

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 4801 of 2021**

M/s. T.B.S. Banchhor, Having Office At 29, Kadambari Nagar, Durg (Cg)
Through Its Partner Shri. Nivedit Banchhor S/o. Shri T.B.S. Banchhor, Aged
About 43 Years, R/o. 29, Kadambari Nagar, Durg Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Water Resource Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur Chhattisgarh
2. Engineer - In - Chief, Mahanadi Godavari Basin, Water Resource Department, Shivnath Bhawan, Atal Nagar, Raipur Chhattisgarh
3. Chief Engineer, Water Resource Department, Shivnath Bhawan, Atal Nagar, Raipur Chhattisgarh
4. Chief Engineer (Tender Cell) O/o. The Engineer-In- Chief, Water Resource Department, Shivnath Bhawan, Atal Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Shishir Dixit, Advocate
For Respondent	:	Mr. Gagan Tiwari, GA

Hon'ble Mr. Justice P. Sam Koshy**Hon'ble Mr. Justice Arvind Singh Chandel****Judgment on Board by Hon'ble Mr. P. Sam Koshy****26/11/2021**

1. Aggrieved by the Annexure P-5 dated 02.11.2021 disqualifying the petitioner from participating in the general proceedings vide Tender no. 81826/NIT No.12/SAC/2021-22, the present writ petition has been filed.
2. The tender was invited for the "Akoli Tank", the scope of said work was of Renovation of Akoli Tank and Remodeling and lining of the Main

Canal and 02 Nos. Minor with Construction of 09 Nos V.R.B. 1 Nos Aquaduct, 01 Nos. D.C., 06 Nos. Fall and 30 Nos. Colaba fixing in Block Dhamdha and District Durg”. The probable amount of contract was of Rs. 650.05 Lakhs. The documents were to be submitted by the 24.09.2021.

3. During the scrutiny, the respondents found the petitioner to be disqualified as he did not fulfill the required bid capacity and he was found short of the bid capacity criteria. Accordingly the impugned e-mail Annexure P-5 was issued intimating the petitioner in respect of his disqualification. The letter of disqualification clearly envisaged that in case, if the petitioner has any explanation to the decision arrived at by the respondents, he could make a suitable representation to the Tender Cell within a period of two days. It was further cautioned to the petitioner that in the event, if the petitioner fails to make a representation or to provide for an explanation, the authorities would be at liberty to proceed further with the tender presuming that the petitioner does not have any objection.
4. Today, when the matter is taken up for hearing, learned State counsel intimates the Court that subsequent to the petitioner being declared disqualified and further that for the reason that there was no representation or an explanation provided by the petitioner within the stipulated period, the authorities have further proceeded with the tender and bid have already been opened and L-1 has also been declared and as such much water has since flown and there is hardly any scope for this Court left with the tender.
5. It is the further objection of the State counsel since the L-one has already been declared, a right has been accrued in favour of the L-1, in

case, the writ petition at this juncture is entertained or interfered, the right of the said L-1 would adversely get affected and the said L-1 has not been made a party in the present writ petition. Therefore, also the writ petition would not be sustainable.

6. Though, learned counsel for the petitioner tried to give an explanation that immediately after receiving the e-mail on 02.11.2021 i.e. the impugned order Annexure P-5, the petitioner had personally approached the Chief Engineer of the Tender Cell on the very next day and had given their explanation orally which was rejected by the Chief Engineer and it is only thereafter that the petitioner has made a fresh representation vide Annexure P-6 dated 17.11.2021. However, perusal of the record would show that there is no evidence of the fact that petitioner did meet the Chief Engineer, Tender Cell immediately after the impugned e-mail dated 02.11.2021 was received by him.
7. To further add to it, if we look at Annexure P-6, the first representation which the petitioner has made again is after a period of well over 15 days from the date the impugned e-mail was served upon to the petitioner. It is not the case of the petitioner that they have not been served with the impugned e-mail dated 02.11.2021 on the same day itself, the petitioner accepts the fact that it has been duly received by them on 02.11.2021 itself. If that be so, the contents of that e-mail becomes more relevant at this juncture. For ready reference, contents of the e-mail dated 02.11.2021 is reproduced hereinunder :-

“ During the scrutiny of your documents downloaded for tender numbers shown in the subject above, You are found disqualified due to not fulfilling Bid Capacity Criteria.

Any explanation in this regard may please be presented to the Tender Cell within 2(Two) days. Failing which the process

shall be carried forward presuming that you have nothing to say.”

8. Plain perusal of the aforesaid content of the e-mail dated 02.11.2021 would clearly reflect that the Authorities holding the petitioner disqualified on the specific ground of not fulfilling the Bid Capacity Criteria had given the opportunity for the petitioner to represent before the Tender Cell within a period of two days giving their explanation in respect of the decision taken by the respondents.
9. Apparently, the petitioner has not availed the said opportunity of submitting an explanation within two days. In a tender proceeding, it is the time which is the essence of the contract and therefore the tender proceedings have to be initiated and concluded as per schedule and that is the reason why while declaring the petitioner disqualified, he was permitted to make a representation within two days. The petitioner having not done so and thereafter making a representation after a period of well over two weeks' time, the same cannot be accepted to be a genuine grievance raised by the petitioner at a belated stage. He cannot be permitted to cry foul after having failed to avail the opportunity at the given time and there being no cogent reason for not approaching the authorities within the prescribed period.
10. Moreover, during the intervening period as per the contents of the e-mail dated 02.11.2021 the respondents have in fact proceeded with the tender, bids were opened and the L-1 have also been declared.
11. Further taking note of the objection raised by the State counsel, the L-1 has also not been made a party to the present petition in spite of the petition being filed after L-1 was declared. For all the aforesaid reasons, we are not inclined to entertain the writ petition as no sufficient cause

has been shown by the petitioner for not having approached the authorities concerned as per the requirement of impugned e-mail itself.

12. The writ petition therefore deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

Rohit