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HIGH COURT OF CHHATTISGARH BILASPUR

Order reserved on 19/08/2020
Order delivered on 02/09/2020

Writ Petition (C) No. 1601 of 2020

Digdarshi Women Group Through it's President, Rekha Verma D/o Shri B. Verma, Aged about 48 years, R/o Near J.J. Hospital Torwa, Bilaspur (C.G.).

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Urban Administration and Welfare Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Distt. Raipur, (C.G.).
2. Collector, Bilaspur, District Bilaspur (C.G).
3. Municipal Corporation, Bilaspur, Through Municipal Commissioner, Municipal Corporation, Bilaspur (C.G.).
4. Zone Commissioner, Zone No.1, Municipal Corporation, Bilaspur, District Bilaspur (C.G.).

---- Respondents

WPC No. 1732 of 2020

Digdarshi Women Group Through Its President, Rekha Verma D/o Shri B. Verma, Aged About 48 Years, R/o Near J.J. Hospital Torwa, Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Urban Administration And Welfare Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh
2. Collector, Bilaspur, District Bilaspur Chhattisgarh
3. Municipal Corporation, Bilaspur, Through Municipal Commissioner, Municipal Corporation, Bilaspur Chhattisgarh
4. Zone Commissioner, Zone No. 6, Municipal Corporation, Bilaspur, District Bilaspur Chhattisgarh

---- Respondents

For Petitioner	: Shri Anup Majumdar, Advocate
For Respondents No.1 & 2	: Shri Sudeep Agrawal, Deputy Advocate General
For Respondents No. 3 & 4	: Shri Ashutosh Singh Kachhawaha, Advocate

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

<u>C A V Order</u>

<u>Per Parth Prateem Sahu, Judge</u>

1. As in both the writ petitions, the petitioner is one and the same and cause of action are of cancellation of entire tender proceedings by respondent-Municipal Corporation and further that the grounds raised by the petitioner in both the writ petitions are one and the same, therefore, both the writ petitions are being disposed of by this common order.

2. Cancellation of the tender proceedings after opening of the price bids of tenderers participated therein in System Tender No.64880 bearing NIT No.1012 dated 04/06/2020 for the work of “supply of 60 labourers and supervisors for Department Zone-01 Municipal Corporation, Bilaspur” and floating of fresh tender for the same work bearing System Tender No.65917 bearing NIT No.1134 dated 06/07/2020 is under challenge in these writ petitions.

3. The challenge in Writ Petition (C) No.1732 of 2020 is the cancellation of the System Tender No.64896 bearing NIT No.18 dated 04/06/2020 for the work of supply of 60 labourers and supervisors for Department Zone-06 Municipal Corporation, Bilaspur and issuance of fresh tender notification for the same work vide System Tender No.66662.

4. The petitioner is registered under the Chhattisgarh Society Registration Act having its registration No.3594.

Respondent No.4 has floated System Tender No.64880 bearing NIT No.1012 dated 04/06/2020 for supply of labourers and supervisors. The bid start dated was 06/06/2020, last date for submission of the documents online was 27/06/2020 and physical document submission dated was 30/06/2020 and the same date was for opening of bids. Petitioner participated in the tender proceedings and submitted her tender document on the scheduled date as shown in the tender proceedings i.e. 30/06/2020. The bids were not opened on the scheduled date and the same was opened only on 03/07/2020. Upon opening of the bid of Envelop-A, the petitioner has been found to be qualified under technical evolution and thereafter, price bids of the bidders participated in the tender proceedings, which are five in number, were opened. Upon opening of the price bids the price quoted by the petitioner was found to be lowest as it was only 2.25% of the offset price, whereas the other tenderers have quoted the price above 42% of the offset price. After opening of the price bid on the very next day, the petitioner was served with a letter dated 04/07/2020 issued by respondent No.4 mentioning therein that a complaint was received by respondent No.4 from one Sunil Kumar Jain mentioning that in the affidavit submitted along with tender proceedings by her, she has not disclosed the fact that her relative is working within the office of respondent No.4. In the letter, it has been mentioned that her daughter-in-law, namely, Manisha Singh is working in Municipal Corporation, Zone No.1 and sought clarification from the petitioner. The period for submission of reply/clarification/explanation is mentioned as seven days, but prior to the submission of explanation, entire tender proceedings of the System Tender No.64880 bearing NIT No.1012 was cancelled on 07/07/2020 and cancellation of System Tender No.64896 bearing NIT No.18. This made the petitioner to approach this Court by filing the writ petitions (Writ Petition (C) Nos.1601 of 2020 and 1732 of 2020) with following reliefs :-

> **Writ Petition (C) No.1601 of 2020**
>
> "10.1) Relief sought-
>
> 10.2) That, the Hon'ble court may kindly be pleased to call the records pertaining to the, NIT No.1012 dated 04/06/2020 and NIT No.1134 dated 06/07/2020 for perusal of the Hon'ble court.
>
> 10.3) That the Hon'ble may kindly be pleased to issue appropriate writ/ order/direction to set aside/quashed the impugned NIT: 1134 issued on 06/07/2020 (P/1) and Notice 04/07/2020 (P/6) by the respondent No.4.
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> 10.4) That, the Hon'ble Court may kindly be pleased to quash/set-aside impugned Notice/cancelling NIT No:1012, Tender (Code:64880) dated 07/07/2020 (P/5).
>
> 10.5) The Hon'ble court may kindly be pleased to direct the resplendent corporation to award the contract arising out of NIT No -1012 Tender (Code:64880) dated 04/06/2020.

10.6) The Hon'ble court may kindly be pleased to direct the respondent corporation to conclude the process of earlier tender arising out of NIT:1012 dated 04/06/2020 Tender (Code :64880) and further award the contract to the petitioner.

10.7) That, the respondent No.1 be directed to conduct high level enquiry regarding disclosure of confidential documents to a third person.

10.8) Hon'ble may kindly be pleased to grant any other relief as deemed fit."

Writ Petition (C) No.1732 of 2020

"10.1 That, the Hon'ble court may kindly be pleased to call the records pertaining to System Tender No. 64896 NIT No.18 Dated:04/06/2020 for perusal of the Hon'ble court.

10.2 That, the Hon'ble may kindly be pleased to issue appropriate writ, orders, direction to set aside/quash the impugned order/communication, dated 28th of July 2020 arising out of System Tender No 66662 NIT No:22 Dated:28.07.2020 issued by the respondent No.4 *(Annexure P/1).*

10.3 That, the Hon'ble may kindly be pleased to issue appropriated writ/order/direction to set aside/quash the impugned order/communication, dated 30th of July 2020 arising out of NIT No:18 thereby cancelled the Tender by the respondent No.4 *(Annexure P/7).*

> 10.4 That, the Hon'ble may kindly be pleased to issue appropriate writ/order/direction to set aside/quash the impugned order/communication, dated 10th of July 2020 arising out of NIT No:18 thereby the petitioner has been deprived from participation in the tender process by the respondent No.4 *(Annexure P/4)*.
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> 10.5 The Hon'ble court may kindly be pleased to direct the respondent corporation to conclude the process of tender arising out of NIT No.18 dated 04.06.2020.
>
> 10.6 The Hon'ble may kindly be pleased to issue appropriate writs/orders/ direction, thereby direct to the respondent No.4 to consider for award of contract and further prayed for award the contract to the petitioner.
>
> 10.7 The Hon'ble court may kindly be pleased to grant any other relief as deemed fit on the basis of material on available in the petition."

5. Shri Anup Majumdar, learned counsel for the petitioner with regard to the facts of Writ Petition (C) No.1601 of 2020 submits that the petitioner is registered under the Chhattisgarh Society Registration Act in the name of Women Development Group; it is a licensed contractor and provides person's for manual work. He further submits that no near relative of the petitioner is under the employment of the Municipal Corporation, but the relative named in the letter issued by respondent No.4 (Annexure P/6) dated 04/07/2020 was engaged with the placement agency, namely, Jyoti Traders dealing with the works of Municipal Corporation. It is pointed out that on the scheduled dates, bids were not opened, but it was opened behind the back of petitioner without any information about the change of bid opening date i.e. 03/07/2020. Only a few minutes before opening intimation/information was sent to the petitioner about opening of the price bid of subject tender proceedings vide Annexure P/4. It is contended that upon opening of the price bid, petitioner has been found to be lowest bidder and eligible to be awarded the subject contract, but only to sideline the petitioner, initially on the very next day of opening of the price bid, a letter was issued to the petitioner for explaining the submission of affidavit, in which, it has not been disclosed about the working of near relative with respondent No.4. It is further contended that L-2 tenderer has quoted 40% above of the offset price and there was a very vast difference of price quote by the petitioner (L-1) and L-2 and no reason was assigned for cancelling the tender proceedings dated 04/06/2020 for system tender No.64880 on 07/07/2020 and issuance of fresh tender for the same work. It is pointed out that second tender has been floated on 06/07/2020 prior to cancellation of earlier tender proceedings, which shows ill-intention of the respondent authorities and the action on the part of respondent authorities is unreasonable and is against the principles of *wednusbarry*. The cancellation of tender proceedings is on the whims of respondent No.4 and issuance of notice dated 06/07/2020 is only an attempt to oust the petitioner from the subject tender proceedings, in which, it was found upon opening of the price bid, her rate to be lowest. He further submits that the private employee working under the contractor cannot be said to be a permanent employee of the Department and he/she can in no manner influence the decision of tender committee, which is the purpose of Clause mentioned in the affidavit.

6. With regard to the facts of Writ Petition (C) No.1732 of 2020, learned counsel for the petitioner submits that it was informed to the petitioner on 10/07/2020 that she shall not be permitted/allowed to participate in opening of financial bids on the ground that "other GST certificate not valid". Upon such information, the petitioner met the concerned Officer and requested that the petitioner may not be deprived from participating in the tender process on baseless ground for rejecting her candidature against terms and conditions of the NIT. The action of rejection of the bid of the petitioner was challenged by filing Writ Petition bearing Writ Petition (C) Filing No.8537 of 2020, but the same could not be listed for hearing due to lock-down period and the petitioner thereafter came to know about cancellation of the entire tender proceedings. He submits that the action on the part of the respondent-Municipal Corporation in cancellation the entire tender proceedings is illegal and arbitrary.

7. Shri Ashutosh Singh Kachhawaha, learned counsel for respondents No.3 and 4/Municipal Corporation submits that the submission made on behalf of the petitioner is not correct. He submits that though the letter dated 04/07/2020 was issued to the petitioner calling her explanation upon it within a period of seven days, but that was not the ground for cancellation of tender proceedings. The bid of the petitioner was found to be non responsive as the petitioner has not submitted the copy of live licence of Labour Department authorizing her to engage in supply of labourers as contract labourers and further, the GST registration certificate submitted by her was a composite GST, but looking to the nature of work, requirement is of regular GST and not the composite GST. With regard to the licence, he points out the provisions as envisaged under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'Act of 1970') to submit that the licence to work as supplier requires licence, which is not their with the petitioner. On the strength of above submission, learned counsel submits that at the time of participation of tender proceedings, the participants are required to possess valid labour licence and there is specific mention under Clauses 11 and 14 of the tender document as well as Condition No.9 of the terms and conditions forming part of tender document. Mandatory requirement of submission of copy of self-attested copy of licence along with the tender form to be submitted by the tenderers, but the petitioner has not placed on record any such licence. It is contended that as per provisions of Section 10(2) and the Schedule attached to the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act, 2017') for the nature of work as mentioned in the composite GST certificate, is not applicable. He submits that the submission made by learned counsel for the petitioner with regard to opening of the bid on 03/07/2020 is not correct as the bids were opened physically on 30/06/2020 i.e. the date which was prescribed for opening of the bid. The document placed along with tender document has been taken into consideration, but after finding and recording that petitioner was not eligible to further participate in the tender proceedings as she has not submitted the copy of licence and also proper GST certificate as per requirement. Due to some misunderstanding/ miscommunication and some technical error, price bid of all the tenderers have been opened in which bids of two non-eligible bidder's price bids including petitioner was also opened. For the aforesaid reason, the entire tender proceedings was cancelled. It is also pointed out that petitioner was engaged as contractor for the similar nature of work in the year 2018, but the work of petitioner was not satisfactory and several letters have been issued to her in this regard. The contract of the petitioner was even terminated on 27/06/2019 and the said order was not challenged and it attained finality. It is lastly contended that the tender proceedings are not likely to be interfered by the Court on technical grounds unless and until any prejudice is being caused to the petitioner/tenderer challenging the cancellation of tender proceedings, in which, he/she participated.

8. Shri Majumdar replying to the submission made by learned counsel for the respondent-Municipal Corporation with regard to issuance of licence, submits that licensing of contractors has been defined in the Act of 1970 and the procedure is prescribed under the Contract Labour (Regulation and Abolition) Central Rules, 1971 (hereinafter referred to as 'Rules of 1971'). He further submits that requirement under Rule 21 of the Rules of 1971 is that application to be accompanied by uploading a copy of the certificate by a principal employer mentioning that the applicant was employed by him as a contractor, as the petitioner was not employed as contractor within this period, therefore, she was not having the licence, but she of course was having licence during the period, in which, the petitioner was engaged and working as contractor, though it expired in the month of December, 2019. He also submits that looking to the requirement as mentioned in Rule 21 of the Rules of 1971, the employer-respondent No.4 in the terms and conditions of the tender proceedings has very specifically mentioned in Condition No.9, the period within which the licence is required to be submitted before the authorities i.e. within a period of 30 days from the date of issuance of the work order. It is pointed out that enclosing of a certificate along with an application for grant of licence cannot be said to be as mandatory, the employer can issue the certificate only if the petitioner/contractor is engaged with the employer. It is also argued that there is no specific mention of nature of GST in the tender document; the petitioner is registered under the GST, therefore, she fulfilled all the requirements and criteria of tender document. Learned counsel for the petitioner places reliance on the judgments passed by Hon'ble Supreme Court in the matters of **Union of India and Others v. Hindustan Development Corporation and Others** reported in **(1993) 3 SCC 499**, **Dutta Associates Pvt. Ltd. v. Indo Merchantiles Pvt. Ltd. and Others** reported in **(1997) 1 SCC 53** and **Union of India and Others v. Dinesh Engineering Corporation and Another** reported in **(2001) 8 SCC 491** to buttress his submission.

9. We have heard learned counsel appearing for the respective parties and perused the documents annexed with the writ petition. We have summoned the original files and perused the same as well.

10. Perusal of documents annexed with the writ petition would show that in system tender No.64880, bid opening date has been shown to be scheduled on 30/06/2020, but as per documents placed on record along with writ petition with regard to information given through e-mail for opening of bid and the proceedings of opening of the bid is only on 03/07/2020. As per proceedings dated 03.07.2020 (Annexure P/4) placed on record, it is apparent that bids of all participants in the tender proceedings were opened by the authorities on 03/07/2020 and only thereafter, respondent No.4 had issued a letter on 04/07/2020 to the petitioner pointing the non-mentioning of employment of her near relative in the office of respondent No.4 and there is no mention of any other shortcomings in tender document submitted by the petitioner. If once respondent No.4 had opted to call explanation from the petitioner with regard to any of the shortcomings as pointed out as per the case of respondents No.3 and 4 by one of the complainants with regard to system tender No.64880 and the tender document submitted by the petitioner for the same, then had there been any other shortcomings, respondent No.4 could have mentioned those and has passed appropriate orders and drawn appropriate proceedings in that regard.

11. In view of aforementioned fact that after opening of the bids of respective bidders who participated in the tender proceedings, respondent No.4 did not choose to take any step against the petitioner, but for issuance of letter dated 04/07/2020 only with regard to affidavit submitted by her along with the tender document in the prescribed format.

12. The ground raised by learned counsel for the respondent-Municipal Corporation for justifying the action of the petitioner that he had not submitted licence as required under Clauses 11 and 14 of the tender document and further Condition No.9 forming part of terms and conditions of the tender document, though in Clause 14, it has been made mandatory to submit self-attested copy of labour licence and the GST registration certificate submitted is of composite nature and not regular. So far as the clause fo licence, other Clauses mentioned in tender document i.e. Clause 11 as well as Condition No.9 of the terms and conditions of tender document, require that the contractor should submit clear and readable copy before commencement of the work and the contractor is required to submit licence issued by the Labour Department, District Bilaspur within a period of 30 days from issuance of the work order.

13. The requirement of licence to contractors is provided under Section 12 of the Act of 1970, which is reproduced below for ready reference :

> "**12. Licensing of contractors.-**(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.
>
> (2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35 and

> shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed."

14. The procedure for obtaining licence under the Act of 1970 is provided under the Rules of 1971. Rule 21 of the Rules of 1971 provides for application for a licence. Sub-rule (2) of Rule 21 prescribes that the application for grant of a licence shall be accompanied by uploading a copy of the certificate issued by the principal employer to the effect that the applicant has been engaged by him as a contractor. For clear understanding, Rule 21 of the Rules of 1971 is extracted below for ready reference :

> "**21. Application for a licence.-**(1) Every application by a contractor for the grant of a licence shall be made [online on the web-portal specified in sub-rule (1) of rule 17] [in form II annexed to the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017], [***].
>
> (2) Every application for the grant of a licence shall be [accompanied by uploading a copy of the] certificate by the principal employer [in Form III annexed to the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017] to the effect that the applicant has been employed by him as a contractor in relation to his establishment and that he undertakes to be bound by all the provisions of the Act

> and the rules made thereunder in so far as the provisions are applicable to him as principal employer in respect of the employment of contract labour by the applicant.
>
> (3) [***]
>
> [(4) On submission of e-application referred to in sub-rule (1) by the applicant, an automated acknowledgment shall be generated electronically on the web-portal specified in sub-rule (1) of rule 17].
>
> [(5) The deposit of security at the rates specified in rule 24 and the payment of the fees at the rates specified in rule 26 in respect of application referred to in sub-rule (1) shall be made by e-payment.]"

15. The provisions of the Act of 1970 and the Rules framed thereunder, where there is a requirement of enclosure of a certificate of a principal employer of his/her engagement as contractor, it shows that issuance of licence can only be after the acceptance of bid of the contractor and his engagement for the concerned work, because only after engagement, a certificate can be issued by the principal employer. Perusal of the copy of licence placed on record as R-3/2 dated 12/06/2019 shows that name of the Principal employer and its address is also mentioned in the licence. The clause of the tender documents and terms and conditions attached to it are to be read in the light of the provisions of the Act of 1970 and rules framed there under, there cannot be any clause or condition contrary to law.

16. In view of specific provision and requirement of Rule 21 of the Rules of 1971 for making an application for grant of licence, the submission made by learned counsel for the respondent-Municipal Corporation does not appear to be the correct proposition of requirement of submission of the licence along with tender document by a contractor, who was not engaged with principal employer for the said work prior to the tender. In these facts of the case, the submission made by learned counsel for the petitioner appears to be correct that requirement of submission of the licence is within 30 days from issuance of the work order. It is a case that the petitioner has earlier worked with respondent-Municipal Corporation in similar nature of work and for that period there was licence with her.

17. The next ground raised by learned counsel for the respondent-Municipal Corporation for not considering the bid of petitioner of the submission of composite GST certificate, perusal of the tender documents would show that requirement of self-attested copy of GST registration is only mentioned in Clause 14 of the tender document and there is no specific mention of the nature and type of GST certificate. The respondent-Municipal Corporation in support of their contention with regard to GST certificate has placed on record the search with regard to GSTIN number of the petitioner issued in the name of the petitioner, wherein it is mentioned the 'Taxpayer Type as Composition'. It is also argued on behalf of learned counsel for the respondent-Municipal Corporation that upon getting examining the GST certificate filed by the petitioner from its chartered accountant, who informed that there should be regular GST certificate.

18. Learned counsel for the respondent-Municipal Corporation has not pointed out specifically as to how the composition GST will have an effect and bearing with regard to the eligibility criteria. The tender notification only mentions about the requirement of self-attested GST certificate.

19. Even otherwise, the registration under the GST is with regard to the deduction of tax from the payment to be made to the service provider by the employer at source. The respondent-Municipal Corporation has not pointed out before this Court that if the petitioner is having composite GST registration, there will be any loss to the Government. It is for the Department under the GST to consider on the basis of application for registration to consider whether a person applying for its registration will come within the option sought for or not.

20. Taking into consideration the requirement as shown in Clause 14 of the tender document of having GST certificate, submission made by learned counsel for the respondent-Municipal Corporation that the petitioner is not possessing appropriate GST certificate is not sustainable.

21. In the discussions of preceding paragraphs, we hold that the respondent-Municipal Corporation erred in rejecting the technical bid of the petitioner on both grounds and none of the grounds were available to them for rejecting the bid of the petitioner.

22. Now, we will consider the action of respondent-Municipal Corporation for cancelling the entire tender proceedings under the facts and circumstances of the case.

23. The reason assigned by the respondent-Municipal Corporation for cancelling the entire tender proceedings, which is appearing from the proceedings recorded in their file is that due to some technical error in the computer network operated and managed by CHIPS at the time of opening of price bid by the Computer Operator, financial bid of all the participants/bidders were opened. These proceedings have been recorded by the respondent-Municipal Corporation immediately after opening of the price bid on 03/07/2020. The proceedings of the note-sheet would also reflect that the Officers have also directed inquiry and submission of the report in this regard.

24. Perusal of the order issued by the respondent-Municipal Corporation for cancellation of entire tender proceedings would show that it only mentions that System Tender No.64880 is cancelled due to unavoidable circumstances. The action on the part of respondent-Municipal Corporation in opening the price bids of all the participants/bidders, made the price quoted by the bidders known to all and by this action, the petitioner who quoted the lowest price has been made known to all. This definitely will have an impact on participation of the petitioner in the subsequent tender proceedings.

25. Now, in the facts and circumstances of the case at hand it is to be seen, whether the petitioner can be granted any relief by quashing the order/proceedings for cancellation of tender proceedings, which is subject matter of writ petition and further direction to award the contract to the petitioner.

26. The respondent-Municipal Corporation in paragraph-9 of their additional return have very categorically pleaded that respondent-Municipal Corporation had issued several notices to the petitioner in its execution of earlier contract entered between the Municipal Corporation with regard to the non-satisfactory services, which ultimately led to termination of the contract and these pleadings have not been controverted by the petitioner by filing any additional rejoinder to it without commenting much on that as that was not the subject matter before this Court, but looking to the facts and events, which is placed on record, we are restraining ourselves in exercising extraordinary jurisdiction under Article 226 of the Constitution of India and to interfere with the action and proceedings of the respondent-Municipal Corporation.

27. The Hon'ble Supreme Court in the matter of **Tata Cellular v. Union of India** reported in **(1994) 6 SCC 651** has formulated questions as also narrated the grounds for exercising the judicial review and observed as under :

> “77. …......... 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".

28. The Hon'ble Supreme Court in umpteen number of cases of tender and contract observed that public interest is to be kept in mind and not only the private interest. Merely quoting the highest bid or lowest bid would itself not give right to enter into the contract with Government. The Hon'ble Supreme Court in the matter of **Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and Others** reported in **(2005) 7 SCC 764** has held thus:

> “56. …........... It is well-settled that the burden of proving mala fide is on the person making the allegations and the

> burden is "very heavy". [*vide E.P. Royappa v. State of T. N., (1974) 4 SCC 3*]. There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high decree of credibility. As Krishna Iyer, J. stated in *Gulam Mustafa v. State of Maharashtra, (1976) 1 SCC 800 (SCC p.802, para 2)*; "It *(mala fide)* is the last refuge of a losing litigant".

29. If in the light of aforementioned rulings of Hon'ble Supreme Court and further taking into consideration of the facts, particularly, the pleadings in paragraph-9 of the additional return filed by the respondent-Municipal Corporation, we do not find it appropriate to interfere with the action of respondent-Municipal Corporation of cancelling the entire tender proceedings and calling fresh tender for the same work. However, as we held that the grounds taken for rejection of the bid of the petitioner to be not correct and the submission of learned counsel for the respondent-Municipal Corporation that the bids of fresh tender have not been opened, the petitioner will be eligible to participate in the fresh tender proceedings. The respondent-Municipal Corporation shall provide an opportunity to the petitioner also to participate in the fresh tender proceedings by extending dates for submission of the bids as well as opening of the bids by way of issuance of corrigendum to the new tender notification and only thereafter, bids submitted by all the bidders be opened in accordance with law.

30. In the result, both the writ petitions (Writ Petition (C) Nos.1601 of 2020 and 1732 of 2020) are allowed in aforementioned terms.

31. Looking to the course and proceedings pursued by respondent-Municipal Corporation in conducting tender proceedings of the subject matter in Writ Petition (C) No.1601 of 2020, which are emerging from the records of the proceedings submitted before this Court, we find it appropriate to impose cost of Rs.10,000/- upon respondent No.3/Municipal Corporation in Writ Petition (C) No.1601 of 2020 to be deposited with the Chief Minister Relief Fund for COVID-19 within a period of four weeks.

32. Original file be returned to the counsel for the respondent-Municipal Corporation.

Sd/-	Sd/-
(P. R. Ramachandra Menon) **Chief Justice**	**(Parth Prateem Sahu)** **Judge**

Yogesh