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**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (C) No. 1968 of 2016**

Judgment Reserved on: 24.08.2016

Judgment delivered on: 31.08.2016

Bharat Printing Press, Through its Proprietor Pankaj Bhargava S/o  
Late Shri H.S.Bhargava, Aged about 54 years, R/o Bharat Printing  
Press, Ram Mandir Road, Tilak Nagar, Bilaspur , Chhattisgarh

**---- Petitioner****Versus**

1. Collector cum Registrar, National Population Register (NPR)  
Bilaspur, District Bilaspur, Chhattisgarh.
2. M/s. Goin Brothers, Tehsil Unchhera, District Satna, Madhya  
Pradesh

**---- Respondents**


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For Petitioner	: Shri Anoop Majumdar, Advocate.
For Respondent/State	: Shri Y.S.Thakur, Deputy Advocate General.
For Respondent No. 2	: Shri Mateen Siddique, Advocate.

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**Hon'ble Shri Deepak Gupta, Chief Justice****Hon'ble Shri P. Sam Koshy, J****C A V Order****Per Deepak Gupta, Chief Justice**

1. By means of this writ petition, the Petitioner has prayed that the Respondent No. 1 be directed to award the contract in its favour for updation of data-base of National Population Register in the District of Bilaspur.

2. Briefly stated, the facts of the case are that Respondent No. 1, who is the Collector-cum-Registrar, National Population Register, floated a Notice Inviting Tender (for short 'the NIT') on 05.07.2016 inviting tenders for data entry in database of the National Population Register. We are concerned with the following conditions of the NIT:

"3. A person interested in award of tender should not have been declared disqualified by any Government or by any Court.

4. It is the mandatory requirement that the Company/Firm submitting the tender should have a live registration with the Commercial Tax Department and it also must submit its income tax return for the year 2015-2016."

3. The tenders were to be submitted in two parts i.e. part A and part B. Part A was technical bid and part B was financial bid. Condition No. 22 of the NIT clearly provides that if the information in part A of the bid is incomplete, then part B of the bid shall not be opened. The last date for sale of tender form was 15.07.2016. The tenders were to be submitted latest by 03:00 pm on 20.07.2016 and the tenders were to be opened on the same day at 03:30 pm in presence of the parties. It is not disputed that the Petitioner alongwith five others including Respondent No. 2-M/s. Goin Brothers submitted the tenders. When part A of the tender was opened on 20.07.2016, the tender of Respondent No. 2-M/s. Goin Brothers was held to be informal and not meeting the requirements of the NIT on two counts. Firstly, the Respondent No. 2 had not furnished any declaration that it had not been disqualified by any Government or Court and secondly, the Respondent No. 2 had not furnished a certificate from the Chhattisgarh Commercial Tax Department that it was registered with it as a dealer in the State of Chhattisgarh. Respondent No. 2, however, produced registration from the State of Madhya Pradesh. The Tender Committee felt that the registration should be of Chhattisgarh and accordingly, part A i.e. technical bid of Respondent No. 2 was rejected. Thereafter, part B i.e. financial bid of the tenderers were opened and it was found that the Petitioner is the lowest tenderer, however, the work was not awarded to the Petitioner.

4. The stand of the Respondent No. 1 is that after the bids were opened, Respondent No. 2-M/s. Goin Brothers made an oral representation that since no sale or purchase was to take place and only services were to be provided, requirement of having registration with the Government of Chhattisgarh should be waived. It was also urged that Condition No. 3 did not envisage furnishing of any declaration form that the person should not have been declared disqualified/blacklisted by any Government or by any Court.

5. It appears that the Tender Committee decided to open the financial bid of Respondent No. 2-M/s. Goin Brothers also and this decision was taken on 27.07.2016. On opening of the financial bid of Respondent No. 2, it was found to be the lowest and the Tender Committee reconsidered the entire issue and held that it had wrongly rejected the tender of Respondent No. 2. This action of Respondent No. 1 is under challenge before this Court.

6. Shri Anoop Majumdar, learned Counsel for the Petitioner urges that Condition No. 3 of the NIT clearly stipulates that the tenderer should not have been declared disqualified/blacklisted. His submission is that this itself postulates that some declaration or statement must be made by the tenderer that he has not been disqualified/blacklisted. He also submits that the purpose of Condition No. 4 of the NIT is to ensure that the Company/Firm is a registered dealer within the State of Chhattisgarh. Whether it be payment of service tax or sales tax, the Company/Firm must be registered in the State of Chhattisgarh for doing the work. He further submits that no notice was given to the Petitioner or other tenderers before accepting the representation of Respondent No. 2-M/s. Goin Brothers and Respondent No. 1 gravely erred in opening the tender of Respondent No. 2 behind the back of the Petitioner.

7. On the other hand, Shri Y.S.Thakur, learned Deputy Advocate General for the State submits that Condition No. 3 of the NIT only lays down a condition but does not clearly stipulate that some declaration should be made. He also submits that on a representation being made by Respondent No. 2, a clarification was sought from the Tax Authorities who gave the clarification and after considering the clarification, it was felt that the registration in any State would be sufficient. He lastly submits that the tender of Respondent No. 2 is the lowest and the State will save much money and therefore, this Court should not interfere with the tender process.

8. Shri Mateen Siddique, learned counsel for the Respondent No. 2-M/s. Goin Brothers submits that Condition No. 3 has been complied with since the tenderer alongwith its tender has submitted a declaration in which it has stated on oath that whatever has been stated in the tender form is true and correct to its knowledge. Respondent No. 2 has also undertaken to abide by the conditions of the NIT. Though the date of receipt of the representation is 30.07.2016, it has been urged by Shri Mateen Siddique that in fact this representation has been filed on 20.07.2016.

9. We had called for the records of the case and also asked the Collector-cum-Registrar to be present in the Court. At the outset, we may notice a very disturbing factor. The representation of Respondent No. 2-M/s. Goin Brothers, though dated 20.07.2016, has been received in the office of the Collector only on 30.07.2016. We had pointedly asked the Collector, who was present in person, as to how it is mentioned in the notings as well as in the reply filed before the Court that the action was taken on the basis of the representation made by Respondent No. 2 when actually there was no such representation till 30.07.2016. The answer, to

say the least, is shocking. The answer is that M/s. Goin Brothers had made an oral representation and on the basis of the said oral representation, a clarification was sought from the Commercial Tax Department. When the Government and government bodies deal with any person, there can be no concept of oral representation or oral orders. Everything must be in writing and supported by the records. Otherwise, there is always scope for interpolations and manipulations at any stage. In this case, the so-called representation of M/s. Goin Brothers, which has not been filed but is part of the record of the Respondent bears the date 20.07.2016 and is signed by one Shri Ankit but it has not been shown as to how he is the authorised signatory on behalf of the firm. In the said representation, it is also mentioned that if the arguments of M/s. Goin Brothers are not accepted, then the representative is willing to submit an undertaking.

**10.** On going through the representation, we find that no representation whatsoever has been made in writing on 20.07.2016 that there is no requirement of being registered with the Chhattisgarh Commercial Tax Department. This Court fails to understand how the Collector asked for a clarification from the Commercial Tax Department when this has not been raised in the so-called representation dated 20.07.2016.

**11.** In view of the above, we are clearly of the view that somebody was going out of way to help Respondent No. 2-M/s. Goin Brothers. Even if it be believed for the sake of argument that the representation had been filed, there is nothing in the representation in relation to Condition No. 4. There is no answer to our query as to why some clarification was sought from the Commercial Tax Department in this regard except to say that an oral representation was made. Condition No. 3, in our view, clearly envisages that the party submitting a tender will have to make a

statement that it has not been declared disqualified/blacklisted by any Government or Court. It may be true that the manner of making statement has not been clearly defined in the tender conditions, but we have no doubt in our mind that any party submitting a tender was required to inform Respondent No. 1 that it had not been declared disqualified/blacklisted by any Government or Court, which having not been done, the tender of Respondent No. 2 was not in accordance with the NIT.

**12.** With regard to Condition No. 4 of the NIT, we have no doubt in our mind that when the matters of tax are concerned and it is a condition that the person should be registered with the Commercial Tax Department, it obviously means registration with the Commercial Tax Department in the Chhattisgarh. This is to ensure that the party is already registered and there should be no problem while deducting or depositing the tax. It may be true that a party in Madhya Pradesh or in fact in any other part of the country is free to submit a tender in Chhattisgarh also. They can apply for such works, but if they have to work within the State of Chhattisgarh, they must be registered with the Commercial Tax Department of State of Chhattisgarh.

**13.** We are indeed shocked and dismayed by the clandestine manner in which the tender of Respondent No. 2, which had rightly been rejected, was again reconsidered and reopened. As pointed out above, there is nothing on record to show that the representation was actually received in the office on 20.07.2016 because the first diary entry of the Department is 30.07.2016 and the second diary entry is of 06.08.2016. There is no noting with regard to this representation and it is now stated that the oral representation was considered. To a pointed question asked by us as to who made the oral representation, there is no answer. There is also no

answer to our question that to which official the oral representation was made.

**14.** We have to examine the file in these circumstances. Assuming that the tender of Respondent No. 2-M/s. Goin Brothers had been wrongly rejected and the Collector/Tender Committee found that it was necessary to re-consider its earlier decision, it was then necessary to inform the Petitioner and other tenderers in whose presence, the tender of M/s. Goin Brothers had been rejected. The decision which had been taken in their presence, could not have been overturned behind their back. Even more shocking is the fact that the part B of the tender of M/s. Goin Brothers was opened in absence of any of the competitors.

**15.** The purpose of inviting tenders is that the tenderers submit their offers/bids in a sealed cover and they do not know what is the bid of any other person. In this case, the bids of all the tenderers had been opened on 20.07.2016. At that time, a decision was taken that the tender of M/s. Goin Brothers had been rejected. This bid is not a bid submitted on the net and the second envelope containing the financial bid was opened in absence of other competitors. This raises a doubt that may be there has been interpolations in the second envelope. Fairness demanded that if the tender of M/s. Goin Brothers was to be opened, the Petitioner should have been called and in its presence, it should have been clearly brought out that the envelope which has been opened is the same envelope which was received on 20.07.2016. Otherwise, there is always a scope for interpolations.

**16.** Shri Mateen Siddique, learned counsel for Respondent No. 2 has placed reliance on the judgment of the Apex Court in *Tejas Construction & Infrastructure Private Limited. v. Municipal Council, Sendhwa & Another* {(2012) 6 SCC 464} wherein the Apex Court held as follows:

"26. The High Court has rightly observed that the appellant had not disputed the correctness of the turnover certified by the chartered accountant for the year 2010-2011 nor was it disputed that the same satisfied the requirement of the tender notice. In that view, therefore, there was no question of Respondent 2 being ineligible or committing a deliberate default in producing the requisite documents to establish its eligibility to offer a bid. The first limb of the challenge to the finding of the High Court on the above aspect must, therefore, fail and is accordingly rejected. "

We are clearly of the view that this judgment is not at all applicable to the facts of the present case. The requirement of tender in that case was that audited accounts for the last five years had to be submitted. The tenderer had submitted the audited accounts of four years and with regard to fifth year, it had submitted a certificate of the Chartered Accountant. The Municipal Council held that this was a valid tender and opened the same. One of the parties had contested this and the Apex Court held that since nobody had disputed the turnover certified by the Chartered Accountant, there could be no challenge on this issue. It must be remembered that in this case, the certificate was issued by the Chartered Accountant before the last date for submission of tenders and not after the tenders were opened as in the present case.

**17.** As far as the second judgment of the Apex Court in *Siemens Aktiengesellschaft and Siemens Limited v. Delhi Metro Rail Corporation Limited & Others* {(2014) 11 SCC 288} relied upon by Shri Siddique is concerned, it would be pertinent to refer paragraphs 23 and 25 which as reads as under:



"23. There is no gainsaying that in any challenge to the award of contract before the High Court and so also before this Court what is to be examined is the legality and regularity of the process leading to award of contract. What the Court has to constantly keep in mind is that it does not sit in appeal over the soundness of the decision. The Court can only examine whether the decision making process was fair, reasonable and transparent. In cases involving award of contracts, the Court ought to exercise judicial restraint where the decision is bonafide with no perceptible injury to public interest.

25. The contention urged by Mr. Lalit may at best constitute an irregularity in the process of evaluation of the bids. That an irregularity can itself, in certain situations result in invalidating a process, cannot be disputed. The question, however, is whether there was any irregularity in the evaluation of the bids in the present case and if so whether the same was sufficient to invalidate the evaluation process or the ultimate award of the contract. Whether or not there was any irregularity in the process of evaluation of the bids shall in turn have to be examined by a reference to the conditions of the tender notice under which the tenders were invited, received, processed, evaluated and eventually accepted."

**18.** The law is very clear that this Court does not sit in appeal. It only decides whether there has been any irregularity in the process of evaluation. We have not gone into the merits of the bids. But we have no hesitation in holding that the manner in which the tender of Respondent No. 2-M/s. Goin Brothers resurrected after it had been declared to be an invalid tender, shows gross misuse of power by the Collector. It also

shows that something was going on behind the scenes to somehow ensure that Respondent No. 2 is awarded the contract. It may be true that the tender of Respondent No. 2 was the lowest, but if the tender as on the last date of submission of the tenders was an invalid tender, merely because the rate is low, is no ground to award contract to Respondent No. 2. The whole purpose of ensuring transparency in such transaction will be lost in case the parties are allowed to fill up the lacuna in their documents after the last date of submission of tenders. The conditions which the Respondent No. 2 violated are the conditions which go to the root of the matter and they cannot be waived. Furthermore, once the Tender Committee had rejected the tender, we fail to understand how it could have again been held that the tender was valid, that too without any written representation.

**19.** In this view of the matter, we allow the writ petition and direct that the tender of Respondent No. 2-M/s. Goin Brothers shall be treated to be an invalid tender and now the Respondent No. 1-Collector-cum-Registrar shall proceed on the basis of the recommendations of the Tender Committee made on 20.07.2016. We further direct that Respondent No. 1 shall pay a cost of Rs. 10,000/- to the Petitioner. The cost shall be paid within a period of one month from today.

Sd/-

(Deepak Gupta)  
**CHIEF JUSTICE**

Sd/-

(P. Sam Koshy)  
**Judge**