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(Proceedings through video conferencing)
HIGH COURT OF CHHATTISGARH, BILASPUR
WPC No. 2206 of 2021

- M/s Jai Ambey Emergency Services (I) Private Limited Through its Director Mr. Dharmendra Singh, Registered Office At I- 37, Jai Ambey Group Campus, Anupam Nagar, Shankar Nagar, Raipur, Chhattisgarh 492007. Being The Lead Member Of Consortium Of M/s. Jai Ambey Emergency Services (I) Pvt. Ltd. And M/s Pragati Indian Road Lines.

---- **Petitioner**

Versus

1. State of Chhattisgarh Through Secretary, Department of Health & Family Welfare, Govt. of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur (CG) 492015
2. Directorate of Health Services (DHS) Through its Director, Department of Health & Family Welfare, Government of Chhattisgarh, Third Floor, Indravati Bhawan, Nava Raipur, Atal Nagar, Raipur (CG) 492101
3. National Health Mission (NHM), through its Director, Ministry of Health & Family Welfare, Government of India, Nirmal Bhawan, New Delhi 110011.
4. National Health Mission (NHM) through its Mission Director, Department of Health & Family Welfare, Govt. of Chhattisgarh, Housing Board Commercial Complex, 4th Floor, Sector-27, North- East Corner, Atal Nagar (CG) 492015
5. Consortium of M/s R. K. Transport And Constructions Ltd. M/s Pashupatnath Distributors Pvt. Ltd. And M/s Ranjan Engicon Pvt. Ltd. Through Its Lead Partner, M/s R. K. Transport And Constructions Ltd. Registered Office At HIG-07, Behind Madan Complex, Sector 02, Shankar Nagar, Raipur (CG) 492007
6. M/s NTPC Limited Korba Super Thermal Power Station, Vikas Bhawan, Post Office Jamnipali, District Korba (CG) 435450

---- **Respondents**

For Petitioner	:	Mr. Prafulla N Bharat, Advocate
For Respondent No.1, 2, 4	:	Mr. Vikram Sharma,
For Respondent No.5	:	Mr. Vaibhav Shukla, Advocate
For Respondent No.6	:	Mr. B.D. Guru, Advocate

Hon'ble Shri P.S. Koshy &
Hon'ble Shri Parth Prateem Sahu, JJ
Order On Board

Per Parth Prateem Sahu, J

24/05/2021

1. Challenge in this writ petition is to the arbitrary action on the part of respondents No.2 in the proceedings with regard to RFP dated 06.03.2021 bearing Ref. No.05/DHS/102/2021 inviting tenders for selection of 'service provider for Fleet Management of 102 Mahatari Express in the State of Chhattisgarh' whereby respondents No.2 has not decided representation submitted by petitioner on 6.4.2021 stating that the respondent No.5, who had suppressed material fact by making wrong declaration mandatorily required under Column No.7 of Clause 3.5 of the tender document, suffered disqualification.
2. Necessary facts for disposal of this petition are that respondent No.2 had floated RFP dated 06.03.2021 for selection of 'service provider for Fleet Management of 102 Mahatari Express in the State of Chhattisgarh' (for short 'the RFP'). Pursuant to RFP, total five bidders submitted their bids and all of them have been found to be technically qualified. Upon opening of commercial/financial bids on 25.3.2021, respondent No.5 emerged as 'L1' and petitioner as 'L2'. Petitioner received information from reliable sources that the respondent No.6 has banned business dealing with respondent No.5, hence petitioner submitted representation

before the respondent No.2 on 6.4.2021 specifically requesting for disqualifying the respondent No.5 on the ground that the respondent No.6 issued order of banning of business dealings with respondent No.5. Requested to take necessary action as per terms & conditions of tender document; to proceed further and to award the work to the next lowest bidder i.e. L2. However, even after lapse of sufficient time representation submitted by the petitioner has not been decided, which made the petitioner to file this petition with following reliefs:-

“10.1.Issue an appropriate writ of mandamus or any other appropriate writ, order or direction directing the respondent No.2 to disqualify and reject the bid submitted by the respondent No.5 in accordance with sub-clause (5) of Clause 2.18 of the RFP;

10.2.Issue an appropriate writ of mandamus or any other appropriate writ, order or direction directing the respondent no.2 to forfeit the earnest money deposit (EMD) submitted by respondent No.5 in accordance with sub-clause (4) of clause 2.6 of the RFP; and

10.3. Issue an appropriate writ of mandamus or any other appropriate writ, order or direction directing the respondent No.2 to debar /blacklist the respondent No.5 from participating in further tenders of the department of Health and Family Welfare, Government of Chhattisgarh for a period of three years in accordance with sub-clause (2) of Clause 2.21 of the RFP having adopted fraudulent practice in order to influence selection process.

10.4. Pass any other order (s) or direction (s) as are deemed fit and proper in the interest of justice.”

3. Mr. Prafulla Bharat, learned counsel for the petitioner submits that under Column No.7 of Clause 3.5-'Qualification Criteria' of the tender document, there is mandatory requirement of submission of self-declaration by a bidder as per Annexure-2 (iv) duly signed by the authorized signatory declaring that bidder has not been blacklisted/debarred by any government department/agency/PSU/Undertaking in India as on the date of bid submission. Declaration is to be made by the sole/lead bidder and consortium members. Respondent No.6 vide order dated 18.2.2021 (Annexure P-6) banned business dealing with respondent No.5 for a period of three years from the date of issuance of the order. The order of banning of business dealing is issued on 18.2.2021, whereas, as per date schedule under the tender document, last date for submission of bid was 22.3.2021, which is much after the passing of order of banning of business dealing against respondent No.5. He submits that petitioner has annexed the document Annexure P-5 i.e. declaration made by respondent No.5 in pursuance of Clause 3.5 of the tender document making a declaration that he has not been blacklisted or declared ineligible, which is contrary to Annexure P-6 dated 18.2.2021. He also points out that declaration Annexure P-5 is made on 17.3.2021, hence, act of respondent No.5 is deliberate in suppressing material fact, which is mandatory in terms of tender document. He submits that petitioner has brought the fact of breach of

essential condition of RFP by respondent No.5 to the notice of respondent No.2 by filing representation within time, but till date the respondent authority concerned has not taken any decision on the same. He submits that act of respondent No.2 shows that respondent No.2 is acting in a very arbitrary manner and contrary to the terms and conditions mentioned in RFP.

4. Mr. Vikram Sharma, learned Deputy Government Advocate for the State submits that instant petition is pre-mature as the representation submitted by petitioner on 6.4.2021 (Annexure P-7) is pending consideration before the Competent Authority. He further submits that looking to the nature of work involved in the subject tender, the proceedings may not be stalled at this stage, representation of petitioner will be decided by the Competent Authority at the earliest.
5. Mr. Vaibhav Shukla, learned counsel representing respondent No.5 submits that banning of business dealing by respondent No.6 is not on account of corrupt or fraudulent practice, hence declaration Annexure P-5 is made.
6. Mr. B.D. Guru, learned counsel appearing on behalf of respondent No.6 submits that respondent No.6 had issued Annexure P-6 banning the business dealings with respondent No.5 for a period of three years from the date of order. He also points out that the order passed by respondent No.6 is put to challenge by respondent No.5 by filing a writ petition,

which is pending consideration.

7. At this stage, on a specific question being put to learned State Counsel, he replied that as representation of petitioner is pending consideration, the work order has not yet been issued.
8. To appreciate the submissions made by learned counsel for respective parties, we have perused the tender document placed on record as Annexure P-2. As per relevant dates mentioned in the tender document, it is clear that RFP was issued on 6.3.2021, last date for submission of bid was 22.3.2021; date of opening of technical bid was 22.3.2021, whereas financial bid was to be opened on 25.3.2021. There is mention under Clause-3.5 "Qualification Criteria" of tender document that a bidder has to make self-declaration, which has been shown to be mandatory. Column No.7 of Clause 3.5 is relevant and the same is extracted herein below for ready reference:-

	Qualification Criteria	Mandatory documentary evidence to be submitted	Applicable to
7.	The Bidder should not have been blacklisted/debarred by any government department/agency/ PSU/Undertaking in India as on the date of bid submission	Self-declaration by the bidder as per annexure 2 (iv), duly signed by the authorized signatory	Sole/Lead Bidder and Consortium Members (if any)

9. Perusal of Column 7 of Clause 3.5 reveals that it is mandatory on the part of a bidder to submit a self-declaration to the effect that bidder has not been blacklisted/debarred by any government department/ agency/PSU/Undertaking in India as on the date of bid submission. There is specific mention in Column No.7 that declaration is to be made as on the date of submission of bid. Perusal of order Annexure P-6, which is not disputed by learned counsel for respondents No.5 & 6, would show that respondent No.6 had taken the decision to ban business dealings with respondent No.5 for a period of three years w.e.f. 18.02.2021. Respondent No.5 has also not disputed the fact that order Annexure P-6 issued by respondent No.6 is put to challenge by filing a writ petition, which is pending consideration. Perusal of self-declaration of respondent No.5 available on record would show that it is dated 17.3.2021, much after the date of Annexure P-5 i.e. 18.2.2021, which reads as under:-

“We further declare that presently our Company R.K. Transport and Construction Limited is not blacklisted and not declared ineligible for reasons other than corrupt and fraudulent practices by any State/Central Government / PSU on the date Bid submission.”

10. It is also brought to the notice of this Court that giving false information, misrepresentation will be a disqualification under Clause 2.19 (vi) of the tender document. Relevant clause is extracted below for ready reference:-

“vi. Information submitted in qualification bid criteria is found to be misrepresented, incorrect or false,

accidentally, unwittingly or otherwise, at any time during the processing of the contract (no matter at what stage) or during the tenure of the contract including the extension period if any.

11. During the course of arguments, learned State Counsel admitted the fact that representation dated 6.4.2021 submitted by the petitioner is pending consideration before respondent No.2. However, on instructions, he submits that representation of petitioner will be decided at the earliest.
12. Taking into consideration overall facts and circumstances of case, particularly the fact that representation submitted by petitioner on 6.4.2021 is still pending before respondent No.2, we are of view that the ends of justice will be served if respondent No.2 is directed to consider and decide the representation of petitioner within stipulated period. Consequently, looking to the period of pendency of representation, respondent No.2 is directed to decide representation dated 6.4.2021 (Annexure P-7) within a period of two weeks from today. Till then *Status Quo*, as it exists today, with respect to RFP shall be maintained.
13. Respondent No.2 shall intimate the order passed on representation to the petitioner immediately thereafter without any delay.
14. With the above direction, writ petition stands disposed of.

Sd/-
(P.S. Koshy)
Vacation Judge

Sd/-
(Parth Prateem Sahu)
Vacation Judge