

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 1629 of 2020**

- M/s Sat Kartar Mining & Allied Services Pvt. Ltd., a company duly incorporated under the provisions of the Companies Act 1956, having its office at B-78, Shanti Nagar, Ameri Road, Bilaspur Chhattisgarh, through its Director, Shri Daljeet Singh Kalra, son of Late Shri Kartar Singh Kalra, aged about 53 years, B-78, Shanti nagar, Ameri Road Bilaspur, C.G.

**-----Petitioner****VERSUS**

1. Union of India, through the Secretary, Ministry of Railways, Rail Bhawan, 1, Raisina road, New Delhi.
2. South East Central Railway, through its General Manager, Headquarter, Bilaspur, Chhattisgarh
3. Divisional Railway Manager (DRM), South East Central Railway, Bilaspur, Chhattisgarh
4. Senior Divisional Engineer, South East Central Railway, Bilaspur C.G.
5. Divisional Engineer (Special Work), South East Central Railway, Bilaspur C.G.
6. M/s Rakesh Kumar Jain, RENUKA, 33/17 Ground Floor, in front of Dr. Ghosh, Main Road, Tikra Para, Bilaspur, C.G.

**-----Respondents**


---

For Petitioner	:	Mr. Amrito Das, Advocate.
For Respondent-Railway	:	Mr. Abhishek Sinha, Standing Counsel

---

**Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**  
**Hon'ble Shri Parth Prateem Sahu, Judge**

**Judgment on Board****Per Parth Prateem Sahu, J.****31/07/2020**

1. Oral Information upon enquiry given to the petitioner by the Respondents-Railway with regard to rejection of his bid submitted for Tender No. DRM-ENGG-BSP-T-12-20-21 dated 06-05-2020 is the issue raised in this petition.
2. Facts of the case as projected by the petitioner in this writ petition is that the Railways issued Notice Inviting Tender (NIT) bearing No. DRM-ENGG-BSP-T-12-20-21 dated 06-05-2020, mentioning last date for submission of the Tender document to be 08-06-2020, in which, tender work is shown as "Transportation of P.Way and other materials required for Bilaspur Divison". The bids were required

to be submitted in a "Single Packet System". Petitioner submitted his bid along with requisite documents as per the norms and conditions prescribed in the Tender document. Four tenderers participated in the subject Tender proceedings, their bids were opened and Respondent-Railways prepared comparative Techno Commercial Tabulation chart, in which, the petitioner has been found to be qualified, thereafter, Financial Bids were opened and in the chart prepared by the Respondents authorities, rate quoted by the petitioner was found to be lowest as his bid was only 3.85% above the value advertised and the petitioner was ranked as L-1. Respondent 6 has been shown to be L-2 with rate quoted 12.40% above. The petitioner under the expectation that the work would be allotted to him was waiting for the information/intimation in this regard but when even after lapses of long time, petitioner did not receive any information/ intimation, he approached the authority enquiring about the outcome of the Tender process. It is only then he was informed that his bid was rejected as the petitioner did not comply to Clause 1.1 of the Tender document contained under the Special Financial Criteria. The information supplied to the petitioner upon enquiring with regard to status of the tender proceedings made the petitioner to approach this Court by filing this Writ Petition with following reliefs:

"10.1 This Hon'ble Court may kindly be pleased to call for the entire records from respondent no. 2 with respect to the impugned tender process for its kind perusal.

10.2 This Hon'ble Court may kindly be pleased to issue an appropriate writ declaring the petitioner qualified/ eligible in the tender process bearing No. DRM-ENGG-BSP-T-12-20-21 dated 06.05.2020 for transportation of P.Way and other materials required for Bilaspur Division.

10.3 This Hon'ble Court may kindly be pleased to issue an appropriate writ directing the respondent authorities to consider the bid submitted by the petitioner and to award the concerned tender work in relation to NIT bearing No. DRM-ENGG-BSP-T-12-20-21 dated 06-05-2020 for transportation of P.Way and other materials required to Bilaspur Division.

10.4 This Hon'ble Court may kindly be pleased to issue an appropriate writ directing the respondents not to award the concerned tender work in relation to

NIT bearing No. DRM-ENGG-BSP-T-12-20-21 dated 06-05-2020 for transportation of P.Way and other materials required for Bilaspur Division to respondent No. 6 (L-2).

10.5 And pass such other order/ orders as the Hon'ble Court may deem fit and proper and for this act of kindness, the petitioner as in duty bound shall every pray."

3. Mr. Amrito Das, learned counsel appearing for the petitioner submits that the petitioner submitted his bid along with all requisite documents complying with all the requirements and satisfying the conditions as enumerated in the tender document for becoming eligible of considering his Bid. He submits that in the subject tender proceedings as the tabulation chart prepared by the Respondent Railways authority i.e. Techno Commercial Tabulation, four tenderers participated in the Tender proceedings. Upon opening the envelopes submitted by the respective tenderers, Respondent-Railway authorities prepared the Techno Commercial Tabulation chart in which it is mentioned that the petitioner has fulfilled all the requirements and for this submission, he referred the documents annexed with the writ petition from page No. 95 to 98. He submits that under the columns mentioned in the said pages it shows that the petitioner has been awarded 100 number for commercial compliance under the head of Bidder Remarks and for custom compliance under the head of Complied, it has been shown as YES in front of the name of the petitioner. He submits that, from the entires made in the Techno Commercial Tabulation, it appears that the Respondent-Railways authorities have initially found the petitioner eligible and qualified under the techno commercial valuation and thereafter upon opening of financial bid of the petitioner, he has been declared as L-1 which is apparent from Annexure P-4, but in an arbitrary manner, instead of awarding the contract under the subject tender, authorities awarded the contract to Respondent 6. Learned counsel submits that the reason, as assigned by the Respondent-Railways authorities orally for rejecting the bid of the petitioner, is non-compliance of Clause 1.1 of the tender document contained under the subject Financial Criteria,

is not at all available with them as the petitioner has fulfilled all the terms and conditions. It is submitted that as per Clause 1.1, there was requirement to make endorsement on top of each of the certificates enclosed along with the tender documents mentioned in Clause 1.1 as “document supporting the claim of qualifying laid down eligibility criteria”. He also contended that the Techno Commercial Tabulation prepared by the office of Respondent-Railways authorities itself shows that the petitioner has complied with the said requirement otherwise Respondent-Railways authorities could have shown the bid of the petitioner to be non-responsive or rejected in the prepared tabulation itself, but the documents of the Respondents authorities itself show that the petitioner after qualifying on the techno commercial valuation was shown to be L-1 upon opening the Financial bid. Learned counsel also referred to page 61 of the writ petition which is a Format for Self Attestation under Annexure-F and submitted that “Document Supporting the claim of qualifying laid down eligibility criteria” is already mentioned on that page which is part of document. He submits that the difference on the bid value submitted by the petitioner as well as Respondent 6 is sizable because the bid rate quoted by the petitioner is 3.85% above whereas the bid rate quoted by Respondent 6 is 12.40% above. In view of the above submission, he submits that the action taken by the Respondent-Railways authorities rejecting the bid of the petitioner will cause loss to the public exchequer. He lastly submits that till date his bid was not rejected by the Respondent-Railways authorities except oral information given to the petitioner upon enquiry. He submits that the ground taken for rejection of the bid of the petitioner is not available to them as Clause 1.1 is only a condition of convenience and not a condition of qualification and the condition enumerated under Clause 1.1 cannot be said to be an essential core condition of NIT.

4. Mr. Abhishek Sinha, learned standing counsel appearing for Respondent-Railways submits that the terms and conditions as mentioned in the tender document is very clear and unambiguous as to the manner in which the tenderers

are required to submit their bid as also the submission of the required documents under the formate Annexure-F. Pointing out Clause 4 under the head “Eligibility Conditions” in which the special technical criteria has been prescribed, submits that under sub-clause 1.2 of Clause 4, there is requirement of submission of experience certificate as per the format prescribed in Annexure-W, duly self attested/ digitally signed on each page but the petitioner has not complied with the said requirement. He points out that the petitioner has not given any details of work. He also points out that the petitioner has further not complied with Clause 1.3 and also Clause 1.4, there is no endorsement on each of the certificate submitted by the petitioner, highlighting on the top as “document supporting the claim of qualifying laid down eligibility criteria”, as per the requirement of Clause 1.4. He further referred Clause 1.1 of the Special Financial Criteria of consideration of documents only when there was endorsement on the top of each document as “Document Supporting the claim of qualifying laid down eligibility criteria”. He submits that what are the requirements and how the tenderers are required to submit the documents in support of their eligibility conditions are very clear and specifically mentioned, there is no ambiguity in the words and terminology used in the tender document. If the petitioner has not fulfilled the requirement as prescribed under the tender document then he himself is to be blamed for no-compliance of the requirement as mentioned in the tender document. Mr. Sinha, referring to page 76 of the writ petition further argued that it is a certificate issued by the Chartered Accountant but this document does not bear the endorsement as per the requirement nor there is any attestation and signature of the petitioner. He submits that submission made by the learned counsel for the petitioner that the authorities have prepared the tabulation chart and found that the petitioner has complied with the requirement of the tender document and only thereafter the price bid was opened showing the petitioner to be L-1 is not correct. He submits that the submission of the tender documents is under Single Envelop system and after opening envelop, the chart is prepared by the office assistant of the office of

authorities in which it is only shown that what are the documents which have been submitted by the tenderers along with the tender document, as it is a single envelop bid, the price bid enclosed along with the documents is also available with the office assistance and on that basis the chart had been prepared. It is only when the authorities have evaluated the documents submitted along with tender in the light of terms and conditions of the tender document, the bid of the petitioner has been found to be non-responsive and it was rejected. He submits that there is no arbitrariness in the decision making process of the Respondent-Railways authorities but the bid of the petitioner was rejected because of non-compliance of the terms and conditions of the tender document as mentioned above. Learned counsel further argued that these conditions of making an endorsement on top of each document submitted by the tenderers in support of their eligibility condition by mentioning "document supporting the claim of qualifying laid down eligibility criteria" is not for the first time introduced in the tender proceedings by the respondents, but this requirement is made a condition since past many years. He submits that the issue of requirement of making endorsement to be essential/ mandatory or not has been dealt with by this Court in WPC 2482/2018 filed by Respondent 6 here and this Court has held that the eligibility conditions prescribed in the tender document are mandatory and dismissed the writ petition. He submits that the writ petition filed by the petitioner is without any substance which is liable to be dismissed at the threshold. Learned counsel lastly submitted that the writ petition has been filed belatedly and the successful tenderer Respondent 6 has already been awarded the tender work and he has commenced the work on 26-06-2020.

5. We have heard learned counsel for the respective parties and also perused the documents enclosed along with the writ petition.
6. Perusal of Annexure P-1, the first page of the tender document under Clause 4 mentions about the 'Eligibility Condition'. It is further bifurcated under different heads i.e. the special technical criteria, special financial criteria and submission of

the document verification certificate. Further Clause 7 mentions about the submission of the documents in support of the eligibility. Under Clause 4 'Eligibility Conditions' under requirement of compliance with regard to special technical criteria, there is requirement of giving details of the work experience as mentioned therein, Clause 1.2 of the special technical criteria prescribed for the experience certificate to be submitted under the format Annexure-W. Under Clause 1.4, it is clearly mentioned that only those documents which are declared explicitly by the tenderers as “document supporting the claim of qualifying laid down eligibility criteria” will be considered for evaluating his or their tender. Under Clause 1.3, it is mentioned that the documents should be duly self attested/ digitally signed on each page, further under special financial criteria of Clause 14 with regard to certificate issued by the Chartered Accountant under Clause 1.1, there is also requirement of similar nature of endorsement on top of the document as mentioned above, Clause 7 prescribes about the submission of the document in support of the eligibility criteria and the requirement under Clause 7.1 and 7.2 are the same as mentioned above. Clause 7.1, 7.2 and 7.3 are reproduced herein below for ready reference.

7	SUBMISSION OF DOCUMENTS IN SUPPORT OF ELIGIBILITY CRITERIA	No	No	Not Allowed
7.1	All documents in support of fulfillment of the eligibility criteria with respect to completion of Similar nature of work for Technical Eligibility Criteria and Total gross contractual receipt value for Financial Eligibility Criteria must be uploaded over the website <a href="http://www.ireps.gov.in">www.ireps.gov.in</a> with scanned copy in .Pdf format at the time of tender bidding with details in specified format (Annexure W, X and Y).	No	No	Not Allowed
7.2	The tenderers shall submit along with the tender document, documents in support of his/ their claim to fulfill the eligibility criteria as mentioned in the tender document. Each page of the copy of documents/ certificates in support of credentials, submitted by the tenderers, shall be self-attested/ digitally signed by the tenderers or authorized representative of the tendering firm. Self attestation shall include signature, stamp and date (on each page). Only those documents which are declared explicitly by the tenderers as “documents supporting the claim of qualifying the laid down eligibility criteria” will be considered for evaluating his/ their tender.	No	No	Not Allowed
7.3	Eligibility document must be super scribed with “Documents supporting the claim of qualifying the laid down eligibility criteria” in line with Para 7.2 above as shown in Annexure-F of attached tender document. In case the aforementioned statement is written by hand, the contractor should write in block letters so that it is easily legible.	No	No	Not Allowed

7. Upon going through the documents submitted by the petitioner in support of the writ petition in Annexure-W i.e. experience certificate, there is no such endorsement on the top of certificate as required and there are no details of the work with regard to the award of work, date of completion etc. as per the requirement of Annexure-W and similarly on every certificate, there was no highlighting/ endorsement was made by the petitioner as "document supporting the claim of qualifying laid down eligibility criteria". During the course of argument when we confronted with the documents to the petitioner, he admits that there is no such endorsement on each of the certificate but he only submitted before this court that his bid was found to be responsive and only thereafter the Respondent-Railways authorities have shown in the techno commercial tabulation chart that the petitioner has complied the requirements and also opened the price bid and ranked bid of the petitioner as L-1.
8. In view of the above admission made by the learned counsel for the petitioner on confronting with the documents enclosed with the writ petition that there is no endorsement on top of the certificate submitted by him towards the Special Technical Criteria and Special Financial Criteria, we do not have any doubt that the petitioner has not complied with the requirement of the terms and conditions mentioned in clause 4 & 7 of the tender document.
9. So far as, the submission made by the learned Counsel for the Petitioner with regard to acceptance of his bid to be responsive upon preparing the techno commercial tabulation chart and identified to be L-1 by the authorities, we do not find force in that submission, in view of the submission made by the learned Counsel for Respondent-Railways that it is the office assistant with the Respondent Authorities who upon opening the bid envelopes received from the tenderers, chart is prepared by office assistance and that chart is not after the evaluation of the bids by the Competent Authority/Committee and therefore the petitioner will not get any benefit on the basis of the chart. Only after preparing the tabulation and chart showing the financial bid of the tenderer, the tender

documents are placed before the competent bid evaluation Authority appears to be the procedure as submitted by the counsel for the respondents, especially when it is a Single Packet System. The tenderers are required to comply with the terms and conditions of the tender document as it is required to be done under the terms and conditions of the tender documents, the tenderers can not have the liberty to interpret any terms and condition of the tender document according to their own wish and choice. The Hon'ble Supreme Court in the case of ***Central Coalfields Limited and another v. SLL-SML (Joint Venture Consortium) and others*** reported in **(2016) 8 SCC 622** has considered the issue with regard to compliance of the terms to be required under the tender document and held thus.

“52. There is a wholesome principle that the courts have been following for a very long time and which was articulated in *Nazir Ahmad v. King Emperor*, AIR 1936 PC 253(2), namely: (SCC OnLine PC)

“... where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

There is no valid reason to give up this salutary principle or not to apply it mutatis to bid documents. This principle deserves to be applied in contractual disputes, particularly in commercial contracts or bids leading up to commercial contracts, where there is stiff competition. It must follow from the application of the principle laid down in *Nazir Ahmad(supra)* that if the employer prescribes a particular format of the bank guarantee to be furnished, then a bidder ought to submit the bank guarantee in that particular format only and not in any other format. However, as mentioned above, there is no inflexibility in this regard and an employer could deviate from the terms of the bid document but only within the parameters mentioned above.

53. *Nazir Ahmad (supra)* has been followed in dozens of decisions rendered by this Court and by other constitutional courts in the country. The Central Vigilance Commission has accepted this principle in a modified form as a guiding principle in its circular dated 31-12-2007 wherein it is mentioned that all organisations ought to evolve a procedure for acceptance of bank guarantees that is compatible with the guidelines of banks and Reserve Bank of India. One such requirement is that the bank guarantee should be in a proper prescribed format and should be verified verbatim on receipt with the original. Adherence to this principle of verbatim

verification would not only avoid undue problems for the employer but would also virtually eliminate subjectivity on the part of the employer.”

10. So far as the learned Counsel for the Petitioner submitted that the requirement under Clause-4 with regard to Special Technical Criteria and Special Financial Criteria of making and endorsement of “document supporting the claim of qualifying laid down eligibility criteria” on top of each of the certificate and to be self attested/signed is not mandatory, is not acceptable in view of the law laid down by the Hon'ble Supreme Court when the authority floating the tender wanted the documents to be filed in a particular format and in particular manner then it is for the tenderers to comply with each and every condition mentioned in the tender document and it is for the authority floating the tender to look into the bids whether the requirement of the terms and conditions of the tender document are fulfilled or not.

11. The Hon'ble Supreme Court in the case of ***Consortium of Titagarh Firema Alder S.P.A.-Titagarh Wagons Ltd. through authorised signatory v. Nagpur Metro Rail Corporation Limited (NMRCL) through its General Manager (Procurement) and another*** reported in **(2017) 7 SCC 486** has held thus.

“30. ... The Court quoted a passage from *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.*, (2016) 16 SCC 818, wherein the principle that interpretation placed to appreciate the tender requirements and to interpret the documents by owner or employer unless mala fide or perverse in understanding or appreciation is reflected, the constitutional Courts should not interfere. It has also been observed in the said case that it is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given. ...”

12. The aforementioned law laid down by the Hon'ble Supreme Court clearly held that the authority floating the tender is the best judge to interpret of its requirement under the terms and conditions of the tender document and further

this Court while considering the similar issue raised in WPC No.2482/2018 between *Rakesh Kumar Jain v. Divisional Railway Manager (Engg.)* and another of putting an endorsement of "document supporting the claim of qualifying laid down eligibility criteria" to be mandatory or directory has held that whatever terms and conditions of eligibility criteria laid down in NIT to be mandatory and after recording that the omission on the part of the Petitioner in not making the endorsement as per the requirement mentioned in the eligibility criteria is of the fault of the Petitioner.

13. In view of the above discussed facts and circumstances of the case where the Petitioner has admittedly not put endorsement on the top of each certificate as required under clause 1.4 under Special Technical Criteria, Clause 1.1 under Special Financial Criteria and further as specifically mentioned in Clause 7 with regard to the submission of the documents in support of the eligibility criteria and considering the law laid down by the Hon'ble Supreme Court with regard to scope of interference in Tender matters, as also that the similar issue was decided by this Court in favour of Respondent-Railways. We do not find any error in decision making process of the Respondent-Railways authorities in rejecting the bid of the Petitioner.

14. The petition being devoid of any substance which is liable to be and is hereby dismissed accordingly.

Sd/-

**(P.R. Ramachandra Menon)**  
Chief Justice

Sd/-

**(Parth Prateem Sahu)**  
Judge