

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 4267 of 2023**

M/s Mahamaya Construction, Partnership Firm Through Its Partner Nilesh Chaturvedi, S/o Shriram Chaturvedi, Aged About 33 Years, R/o B-13, Rawat Residency, M.G. Road, Ambikapur, District Surguja, Chhattisgarh

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

1. State of Chhattisgarh Through Secretary, Water Resources Department, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Chhattisgarh
2. Chief Engineer Hasdeo Ganga Bhasin Water Resource Department, Ambikapur, Chhattisgarh
3. Superintendent Engineer Water Resource Circle, Balrampur, District Balrampur-Ramanujganj, Chhattisgarh
4. Executive Engineer Water Resources Division, Balrampur, District Balrampur-Ramanujganj, Chhattisgarh

**---- Respondents**

(Cause title taken from Case Information System)

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For Petitioner	: Mr. Manoj Paranjpe, Advocate
For State/Respondent	: Mr. Gagan Tiwari, Deputy Govt. Advocate

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**Hon'ble Shri Ramesh Sinha, Chief Justice****Hon'ble Shri N. K. Chandravanshi, Judge****Order on Board****Per Ramesh Sinha, C.J.****29.09.2023**

1. Heard Mr. Manoj Paranjpe, learned counsel for the petitioner and Mr. Gagan Tiwari, learned Deputy Government Advocate, appearing for the respondents / State perused the documents appended with the writ petition.
2. The instant petition has been filed by the petitioner with the following prayers :

*“i. That, this Hon’ble Court may kindly be pleased to issue writ/writs, order/orders, direction/directions and precondition at Sr. No. 8 which has been inserted as **“providing and fixing in position M.S./D.I./C.I. Pipe (Dia 900 mm & above)”** in prequalification document part-I (Envelope – B) (Annexure P/2), Name of project Lawangpani Tank Scheme in the NIT No. 13/SAC/e-procurement/2023-24 dated 05.09.2023 may kindly be struck down and set aside and further respondent authorities may be directed to consider the tender documents/offer of the petitioner without insisting qualification prescribed at Sr. No. 08 of prequalification document (Annexure P/2) which relates to experience of providing **“M.S./D.I./C.I. Pipe (Dia 900 mm & above)”**, in the interest of justice.*

*ii. Any other relief, which this Hon’ble Court deems, fit in the facts and circumstances may also be granted in favour of the petitioner.”*

3. Mr. Manoj Paranjpe, learned counsel for the petitioner submitted that the prequalification with respect to experience for providing of M.S./D.I./C.I. Pipe is illegal, arbitrary and colorable exercise of power of the respondent authorities, the said clause has been inserted with the intention to favor a particular tenderer. He further submitted that in the State of Chhattisgarh there is not a single contractor who is working with the respondent department is having the aforesaid experience of providing of M.S./D.I./C.I. Pipe as the same was never earlier required under any of the old N.I.T.’s. Though it is settled legal position that a judicial review in contractual matter is not permitted unless a case of arbitrariness,

malafie, bias or irrationality is made out, but in the instant case, the clause is apparently arbitrary and has been made part of the tender document in collusion with outside contractors who are willing to participate and gain the benefit of tender just on the basis of the impugned clause. He placed reliance on the judgment passed by the Hon'ble Supreme Court in ***Air India Ltd. v. Cochin International Airport Ltd.***, reported in **(2000) 2 SCC 617**.

4. On the other hand, learned State counsel opposed the aforesaid submissions.
5. The law as has been well settled by the Apex Court regarding the interference of the High Court in exercise of power under Article 226 of the Constitution of India has been recently reiterated in the case of ***Tata Motors Limited v The Brihan Mumbai Electric Supply & Transport Undertaking (Best) and Others*** passed in Civil Appeal No. 3897 of 2023 vide judgment dated 19.05.2023 held as follows :

*“48. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between*

*private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer. (See: **Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489**).*

52. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice,

should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in **Association of Registration Plates v. Union of India and Others**, reported in (2005) 1 SCC 679.

53. The law relating to award of contract by the State and public sector corporations was reviewed in **Air India Ltd. v. Cochin International Airport Ltd.**, reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

54. As observed by this Court in **Jagdish Mandal v. State of Orissa and Others**, reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision

*relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.”*

6. The terms and conditions of the NIT has to be framed according to the needs by the authority concerned and when they have prescribed the manner for which they want the work to be done as they are the best person to make the terms and conditions in the NIT for getting the work done, no interference can be warranted.
7. In view of the same and considering the judgment passed by the Apex Court in **Tata Motors Ltd** (supra), wherein it has been held that a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out, the court ordinarily should not interfere in matters relating to tender or contract, we do not find any good ground for interference in the writ petition.
8. Accordingly, the writ petition deserves to be and is hereby **dismissed**.

**Sd/-**  
**(N.K. Chandravanshi)**  
Judge

**Sd/-**  
**(Ramesh Sinha)**  
Chief Justice