

(2012) 05 CHH CK 0010
In the Chhattisgarh High Court
Case No : Writ Petition C. No. 884 of 2012

Sandeep Rai and Another

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 4 CGLJ 175

Hon'ble Judges : Manindra Mohan Shrivastava, J; Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : Alok Bakshi, for the Appellant; A.S. Kachhwaha Dy Advocate General for the State, for the Respondent

Final Decision : Dismissed

Judgement

Abhay Manohar Sapre, J.—Heard. By filing this writ petition under article 226/227 of the Constitution of India, the writ petitioners seek quashing of NIT (Notice Inviting Tender) dated 20.4.2012 (Annexure - P/1) issued by respondent NO. 2(Municipal Corporation, Bilaspur).

2. The notice inviting tender is for the "work of cleaning various wards of Bilaspur town". According to the writ petitioners, since the notice inviting tender does not prescribe any experience clause in the field for which the tenders are invited and hence the NIT without providing such clause is bad in law. In other words, the contention is that it is necessary in every tender including the tender of the nature in question to provide "experience clause" to judge the capacity of the tenderer in the work for which the tenders are invited and since in this case, the NIT does not provide for such clause and hence, it is bad in law and can not be given effect to. It is therefore, prayed that such NIT be therefore, either quashed by issuance of writ of certiorari or respondent No. 2 be directed by issuance of mandamus to insert the clause relating to experience of the tenderer in the work in question for which the tenders are invited so that the writ petitioners who claim to be eligible would be able to submit their tender.

3. Having heard learned counsel for the writ petitioners at length and on perusal of the record of the case, we are not impressed by the contentions urged by learned counsel for the writ petitioners as taken note of supra.

4. In our opinion, the grievance raised by the writ petitioners insisting for insertion of clause relating to "experience of tenderer in the field" as being mandatory in every NIT is not acceptable to us. In our opinion, it is the sole prerogative of the issuing authority as in this case respondent No. 2 - Bilaspur Municipal Corporation to decide as to whether they consider it necessary to provide for insertion of such condition or not? It depends upon several factors - such as nature of work, its length, time, manner of execution, previous experience, amount, etc. Indeed, it is essentially a commercial matter to be dealt with by the experts running the institution, which is based on several commercial factors as specified above and being totally at their commercial wisdom, the Courts does not come into picture to deal with such matters on judicial side and nor can they be a guide by directing the issuing authorities to execute their works contract in a particular manner and that too at the instance of one of the interested parties in such work. In other words, whether to insert any clause in particular tender or contract or delete is beyond the judicial scrutiny of the Courts. It falls exclusively within the domain of the experts of the Institution to decide. It is only when such clause, if inserted is found to be against any public policy or offending any provision of law or totally absurd having no nexus with the work for which tenders are invited, the Court may consider proper to examine its legality and reasonableness within their limited well settled judicial parameters else not.

5. Since in this case, respondent No. 2 did not consider it necessary in its commercial wisdom to provide the "experience clause" as one of the essential condition of the eligibility of the tenderer for submission of the tender then it would not be for the Court to direct such insertion. It would then necessary to follow that any person regardless of experience in the field can apply subject to his ensuring compliance of other terms of tender and participate in the tender process which will include the writ petitioners who claim to have experience in the field in question and others who do not have experience in the field.

6. Before parting with the case, we consider it proper to observe that it must always be the sole objective of respondent No. 2 to ensure maintenance of total transparency while dealing with any tender process and awarding the contract work. Every endeavour must be made to see that work is awarded to the most competent and suitable persons amongst the entire lot, who participated in the tender process keeping in view the interest of the Institution at the upper most and the public good for which the institution is meant to serve. It must always be kept in the mind by the authorities dealing with awarding contract work for and on behalf of the State and their Institutions that the element of any extraneous consideration, inclination to favour some one, or to have any kind of bias to exclude some one for any irrational reasons does not influence their decision

making. If such things come in their mind, it pollutes their decision and in turn adversely affect the Institution and the public at large suffer. In fact, it does not serve good to any one. The more is a transparency and fairness in awarding contract; the better is for the Institution and in turn for public at large, which generates confidence amongst citizen in the functioning of the Institution.

7. Needless to say, respondent No. 2 would keep these considerations in mind while dealing with all tenders, including the tender in question.

8. It is with these observations, the writ petition fails and is dismissed in limine. No cost.