

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 22.2.2021****Order Delivered on 26/02/2021****WPC No. 671 of 2021**

- M/s New Capital Security Services, through Sourabh Mishra Proprietor S/o Narendra Mishra, age about 39 years Registered Office 505 A Wing, Babylon Tower, VIP Chowk, Talibandh, Raipur Tah. & District Raipur (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretary Department of Civil Administration, Mantralaya Naya Raipur, Chhattisgarh.
2. Raipur Smart City Limited, Through Its Managing Director, Ground Floor, Outdoor Stadium Campus, Infront of Budha Talab, Raipur (CG)
3. M/s Moon Caters, Through Managing Director, Raipur Smart City Limited, Ground Floor, Outdoor Stadium Campus, Infront of Budha Talab, Raipur (CG)

---- Respondents

For Petitioner	:	Mr. Amit Sharma, Advocate
For Respondent No.1	:	Mr. Ashish Tiwari, Govt. Advocate
For Respondent No.2	:	Mr. Animesh Tiwari, Advocate
For Respondent No.3	:	Mr. Awadh Tripathi, Advocate

Hon'ble Shri PR Ramachandra Menon,CJ**Hon'ble Shri Parth Prateem Sahu, J****CAV Order****Per Parth Prateem Sahu, J**

1. Aggrieved by the rejection of Technical Bid by respondent No.2, the petitioner has approached this Court by filing this petition with following reliefs:-

“10.1. The Hon'ble Court may kindly be pleased to call for the entire records pertaining to the instant case.

10.2.The Hon'ble Court may kindly be pleased to

direct the respondent authorities to recall the tender for Maintenance and operation of Parking Tender no.70115 of the NIT.

10.3. That the Hon'ble Court may kindly be issue a writ in the nature of certiorari and quash the whole proceedings taken in pursuance of tender no.70115 of the NIT

10.4. Any other relief, which this Hon'ble Court deems fits and proper under the facts and circumstances, may also be provided to the petitioners.”

2. Case of the petitioner is that on 22.12.2020 respondent No.2 has issued e-notice tender notification / Request for Proposal (RFP) for selection of agency for “Design, Development, Implementation, Operation and Maintenance of Smart Parking Management” at MLCP located at EAC Colony, Raipur on annual license fee basis. Petitioner submitted his bid and participated in the aforementioned tender proceedings. The bid is required to be submitted in two separate envelopes, one containing documents prescribed under the qualification and another containing financial bid. Petitioner qualified in technical assessment as in the official website of respondent No.2 the qualification status of petitioner has been shown to be qualified. Subsequently, on 7.1.2021 the technical bid submitted by petitioner has been rejected in a very arbitrary manner and the work has been awarded to respondent No.3. The petitioner fulfils all essential qualifications, as prescribed in the tender notification, but technical bid of petitioner has been rejected arbitrarily.
3. Respondent No.2 filed reply to writ petition resisting pleadings made therein. It is pleaded that document, Annexure P-4,

based on which writ petition is filed is only evaluation of the envelopes submitted by the bidders i.e. to check whether RFP along with requisite Earnest Money Deposit (EMD) has been submitted or not. Technical Bid is to be evaluated by the Techno Evaluation Committee. Upon opening of technical bids, the Techno Evaluation Committee has scrutinized the documents annexed in support of technical qualification and it was found that the petitioner does not fulfil requisite qualification as prescribed under Clause 2.2.2 & 3.2 of the tender notification. Petitioner also does not have experience of three years in past five years of vehicle parking management at hospitals, airports, railway station, bus terminals etc. Petitioner has also not submitted along with bid showing his annual turnover in the prescribed format.

4. Controverting the reply filed on behalf of respondent No.2, the petitioner by way of rejoinder pleaded that requirement of three years experience in last five years is not in the way. It has been pleaded in the reply that minimum three years experience in past five years means any of the five years. Annual turnover is only to see/assess capability of a bidder to execute the tendered work. Hence, if annual turnover certificate has not been in the prescribed format, it will not affect in any manner.
5. Mr. Amit Sharma, learned counsel for the petitioner submits that action on the part of the respondents when once upon analysing bid submitted by petitioner finding him to be

qualified and subsequently rejecting technical bid, is only to give undue advantage to other bidders. Respondent No.2 upon analysing the documents submitted by petitioner declared the petitioner to be eligible and qualified, therefore, there was no reason for them to reject technical bid of petitioner at a later stage. He points out that requirement under the tender notification of experience has wrongly been interpreted by the respondent authorities in their reply. Three years minimum experience can be in any of the five years.

6. Mr. Animesh Tiwari, learned counsel representing respondent No.2 submits that there is no arbitrariness or unreasonableness in the action taken by respondent No.2 on the technical bid submitted by petitioner. Petitioner did not fulfil eligibility criteria prescribed under Clause 2.2.2 and 3.2 of the tender notification. Petitioner in his rejoinder has admitted that he has not submitted document showing annual turnover in the prescribed format but only pleaded that if turnover is not submitted in the prescribed format, it will not cause any harm. He further points out that experience of bidder has been very specifically mentioned in the tender document in Clause 3.2. Experience which is sought in the tender document is of minimum three years in past five years and past five years means preceding five years to the date on which tender notification is floated. Petitioner in his pleadings has mentioned that he is having experience in different years since 2008 to 2013 and not thereafter.

7. Supporting the contentions of learned counsel for respondent No.2, Mr. Awadh Tripathi, learned counsel appearing on behalf of respondent No.3 submits that respondent No.2 after analyzing bid submitted by respective bidders has considered their documents strictly in accordance with the clauses mentioned in the tender notification. Technical Bid of petitioner has rightly been rejected as the petitioner did not fulfil qualifying criteria as provided under Clause 2.2.2 & 3.2 of the tender notification. He further submits that respondent No.3 has already been identified and declared as successful bidder, but on account of interim order passed by this Court, further consequential orders could not be passed in favour of respondent No.3.
8. We have heard learned counsel for the parties and perused the documents annexed with writ petition.
9. To appreciate the pleadings and submissions made by learned counsel for the parties, once again we have perused the reliefs sought for by the petitioner in this petition. Petitioner has not sought any relief for himself i.e. reconsidering the bid and declaring him to be qualified in the technical bid and further direction to respondent No.2 for opening of his price bid. But, only relief which he has sought for is to recall the tender No.70115 and to quash the whole tender proceedings of Tender No.70115. There is no pleading and ground for seeking such a relief. In view of the pleadings made in the writ petition and the reliefs sought for, we are of the

considered view that no relief, as claimed in writ petition, can be granted to the petitioner.

10. Apart from above, Clause 2.20 of the tender document mentions about tests of responsiveness and relevant part of which reads as under:-

“2.20. Tests of Responsiveness.- Prior to evaluation of Qualification Proposal, the Authority shall determine whether each Qualification Proposal is responsive to the requirements of the Request for Qualification cum Proposal. A Qualification Proposal shall be considered responsive only if:

- a) xxxx
- b) xxxx
- c) xxxx
- d) xxxx
- e) xxxx
- f) xxxx
- g) xxxx
- h) xxxx
- i) xxxx
- j) xxxx
- k) xxxx
- l) xxxx
- m) it submits the Qualification Bid, bid security envelopes as stipulated in this RFP.”

11. From bare perusal of the aforementioned clause in the tender notification, it is apparent that tests of responsiveness is to be determined prior to evaluation of the Qualification Proposal. In view of the aforementioned specific clause in the tender document and the submission made by learned counsel for respondent No.2 that document Annexure P-4 on which petitioner has relied upon, is tests of responsiveness and not

the result after evaluation of the qualification proposal, which is to be scrutinized by the Techno Evaluation Committee. The shortcoming as pointed by the Techno Evaluation Committee for rejection of bid, as pleaded in the reply to writ petition and also appearing from the documents placed before this Court by learned counsel for respondent No.2 showing reasons for non-responsiveness / rejection of technical bid, has not been refuted by showing clauses of tender notification and the supporting documents, but learned counsel for the petitioner has only made submission that once the technical bid has been accepted then there was no reason for the respondent No.2 to reject petitioner's technical bid and further in the rejoinder he has only pleaded that non-submission of annual turnover certificate in the prescribed format will not affect in any manner and with regard to experience, it was argued that three years experience in past five years means in any five years.

12. In view of aforementioned facts and circumstances of the case and submissions made by learned counsel for the parties, we do not find any error in the decision making process of the respondent No.2 rejecting technical bid of the petitioner. The principle is well settled by Hon'ble Supreme Court in its decision that if there is procedure prescribed for doing a particular thing in a particular manner, then such thing has to be done in the manner prescribed. The Hon'ble Supreme Court in case of **Central Coalfields Ltd. & anr vs. SLL-SML**

(Joint Venture Consortium) & ors reported in **(2016) 8 SCC 622**, while relying upon the judgment in case of **Nazir Ahmed v. King Emperor** reported in **AIR 1936 PC 253 (2)** has held thus;-

“52. There is a wholesome principle that the courts have been following for a very long time and which was articulated in Nazir Ahmad v. King Emperor, namely:(SCC OnLine PC)

“... where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

There is no valid reason to give up this salutary principle or not to apply it *mutatis mutandis* to bid documents. This principle deserves to be applied in contractual disputes, particularly in commercial contracts or bids leading up to commercial contracts, where there is stiff competition. It must follow from the application of the principle laid down in Nazir Ahmad that if the employer prescribes a particular format of the bank guarantee to be furnished, then a bidder ought to submit the bank guarantee in that particular format only and not in any other format. However, as mentioned above, there is no inflexibility in this regard and an employer could deviate from the terms of the bid document but only within the parameters mentioned above.”

13. For the foregoing reasons, we do not find any merit in this petition, the same is liable to be dismissed and is hereby dismissed.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-