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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 5020 of 2021**

M/s N.C. Nahar A Partnership Having Its Head Office At J.K. Villa, Malviya Nagar, Durg (C.G.) Through- Its Authorized Representative Saket Jain, S/o Ashok Kumar Chajed, Aged About 32 Years And Residing At A-302, Metro Heights Near Airtel Office, Ring Road No. 1 Telibandha, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh Through- Its Secretary, Panchayat And Rural Development Department, Raipur (C.G.)
2. Chief Engineer Tender Cell, Pradhan Mantri Gram Sadak Yojna, Chhattisgarh Rural Road Development Agency, Civil Lines, Raipur-492001

---- Respondents

(Cause-title taken from Case Information System)

For Petitioner	:	Mr. Abhinav Kardekar, Advocate
For Respondents	:	Mr. Sudeep Agrawal, Deputy Advocate General

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri N. K. Chandravanshi, Judge****Order on Board****Per Arup Kumar Goswami, Chief Justice****08.12.2021**

Heard Mr. Abhinav Kardekar, learned counsel for the petitioner. Also heard Mr. Sudeep Agrawal, learned Deputy Advocate General appearing for the respondents.

2. Pursuant to a Notice Inviting Tender (NIT) dated 26.07.2021 issued by the respondent No.2 for renewal and maintenance of rural road under the *Pradhan Mantri Gram Sadak Yojna* (PMJSY), the petitioner had participated in the said tender.

3. The undisputed facts are that on 16.08.2021, technical bid was opened and the petitioner had qualified in the technical bid. The financial bid was opened on 05.09.2021 and the petitioner emerged as the lowest tenderer. On 19.08.2021, the respondent No.2 had passed an order debarring the petitioner from participating in any tender for the next six months.

4. Mr. Kardekar submits that the order dated 19.08.2021 is not under challenge.

5. While the petitioner was expecting award of contract, being the lowest tenderer, subsequently a new NIT dated 08.11.2021 was issued for the same work for which the petitioner had emerged as the lowest tenderer. It is in the backdrop of the aforesaid facts, the petitioner approached this Court challenging the said NIT dated 08.11.2021.

6. Mr. Kardekar submits that when the order dated 19.08.2021 specifically says that the petitioner has been debarred from participating in all tender process for the ensuing six months with effect from 19.08.2021 and when the petitioner had participated in the NIT issued on 26.07.2021, issuance of NIT dated 08.11.2021 is, *ex facie*, arbitrary and illegal. It is submitted that such a course adopted amounts to giving retrospective effect to the order dated 19.08.2021. It is submitted that, that apart, no order of cancellation has been brought to the notice of the petitioner and while the aforesaid NIT dated 26.07.2021 is still subsisting, NIT dated 08.11.2021 cannot be sustained in law.

7. Mr. Sudeep Agrawal, learned Deputy Advocate General, on the other hand, submits that before the financial bid was opened, the debarment order dated 19.08.2021 had already been issued and therefore, even though the petitioner had emerged as the lowest tenderer pursuant to the earlier NIT dated

26.07.2021, a decision was taken by the respondent authorities to issue fresh tender notice. He has referred to a decision of the Hon'ble Supreme Court in the case of *Maa Binda Express Carrier and Another vs. North-East Frontier Railway and Others*, reported in *(2014) 3 SCC 760*, to submit that there is no inherent right for a tenderer to contend that because his tender is the highest or lowest, the tender has to be accepted. On the aforesaid premise, he submits that no interference is called for with regard to the NIT dated 08.11.2021.

8. We have considered the submissions of learned counsel for the parties and have perused the materials on record.

9. In *Maa Binda Express Carrier* (supra), it is laid down that the participating bidders are entitled to a fair, equal and non-discriminatory treatment in the matter of evaluation of the tenders. In the matter of award of contracts, the Government and its agencies have to act reasonably and fairly at all points of time and to that extent, the tenderer has an enforceable right in the court for the purpose of examination as to whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest.

10. No doubt, the order dated 19.08.2021 debars the petitioner from participating in any tender prospectively. We are unable to accept the argument of the learned counsel for the petitioner that by issuing NIT dated 08.11.2021, the respondents had given retrospective effect to the order dated 19.08.2021. The fact of the matter is that financial bid was opened on 05.09.2021, by which time the order dated 19.08.2021 had come into effect. Any work order issued in favour of the petitioner after 19.08.2021 would amount to permitting the petitioner to participate in an NIT. It would be incongruous to permit the petitioner to continue to participate in the tender process while the order dated 19.08.2021 is in force. Debarring from

participation in a tender process does not mean that a prospective tenderer is debarred from submission of the tender alone. It will include all other stages subsequent to the submission of tender culminating in award of the contract.

11. In the context of the NIT in question, work order is to be awarded to the lowest tenderer. When the lowest tenderer, *i.e.*, the petitioner stood disqualified, it may not be very material whether any cancellation order of the NIT was passed.

12. When the order dated 19.08.2021 is admittedly not under challenge and when the financial bid had been opened subsequent to order dated 19.08.2021, we are of the considered opinion that there is no infirmity in the decision making process, resulting in issuance of the NIT dated 08.11.2021.

13. Taking that view, we find no merit in this application and accordingly, the writ petition is dismissed in *limine*.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(N.K. Chandravanshi)
Judge