the NIT number 65010 and 65011.

10.2. It is prayed that this Hon'ble Court may kindly be pleased to issue an appropriate writ directing the Respondents to extend the date of filing of Online Bid Documents.

10.3. It is prayed that this Hon'ble Court may kindly be pleased to issue an appropriate writ directing Respondents to accept the Online and Physical bid of the Petitioner and allow him a fair chance of participating in the tender bid.

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

2. Heard Shri Manoj Paranjpe, the learned counsel for the Petitioner and Shri Mateen Siddiqui, the learned counsel for the 2nd Respondent; besides Shri Sudeep Agrawal, the learned counsel for the 1st Respondent/State.
3. The sum and substance of the case projected by the Petitioner is that, Annexure-P/1 Tender Notification was issued by the 2nd Respondent on 09.06.2020, inviting bids for Construction of Bituminous Road and for Drain Works from Arpa River Indra Setu to Shanichari Rapta - Left Side under System Tender No.65011 and similar tender vide Annexure-P/2 for similar Road Construction Work and for the Drain Works on the same stretch – Right Side under System Tender No.65010. It was an Online tender supported with physical submission of documents. Infact, the proceedings were to be contained in three Envelopes; Envelope 'A' consisting of five documents including affidavits and EMD, Envelope 'B' substantiating the Technical Qualification of the bidder

and Envelope 'C' containing the Price Bid. The last date stipulated for submitting the Tender was 08.07.2020 by 5.30 p.m. and after submission of the Bid as above, the participants were to effect the physical submission of the Envelopes 'A' and 'B' on 10.07.2020 before 4.00 p.m..

4. The case of the Petitioner is that, with intent to participate in the Bid, the Petitioner had taken Annexure-P/5 Demand Draft on 06.07.2020 for the requisite amount towards the EMD. It is stated that the Petitioner was attempting to upload the particulars / documents on the last date stipulated for submitting the Tender i.e. 08.07.2020 and it was completed by 4.15 p.m. on that day, except in the case of Envelope 'C' containing the Price Bid. Despite the best efforts taken by the Petitioner, he could not upload the Commercial Bid under the Envelope 'C' since the Server stopped functioning and the Website stood dead and was not operable. This made the Petitioner to send 'e-mail' by 4.34 p.m. to the 2nd Respondent, pointing out the technical problems and requesting for more time to submit the Tender. This was followed by a detailed communication vide Annexure-P/4 issued by the Petitioner to the 4th Respondent on the next day i.e. 09.07.2020, informing the said Respondent as well, about the technical glitches which were faced by the Petitioner while submitting the Tender and thus seeking to grant extension of time to submit the Bid and to participate in the proceedings. The inaction on the part of the Respondents with reference to the request made by the Petitioner to

approach this Court by filing the writ petition contending that the act of “blocking the Server and only allowing the Bids to be submitted in the fixed time window could be deliberate act of favouritism” (Paragraph 8.12 and Ground No.9.4).

5. The learned counsel for the Petitioner submits that the *bonafides* on the part of the Petitioner is evident from Annexure-P/5 Demand Draft dated 06.07.2020 taken towards the EMD to participate in the Tender and also from Annexure-P/3 'e-mail' sent at 4.34 p.m. on 08.07.2020 *i.e.* well before the time limit stipulated at 5.30 p.m. on the same day for submitting the Bids. Reference is also made to the representation preferred before the 4th Respondent as well and according to the Petitioner, there was no response from any one; which hence requires interference by this Court. It is also pointed out by the learned counsel that, absolutely no prejudice will be caused to anybody else, on permitting the Petitioner to participate in the Tender and that it will only help to set a 'level playing field' and to bring forth more competition.
6. Shri Mateen Siddiqui, the learned counsel appearing for the 2nd Respondent submits that there is absolutely no merit or *bonafides* in the writ petition. The learned counsel submits with reference to the documents produced along with the Covering Memo dated 17.07.2020 that, several Companies, who wanted to participate in the Bid, had submitted their Tenders on 08.07.2020 well within time *i.e.*, at 2:09:06 p.m., at 4:29:26 p.m., at 4:46:36 p.m. and at 5:27:01 p.m. respectively. This by itself shows that the alleged “Server collapse” in the evening on

08.07.2020 is nothing but incorrect and intended only to mislead this Court.

7. Admittedly, Annexure-P/1 Tender was notified on 09.06.2020, stipulating the 'last date and time' for submitting the Tender as "08.07.2020 till 5.50 p.m.". This means, one month's time was provided for those who were desirous in participating in the Tender by doing the needful, if at all, they were having any genuine interest. The Petitioner waited till the last date i.e. 08.07.2020 and that too, till the fag end of the time provided to upload the Tender. The allegation of the Petitioner that the Server had collapsed and hence he could not upload the documents which made him to send Annexure-P/3 'e-mail' by 4.34 p.m. does not appear to be factually correct in view of the documents produced from the part of the 2nd Respondent, showing that similar participants had already submitted the Tenders during that time and upto 5:27:01 p.m.
8. That apart, the Petitioner admittedly had taken the EMD with intent to participate in the Tender on '06.07.2020' as borne by Annexure-P/5 Demand Draft. As such, it was quite open for him to have the Tender uploaded on 06.07.2020 itself or on the next day or even in the forenoon on 08.07.2020. Absolutely there is no averment anywhere in the writ petition that, the Petitioner had made an attempt to upload the Tender / documents earlier (despite having obtained one month's time) and absolutely no reason is mentioned as to why he was waiting till the last date. The mere taking of the Demand Draft for payment of EMD or

sending of an 'e-mail', seeking for extension of time or filing a representation on the next day does not improve the case of the Petitioner in any manner.

9. No right of the Petitioner is infringed at the hands of the Respondents. If the Petitioner was sleeping over the issue for '29 days' and woke up from slumber on the last date i.e. 08.07.2020, that too, in the afternoon, just before the time stipulated for submitting the Tender and if the Server had gone down, he can only curse his fate. There is absolutely no fault on the part of the Respondents in any manner and they are not bound to extend the time for participating in the Bid. We do not find any tenable ground to interfere with the matter.
10. The writ petition fails. It is dismissed accordingly.

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

Sd/-
(Parth Prateem Sahu)
Judge