

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Writ Petition (C) No.2904 of 2020**

Anshul Kumar Jain S/o Shri Devendra Kumar Jain Aged About 38 Years R/o B-302, Pooja Park Near Mukti Dham Sarkanda, Tahsil and District Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, (Rural Engineering Services), Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District Raipur Chhattisgarh.
2. The Engineer In Chief (E.N.C.) Tender Uploading Authority, Rural Engineering Services, Atal Nagar, New Raipur, Chhattisgarh.
3. The Chief Engineer Rural Engineering Services Department, Vikas Ayukta Karyalaya Vikas Bhawan, Civil Line, Raipur, Chhattisgarh.
4. The Superintendent Engineer Rural Engineering Services Department Circle Bilaspur, In Front of Sanjay Taran Puskar, Mungeli Naka Bilaspur, Chhattisgarh, Pin No. 495-001.
5. The Executive Engineer Rural Engineering Services, Division Bilaspur, In Front Of Sanjay Taran Puskar, Mungeli Naka Bilaspur , Chhattisgarh. Pin No. 495-001.

---- Respondents

For Petitioner : Shri Anshuman Shrivastava, Advocate
 For Respondent/State : Shri Chandresh Shrivastava, Dy. Advocate
 General

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order On Board****Per Parth Prateem Sahu, Judge****10.12.2020**

1. Rejection of the technical bid of the petitioner submitted against tender notification dated 17.08.2020 bearing system tender No.67004 made the petitioner to approach this Court by way of filing instant writ petition with following reliefs :

“10.1 That, this Hon'ble Court may kindly be pleased issue appropriate writ/order to set-aside decision of rejection dated 20.10.2020 of the respondents communicated to the petitioner vide letter dated 31.10.2020 by the Respondent/Execute Engineer (Annexure P-7). ”

10.2 That, this Hon'ble Court may kindly be pleased issue appropriate writ/order to the respondents to allow and consider the participation of the petitioner in the price bid opening for the Tender No.67004 dated 17.08.2020 issued by respondent No.;

10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief as it may deems fit and appropriate.”

2. Case of the petitioner is that, respondent No.5 issued a tender notification No.67004 dated 17.08.2020 for construction work mentioning terms and conditions therein. The petitioner participated in the said tender proceeding and submitted his bid along with other interested bidders. Upon opening of the technical bid by the respondent authorities, technical bid of the petitioner came to be rejected on the ground that he has not submitted correct work completion certificate as required in Form Annexure-I of the tender document. Workwise details of completed works and volume over the last five years as Annexure-I submitted by the petitioner was incomplete. Respondent No.5 sought an explanation vide letter dated 20.10.2020 (Annexure P/3), which was replied by the petitioner and upon considering the explanation offered by the petitioner,

his technical bid was rejected. The petitioner has pleaded that main ground for rejection of his technical bid was submission of work completion certificate issued by the Assistant Engineer Nagar Palika Parishad, Akaltara to be not proper. Requirement under the tender conditions for issuance of work completion certificate is to be only by the Executive Engineer, but there was no post of Executive Engineer in the post set up of the office of Nagar Palika Parishad, Akaltara, hence, the certificate submitted by the petitioner is valid and correct. Rejection of technical bid was uncalled for and the action of the respondent authorities treating Annexure-I to be incomplete is highly arbitrary and illegal.

3. Respondent/State submitted reply to the writ petition pleading therein that the petitioner was communicated about rejection of his technical bid on 31.10.2020 on the ground that Annexure-I is incomplete. Under the terms and conditions of the tender document, the petitioner is required to submit work order issued by the authorities and work completion certificate of the work which the bidder has done in last five years. The petitioner submitted the work order issued by the office of Nagar Palika Parishad, Akaltara dated 19.01.2017 issued by the Chief Municipal Officer, Nagar Palika Parishad, Akaltara. The petitioner instead of filing work completion certificate of the aforesaid work dated 19.01.2017 issued by the competent authority, has filed experience certificate issued by the Assistant

Engineer, Nagar Palika Parishad, Akaltara. The documents in its form does not fulfill the conditions as mentioned in the tender document for submission of work completion certificate issued by the Executive Engineer. Assistant Engineer even otherwise is not authorized to issue any work completion certificate to any person and it is the Chief Municipal Officer who is to issue work completion certificate to which, the petitioner was well aware as he has obtained work completion certificate on 02.05.2018 of one of the works done for Nagar Palika Parishad, Akaltara vide work order dated 31.12.2016. The said work completion certificate was issued by joint signature of three persons i.e. Chief Municipal Officer, Assistant Engineer and Sub Engineer. The submission of the petitioner that upon issuance of letter Annexure P/3 by respondent No.5 asking him to submit correct document/certificate, to which, the petitioner has submitted on the same day, is not correct. The letter Anneuxre P/3 is only an intimation and seeking clarification from the petitioner with regard to incomplete document submitted by him. The work done under the Municipality is governed by the Chhattisgarh Municipality Account Rules, 1971 wherein under Rule 150, work completion certificate is to be issued in Form 91 by the Chief Municipal Officer, hence, Assistant Engineer is not competent authority to issue work completion certificate.

4. Shri Anshuman Shrivastava, learned counsel appearing for the petitioner submits that the petitioner has taken a very

specific plea that there is no post of Executive Engineer in the post set up of the office of Nagar Palika Parishad, Akaltara. The work of which, certificate issued by the Assistant Engineer for construction of CC road, he is only the competent authority to issue the certificate. The purpose of calling certificate is to whether the work allotted to the petitioner in last five years has been completed or not has been fulfilled from the experience certificate annexed by the petitioner along with tender document for the work order dated 19.01.2017. The said required condition is substantially complied. The respondent authorities have arbitrarily and in very haste manner has rejected his technical bid and technical bid of the petitioner could not have been rejected when once respondent authorities asked him for submission of correct certificate to which the petitioner has submitted before the authorities. He further contended that respondent authorities have not considered the deficiency in the tender document of other bidders and have permitted them to participate in further tender proceedings, as such, the petitioner may not be discriminated with other tenderers. It is contended that certificate issued by the Assistant Engineer with regard to work order dated 19.01.2017 to be correct and in accordance with the conditions of tender document. Referring to Annexure-I of Annexure P/5, he submitted that under the note, it is very specifically mentioned that work order to be issued not below the rank of Executive Engineer, but as such, there is no post of Executive Engineer in the post set up of the office of Nagar

Palika Parishad, Akaltara, the Engineer below the Executive Engineer is Assistant Engineer, who issued the work completion certificate. In view of above submissions, he submits that rejection of technical bid of the petitioner dated 31.10.2020 be set aside and respondent authorities be directed to open financial bid of the petitioner and thereafter to proceed accordingly.

5. Controverting the submission made by learned counsel for the petitioner, Shri Chandresh Shrivastava, the learned Deputy Advocate General representing the State submits that submission of work completion certificate of the work done by the petitioner in last five years is one of the mandatory requirement. The petitioner has submitted the document issued under the head of "Experience Certificate" by the Assistant Engineer of the Municipality. He further submits that the requirement under tender conditions is the work completion certificate to be issued by the competent authority and not the experience certificate. The bidders are required to submit the work order and work completion certificate of that work order issued in their favour. The petitioner has submitted the work order issued by the Chief Municipal Officer, Nagar Palika Parishad, Akaltara on 31.12.2016 and work completion certificate of which is placed on record issued to be on 02.05.2018 signed by the three members i.e. Chief Municipal Officer, Assistant Engineer and Sub Engineer. The petitioner

was well aware as to who is the competent authority to issue work completion certificate, but for the work allotted to him vide work order dated 19.01.2017, he has placed on record only the work order and not the work completion certificate. The said experience certificate was issued by the Assistant Engineer. The requirement is to file work completion certificate and not experience certificate. The respondent authorities have rightly rejected the technical bid of the petitioner holding it to be incomplete as the work completion certificate with regard to the work allotted to the petitioner vide work order dated 19.01.2017 is not filed. It is contended that though in Annexure-I of Annexure P/5, it is very specifically mentioned that the work completion certificate is to be issued by not below the rank of Executive Engineer, but under Chhattisgarh Municipality Account Rules, 1971, it is the Chief Municipal Officer who is competent to issue work completion certificate in Form 91, which the petitioner has not filed. It is pointed out that letter Annexure P/3 referred to by the petitioner does not mention that respondent No.5 at any point of time has asked for submission of correct documents, but sought only explanation before rejection of the technical bid of the petitioner mentioning that Annexure-I is incomplete for which, he is being disqualified. The petitioner submitted reply to letter Annexure P/3 and gave his explanation that as there is no post of Executive Engineer, hence, the certificate issued by the competent authority be accepted and his technical bid should be accepted. In their

reply also, there is no mention of submission of correct certificate, hence, the submission made by learned counsel for the petitioner cannot be accepted being contrary to the pleadings and documents. It is further contended that submission made by the learned counsel for the petitioner that some deficiency found in the bid submitted by the other bidders have been ignored and they were permitted to participate in the tender proceeding is also taken for the first time before this Court.

6. We have heard learned counsel for the respective parties and perused the documents placed on record along with the pleadings.

7. So far as the submission made by learned counsel for the petitioner that respondent authorities have ignored some deficiency found in the tender document of other bidders is to be outrightly rejected on the ground that there is no such pleading in the writ petition, hence, the petitioner cannot be permitted to raise any ground which is not forming part of the pleadings. The said submission is accordingly rejected.

8. The other submission made by learned counsel for the petitioner that the requirement of submission of work completion certificate is from the Executive Engineer, but as there is no post of Executive Engineer in Nagar Palika Parishad, Akaltara, certificate in the form of experience certificate has been issued by the Assistant Engineer who is next below the Executive

Engineer, is valid certificate, we find it very difficult to accept the said proposition for the reasons that undisputedly, there is a requirement of submission of work completion certificate in Annexure-I. The petitioner has not submitted work completion certificate with regard to work order dated 19.01.2017, but he has submitted the experience certificate. From the very nomenclature “Experience Certificate”, it is apparent that it does not fulfill the requirement of the tender conditions i.e. requirement of work completion certificate. When the terms and conditions mentioned in the tender document are specifically clear, it is not for the bidder to interpret the same in any other manner than what is prescribed therein.

9. It is for the authority consider the documents, whether is in conformity with the terms and conditions of the tender document. The employer who floated the tender is the best judge to look into the document and to interpret it. Hon'ble Supreme Court in case of **Silppi Constructions Contractors v. Union of India** reported in **2019 SCC Online 1133** had held thus :

“20. The essence of the law laid down in the judgments 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.....”

10. It is not a case projected by the petitioner that the respondent authorities acted with malafide or the decision making process is so unreasonable that no prudent man can arrive at.

11. It is not a case that the petitioner is not aware with regard to competent authority issuing work completion certificate for the work done in Nagar Palika Parishad, Akaltara because the petitioner himself has submitted the work completion certificate for work order dated 31.12.2016 issued under the seal of Chief Municipal Officer, Assistant Engineer and Sub Engineer jointly on 02.05.2018. This shows that the petitioner has consciously obtained the experience certificate from the Assistant Engineer

knowing fully well that he is not the authority to issue the work completion certificate.

12. In the aforementioned facts and circumstances of the case, we are of firm view that the petitioner has failed to comply with the terms and conditions of the tender document while submitting his bid. The respondent authorities have not committed any error in rejecting the technical bid of the petitioner on the ground that Annexure-I filed along with the tender document to be incomplete as the work completion certificate for the work awarded to him under work order dated 19.01.2017 is not filed. There is no merit in the writ petition, which is liable to be and is hereby dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge