

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2709 of 2020**

- M/s Pahalwan Consturction A Partnership Firm Through Its Parnter Shyam Babu Yadav, S/o Late Ramvilas Yadav, Aged About 33 Years, R/o Agarkhar, Jamnipali, District Korba Chhattisgarh.

---- Petitioner**Versus**

1. National Thermal Power Corporation Limited Through Its General Manager (O and M) Korba Super Thermal Power Station, P. O. Vikas Bhawan, Jamnipali Korba Chhattisgarh.
2. Arcon Office At Gohal Bari, P. O. Kuli, Farakka, District Murshidabad, West Bengal India 742233.

---- Respondents

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- Shri Amit Soni, counsel for the appellant/s.
 - Shri B.D. Guru, on advanced copy for respondent No. 1.
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D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava, J.****06.11.2020**

By this petition under article 226 of the Constitution of India, the petitioner seeks to assail the tender conditions with regard to qualifying requirements for bidders as contained in Para 5.1.1 under the head “technical criteria”.

2. Learned counsel for the petitioner argues that in the matter of Pipeline Inspection, Maintenance, Replacement Outside Boundary Wall And Fugitive Dust Control At Dyke by various methods for NTPC Korba, in the past, there was consistent practice of awarding contract for different work rather than combining all the works under the one contract as reflected from previous NITs placed on record as Annexure P/1 and P/2 collectively. He would submit that earlier there was no strict technical criteria for the bidders in terms of clause 5.1.1 of the impugned tender notice. He would submit that

imposition of such conditions of having executed work of value in single contract or two contracts or three contracts is wholly unreasonable and arbitrary and only seeks to establish monopoly in the hands of few contractors, who due to fortuitous circumstances, happened to execute work of higher values in the past. The new terms and conditions will reduce the competition as small and local contractors would be completely eliminated from the competition to obtain contract.

3. On advance notice, Mr. B.D. Guru would submit that similar criteria was earlier also framed which was challenged before this Court, though unsuccessfully.

4. After hearing learned counsel for the petitioner, we are of the considered opinion that the present petition is sans merit.

As to what should be terms of a tender notice and on what terms contract is to be awarded, as to what should be the technical criteria, working experience of the bidder are entirely matter to be dealt with and decided by the concerned agency and not for the Court. Unless the criteria on technical and financial aspects or qualifications are demonstrably arbitrary or unreasonable, opposed to any law or contrary to statutory provisions, if any, governing terms of contract, interference may not be permissible in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Merely because the competition has been reduced, that by itself would not be a ground for interference.

What we see is that earlier for works, different tender notices used to be issued but now the respondent authority has decided to award work by combining different works connected with pipeline and has also decided to prescribe strict technical criteria obviously with an object to make the competition far more tough than what it was in previous years. No party can claim that the technical or other criteria and qualification for a particular work should remain static and should not be allowed to be changed. Unless the

criteria which is now published is found to be arbitrary or unreasonable, interference would not be possible by the Court as the Courts are not the forum to lay down criteria and qualification for bidders in the matter of award of public contract.

On petitioner's own showing more than one bidders have already qualified therefore, it cannot be said that the terms and conditions have been so designed as to all together eliminate the element of competitive bids and allowing only one party to control the entire work.

5. Therefore, we do not find that there is any merit in the petition requiring issuance of notice to the other party. The petitioner is therefore, dismissed at the stage of admission itself.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge