



A F R

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3207 of 2021

Janmitram Kalyan Samiti (A Non-Government Organisation And Society Registered Under The Relevant Provisions Of Societies Registration Act) Ngo Unique Registration Id.-0838 Dated 31.10.2002, Registered Address-Chhote Attarmuda, T. V. Tower Road, Raigarh Acting Through Its President Manish Singh S/o Late Shri S. P. Singh, Aged Around 44 Years R/o M. I. G.-33, Deendayal Puram Raigarh District Raigarh Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Mineral Resources Department, Indravati Bhawan, Block-4, Second Floor, Nawa Raipur Atal Nagar, District Raipur Chhattisgarh
2. District Mineral Foundation Trust (A Government Of Chhattisgarh Undertaking) District Janjgir Champa, Through The District Collector And Secretary, District Janjgir Champa Chhattisgarh
3. Sangam Seva Samiti Janjgir Through Its Secretary/authorized Representative, C/o Panchayat Bhawan, Bhadesar, Janjgir District Janjgir Champa Chhattisgarh

---- **Respondents**

(Cause-title taken from Case Information System)

For Petitioner	:	Mr.Hari Agrawal, Advocate.
For respondent No. 1 and 2/ State	:	Mr. Prafull N Bharat, Advocate General with Mr. Sangharsh Pandey, Government Advocate.
For respondent No. 3	:	Mr. Abhishek Sinha, Senior Advocate assisted by Mr. Somkant Verma, Advocate.



Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Sachin Singh Rajput, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

21/06/2024

1. The petitioner has prayed for the following reliefs:

“10.1 A writ and/or an order in the nature of writ of appropriate nature do issue commanding respondent authorities to submit all the relevant records pertaining to the subject tender process.

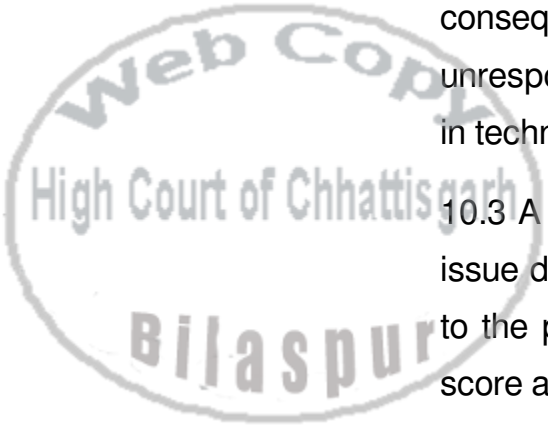
10.2 A writ and/or an order in the nature of appropriate writ do issue, directing the respondent authorities to reject the bid of respondent No. 3 after declaring the respondent No. 3 disqualified/ineligible and be further pleased to quash the consequent work order dated 09.02.2021, being rendered unresponsive because of aforesaid disqualification/ ineligibility in technical evaluation.

10.3 A writ and/or an order in the nature of appropriate writ do issue directing the respondent authorities to award the contract to the petitioner for the fact of being the lowest Bidder in final score after disqualification of the respondent no.3.

10.4 Cost of the proceedings.

10.5 Any other writs and directions that may be deemed fit and just in the facts & circumstances of case.”

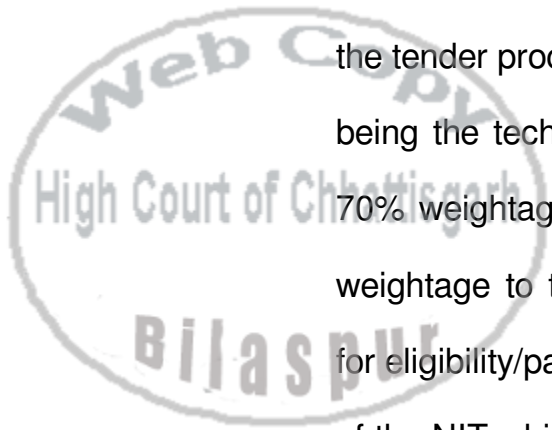
2. The facts, in brief, as projected by the petitioner are that the petitioner is a Non-Government Organization (for short, the NGO) registered under the relevant provisions of Chhattisgarh Societies Registration Act with NGO Unique Registration ID 0838 dated 31.10.2002 and providing services in the State of Chhattisgarh for the past 19 years and present petition is being filed. through its President. The respondent No. 2 is established by the State Government of Chhattisgarh by notification as a trust/non-profit perpetual body in the mining operation affected district of Janjgir- Champa, to work for the interest and benefit of persons and areas affected by mining related operations. It is funded through the contribution from miners and





derive its legal status from section 9B of Mines and Minerals (Development and Regulation) Act, 2015 read with Rule 3 of the Chhattisgarh District Mineral Foundation Trust Rules, 2015 and is fully controlled by the Government of Chhattisgarh and situated in the State of Chhattisgarh, and as such comes within the purview of the definition of 'State' under Article 12 of the Constitution of India, as such fully amenable to the writ jurisdiction of this Hon'ble Court. Vide letter dated 616/DMF/Ji.Pan./2020 dated 11.08.2020, the respondent No.2 has invited bids for preparation of a master plan/vision document for the works relating to identification of mining affected area/persons (direct or indirect), necessary survey, supervision of projects and social audits thereof.

- 3.** A perusal of the tender document would show that the salient features of the tender process is that the bids were to be submitted in two folders, one being the technical proposal and other being the financial proposal, with 70% weightage was to be awarded to the technical evaluation and 30% weightage to the financial evaluation. The essentials requisite/conditions for eligibility/participation in the tender were provided in page 1/condition 1 of the NIT which was sub-divided in five parts/conditions. For the purpose of the instant petition, the petitioner relies upon the part/condition No. 5 mentioned therein, which is with respect of Turnover. The above condition shows that for eligibility/participation, a participant must have received an average of amount of Rs. 10 Lakh Turnover 'from consultancy' in the past three years i.e. 2016-17, 2017-18 & 2018-19 and to substantiate the above, the essential documents which were required to be submitted to substantiate the above was (a) copy of the Average Annual Turn Over issued by a Competent Authority/qualified Chartered Accountant, (b) copy of statement issued by a Competent Authority/Chartered Accountant, showing the total Consultancy Turn Over with regard to past three years.
- 4.** The petitioner-institution has submitted its tender strictly in conformity with





the terms and conditions of the tender along with supporting documents as required, especially the document fulfilling aforesaid Part-5 of the technical qualification. As per the terms and conditions of the NIT, the technical evaluation was further classified into Technical Experience (T-1, maximum 60 marks) and Technical Presentation (T-2, maximum 40 marks) making the total Score (TS) to be 100 and the Total Score (TS) thereof was to be multiplied by 0.70. Similarly, the lowest bidder in the financial bid was to be awarded 100 marks (FS) and said marks would be multiplied by 0.30. Thereafter, the Final Score of the bidder would be calculated to be the sum of above i.e. $[(TS \times 0.70) + (FS \times 0.30)]$. Further, as per the NIT, the scope of marks to be awarded in T-1 i.e. Technical Experience was based objectively on the basis of documents submitted as per the aforesaid Part 1 to 5 and a bare perusal would show that with respect to average income-expenditure, a minimum of 5 marks and a maximum of 15 marks could be awarded as per the criteria mentioned in the Paragraph/clause 7 of the NIT. Furthermore, the scope of marks on T-2 (Technical Presentation) was cognitive/subjective and board parameters and topics/areas for marking were also laid out. After clearance of the qualifying/eligibility criteria, the petitioner was called for the technical presentation, wherein the petitioner appeared before the Tender Evaluation Committee and its representatives put forth the presentation very well before the Tender Evaluation Committee and the members also seemed satisfied.

5. Thereafter, the financial bid was opened, wherein the financial bid of the petitioner was found to be lowest and the petitioner had every hope that it would be declared to be the successful tenderer and the said hope was founded on the belief of possessing requisite technical experience, good technical presentation before the Tender Evaluation Committee coupled with the fact of lowest financial bid. But even after opening of the financial bid for a fairly long time, the final results were neither being communicated in the official website nor any Information in this regard was available in the



office of respondent No. 2 and sometime in the last week of March, 2021, the petitioner came to know that the aforesaid tender has been awarded to the respondent No. 3. Immediately, thereafter petitioner contacted his local counsel to obtain copies of relevant documents but soon thereafter lock-down was imposed in the State looking into the then ongoing second wave of Covid- 19 pandemic and all the administrative offices were closed. However, in the month of June 2021, after easing of restrictions, vide application dated 14.06.2021, the petitioner through his local Advocate, applied for grant of copies of entire records pertaining to the aforesaid tender process. Vide letter 28.06.2021, the petitioner was informed about the preparation of the aforesaid sought documents and in the month of July, 2021, the petitioner has obtained the records pertaining to the aforesaid tender as provided by the respondent No. 2. Upon perusal of the documents as provided, the petitioner came to know that the respondent No. 3 has been declared to be L-1 and the petitioner has scored the position of L-2 and the difference between the total score of respondent No.3 and Petitioner herein is 0.53 marks. Further, vide order dated 09.02.2021, work order has been issued in favour of the respondent No. 3 herein.

6. On going through the documents submitted by the respondent No. 3, the petitioner has come to know that the respondent No. 3 has failed to adhere to the aforesaid condition/Part No. 5 of technical requirements and the respondents authorities have malafidely, illegally, arbitrarily and capriciously declared the respondent No.3 qualified and had awarded the contract.
7. Mr. Hari Agrawal, learned counsel for the petitioner submits that a bare perusal of the documents submitted by respondent No.3 would show that the document which has submitted by the respondent No. 3 to fulfill the aforesaid Part/Condition No. 5 is neither certified by a Chartered



Accountant nor bears the seal and sign of any other authorized authority, as such the essential requirement of Condition No.5 was not fulfilled and respondent No. 2 ought to have declared the respondent No. 3 ineligible and/or disqualified the respondent No. 3 from participating in the tender process, however the respondent authorities continued with the technical presentation and also opened the financial bid of the respondent No. 3 and awarded the tender in its favour. The aforesaid condition is a salutary stipulation, since it is indicative of the commercial standing and reliability of the tendering entity and failure to adhere to the aforesaid term would render the bid non-complaint and therefore beyond the pale of consideration in toto. The respondent No. 3 had failed to comprehensively correspond to the aforesaid essential terms of the tender and therefore its offer contained in the said tender was ineligible for consideration. The respondent authorities have identified the respondent No. 3 as a successful bidder pursuant to a wrong decision making process, ignoring the specific terms in the Tender Notification and while doing so extended undue favour to the respondent No. 3 herein, thereby acted in a arbitrary and discriminatory manner.

- 8.** Mr. Agrawal further submits that the respondent authorities have perpetuated the illegality by not only declaring the respondent No. 3 as qualified/eligible but also awarding maximum 15 marks in the corresponding criteria/documents, and as such an act ex-facie shows that the respondent authorities adopted a pick and choose policy and/or discriminated against the petitioner. Allocation of maximum 15 marks under the Clause/Condition 5 of the Technical evaluation (T-1) was also not correct, as no conclusively turn- over/average income-expenditure) for the past three years can be calculated in the absence of aforesaid certified document. Hence, the respondent No. 3 ought to have got only 45 marks in T-1 and this by itself would have pushed down the respondent No. 3 to a much low in final score and on this ground also, the petitioner would be



entitled to have been awarded the contract and claim other relief as sought in the prayer clause. A bare perusal of the Tabulation Chart T-2 would show that it was signed by as many as five members of Tender Evaluation Committee and consolidated/average marks have been awarded to each of the participants on three different heads. But when the petitioner demanded copy of separate-separate mark/tabulation sheet of each of the aforesaid tender committee members, no such document was provided moreover it was informed to the petitioner that no document is in existence. Upon coming to know about this high-handedness, the petitioner immediately filed a representation before the respondent authorities on 13.07.2021. Further, since the detail scoring by each of the tender evaluation committee was even not conducted and awarding such consolidated marks at the discretion of the authorities as per their whims and fancies, ex-facie shows the respondent authorities have acted in a mala fide and unreasonable manner while awarding unreasonably low marks to the petitioner No.1, without any basis and acted in a manner so as to benefit the respondent No. 3. According to Mr. Agrawal, despite such fatal discrepancy in the eligibility documents and of the fact that the respondent No. 3 was awarded highest marks in the interview and his financial bid of the respondent No. 3 was the highest among the participants being Rs. 1,10,000/-, the reason for allowing the respondent No. 2 to participate in the tender process and consequent award of contract is writ large on the face of record.

9. Mr. Agrawal, relying on paragraphs 74 and 77 of the decision of **Tata Cellular v. Union of India** reported in (1994) 6 SCC 651, submits that the Hon'ble Apex Court has dealt with the power of judicial review to bring its case within the purview of those cases where power of judicial review should be exercised and interference of the Court should be made. He further relies on paragraphs 65 and 66 of the decision rendered in **B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.** reported in (2006) 11



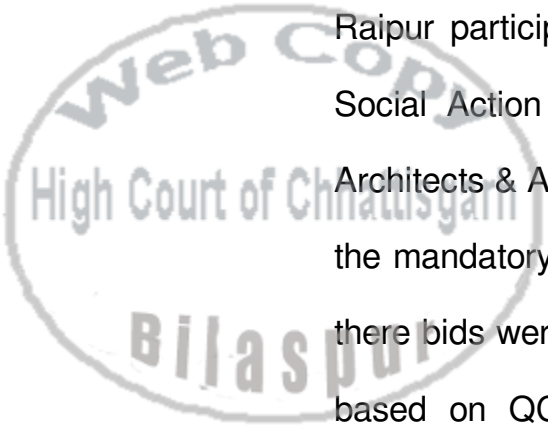
SCC 548, wherein the Hon'ble Supreme Court has summarized the scope of judicial review and the interference of superior courts in awards of contracts particularly in context of adhering to essential conditions and relaxation thereof, and a decision of this Court in the matter of **Ram Gopal Somani vs. Bilaspur City Limited** reported in 2021 SCC Online Chh 906 has followed the judgment of **B.S.N. Joshi** (supra) and held that the respondent authorities have deviated from the notified tender conditions and has further held that the decision making process therein was bad and unsustainable in law.

10. Mr. Agrawal further submits that while laying down qualification criteria certain conditions and/or qualifications are essential in nature and no concession can be given to those conditions or in other words, the qualification criteria should be strictly adhered to and in this case essential qualification criteria of annual Turn Over and Total Turn Over was such a criteria. The action of the respondent authorities and/or their act of omission and commission is contrary to the petitioner's fundamental, constitutional and other statutory rights guaranteed under the Constitution of India.

11. In response to the averments made by the petitioner, Mr. Prafull N Bharat, learned counsel for the respondents No. 1 and 2 submits that the entire petition as framed by the petitioner deserves to be dismissed for the reason that the petitioner, after participation in the tender proceeding and having been aware of the documents submitted by each and every bidders cannot take the somersault and challenge the non-selection of his candidature on the count of selection of respondent No. 3 which was being done as per the wisdom of tender evaluation committee and as per the terms and conditions of the document. The respondent No. 2 through Collector has invited a tender for selection of consultants for preparation of DPR (Detailed Project Report) as well as preparation of written



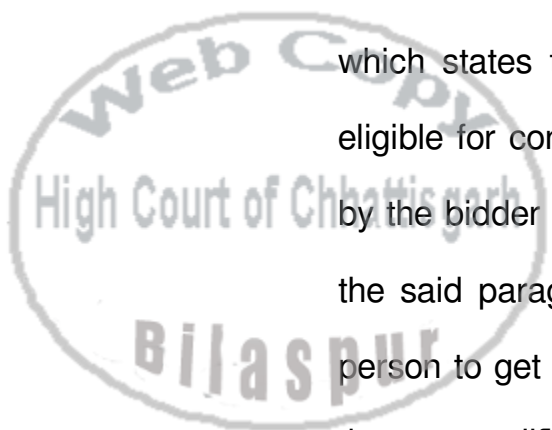
document/master plan for various development work which is to be funded by District Mineral Fund Trust, for the District-Janjgir Champa for upcoming five years. It is worthy to state that present was the second call of the tender, as the first call which was issued on 18.02.2020, was cancelled due to Covid restrictions. The tender was invited through advertisement in the newspaper which was published on 11.08.2020 and the time stipulated for the submission of bid was 15.09.2020. Total eight firms/bidders namely, 1. Janmitram Kalyan Samiti Raigarh (petitioner herein), 2. Sec Tech Bilaspur, 3. Sangam Seva Samiti Janjgir Champa (respondent No. 3), 4. Social Action for Rural Development Raipur, 5. Yuva Jagriti Munch Raipur, 6. Swaniti Initiative Sarvapriya Vihar New Delhi, 7. Vastu Angle Architects & Associates Raipur and 8. Design Matrix Raipur participated in the above tender, out of which two firms namely Social Action for Rural Development, Raipur as well as Vastu Angle Architects & Associates Raipur were held to be disqualified for not fulfilling the mandatory requirement as per condition No. 1 of the NIT. Therefore, there bids were not considered for the further selection. The above NIT is based on QCBS (Quality Cost Based System), means thereby, the successful bidder will be selected on the basis of the highest marks obtained as per the different bench marks prescribed in the tender. Since, the tender was QCBS based, therefore, irrespective of the price difference between the selected bidder as well as the left out bidders, the selection was to be made on the basis of quality, mechanism and not on the basis of price. The purpose of putting this embargo on this tender is because there may be a chances that any new person can, for the purpose of availing the opportunity, quote lower price which may in the future result to non-completion of work due to inexperience of the selected bidder which could lead to further litigation. Therefore, to get rid of all these kind of situations, the quality cost based system bid was called for wherein the first priority was on the quality of the work which the bidders has executed in the past





years irrespective of their prices.

- 12.** Mr. Bharat further submits that the NIT was further sub-categorized into different qualification criteria ranging from Condition No. 1 to 5 in which Condition No. 1 relates to the incorporation of the bidders which stipulates about legal entity of the firm, or registered with partnership or individual or with Company's Act or not. In similar manner, Condition No. 5 mandates that the person has to have the minimum required turnover in last three financial years i.e. 2016- 17, 2017-18 and 2018-19 over and above Rs. 10 Lakh from the consultancy only for which two documents were required i.e. the Turnover Certificates as well as the Audit Report certified by the Chartered Accountant. The tender also stipulated further essential documents for the above five mentioned conditions in the form of Clause 2 which states that technical proposal (essential documents). For getting eligible for condition No. 5 further essential documents were required for by the bidder as detailed in paragraph 6 of the return. Merely perusal of the said paragraph 6 would show that the documents required for the person to get eligible for condition No. 5 are three in number. By reading the pre-qualification criteria condition No. 5, it appears that the main contention of the employer i.e. the Tendering Authority is to check whether the person is financially sound and has achieved the milestone in the last 3 years of the same work and to prove this credential, the bidder has to submit the documents as stated in above para. Admittedly, the respondent No. 3 along with other bidders has submitted the audited balance-sheet for the last 3 financial years which bears the signature of Chartered Accountant. Sub- condition No. 3 of Essential Condition No. 5 provides for the submission of the documents which shows that the bidder has achieved the turnover of 30% of the amount they have proposed for their NIT. Since, none of the bidders which include the petitioner also have disclosed this fact that they have achieved the turnover of 30%, the Tender Evaluation Committee has taken into consideration this fact and relaxed



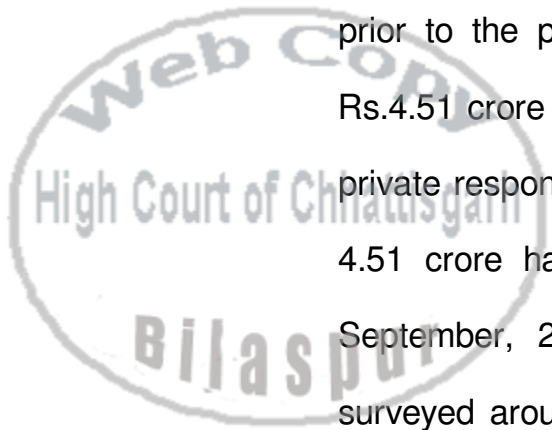


the condition for all the persons. In the similar manner, during the valuation, it was found that the respondent No. 2 has not submitted the turnover certificate duly certified by Chartered Accountant and by looking to the other documents submitted with the balance-sheet which is duly certified by the Chartered Accountant and taking into consideration the substantial compliance of the tender condition No. 5, the Tender Evaluation Committee has considered the candidature of the respondent No. 3 in technical ground also. Thus all proceedings were done in the front of each and every bidders which includes the petitioner also. At the time, when this proceeding was going on, the petitioner did not raise any objection to such thing and now after his non-selection, he is raising hue and cry challenging the credential of the respondent No. 3. The employer i.e. the tendering authority holds power to interpret its own terms and condition for considering the candidature of the bidders. In the present case, since there is substantial compliance by the respondent No. 3 by virtue of the document in the form of audited balance-sheet duly certified by Chartered Accountant, the Committee decided to consider its candidature for the tender. This exercise can by no stretch of imagination be termed as illegal and incorrect.

- 13.** Mr. Bharat further submits that the impugned NIT was floated for the preparation of the DPR for two kinds of villages, i.e. villages which are directly affected by the mining area, and villages which are indirectly affected. The respondent No. 3 prior to passing of interim order by this Hon'ble Court on 27.10.2021, has already completed part of the tender by preparation of the DPR (Detailed Project Report) for the directly affected area on 08.09.2021, and the payment of the same was also done for the same.
- 14.** In response to the return filed by the State, the petitioner had also filed a rejoinder stating that in para 7 of the return, the respondents/State



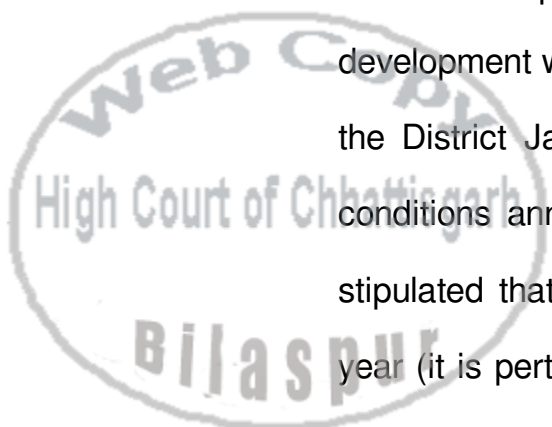
authorities have categorically stated that during the valuation process, qua the tender condition No.5, the respondent No.3 has not submitted the turn over certificate duly certified by the Chartered Accountant, as such from the averments made by the respondent/State authorities it is itself clear that they have not followed the essential condition for eligibility/participation as mentioned in the NIT qua the respondent No. 3. Mr. Agrawal further submits that the respondent/State authorities not only while handling the tender process but also subsequent actions, would show that the respondent/State authorities and the private respondent No.3 are hand in gloves and they have least regard for this Hon'ble Court and said statement is fortified from the fact that in order to defeat the petition, in their reply, the respondent/State authorities have stated that prior to the passing of the interim order dated 27.10.2021, a sum of Rs.4.51 crore has already been released qua the work completed by the private respondent No. 3. It would be cleared that the above sum of Rs. 4.51 crore has been released from the month of February, 2021 to September, 2021 and during this period, the respondent No.3 has surveyed around 450 villages, which are directly affected by the mining area and prepared a DPR (Detailed Project report thereof). The said averment of the respondent / State is in itself malafide and colourable because from the month of March, 2021 to August, 2021, the country has witnessed a severe second wave of the COVID-19 pandemic wherein the entire population/citizens of country including the State of Chhattisgarh were affected and lakhs of citizens have lost their lives. Further, complete lockdown was imposed in the State of Chhattisgarh for around two months restricting the movement then how in the above span of 240 days which includes the lockdown period, survey of more than 450 villages has been done or whether such survey was only conducted on paper, even the date of the clearance of cheque dated 02.09.2021 and 14.09.2021 amounting respectively to Rs.2.25 crore and 0.45 crore assumes importance because





on 06.08.2021, this Hon'ble Court had issued notice on merit as well as on application for grant of ad-interim relief in the matter and on the very same date, the State counsel has accepted notice on behalf of State/respondent authorities. Mr. Agrawal, vide paragraph 12 of his rejoinder tried to explain as to what would the minimum time required for completion of the survey in the mining affected area and in the given time, the respondent No. 3 could not have completed the work.

- 15.** An affidavit has been filed on behalf of the State/respondents No. 1 and 2 in pursuance of the direction of the Hon'ble Court on 21.02.2022 stating that the respondent No.2 through the Collector had invited a tender for selection of consultants for preparation of DPR (Detailed Project Report) as well as preparation of written document/master plan for various development work which is to be funded by District Mineral Fund Trust for the District Janjgir Champa for upcoming five years on the terms and conditions annexed with the return wherein in clause 3(10) it is clearly stipulated that the selected institution will be primarily contracted for 01 year (it is pertinent to mention here that in the said terms and conditions due to typographical error after 01 year has not been mentioned, which is bonafide and thus the same may kindly be read as 1 year), which can be extended on the basis of successful execution of the contracted works. After issuance of the work order dated 09.02.2021 in favour of the respondent No.3/Sangam Seva Samiti, Janjgir District Janjgir Champa an agreement dated 10.02.2021 was executed between the respondent No.3 and Chief Executive Officer, Zila Panchayat District Janjgir Champa for a period of one year. The respondent No.3 has already completed part of the tender by preparation of the DPR (Detailed Project Report) for the directly affected area on 06.09.2021 and the payment of the same was also done for the same, which is evident from the completion certificate for the part of the tender Annexure-R-2 filed with the return. This Hon'ble Court vide its order dated 27.10.2021 had been pleased to suspend the order dated





09/02/2021. Prior to passing of interim order by this Hon'ble Court the respondent No.3 had already completed part of the tender by preparation of the DPR for the directly affected area on 06.09.2021. During pendency of the present petition, the period of contract/agreement of 1 year had already been expired on 10.02.2022.

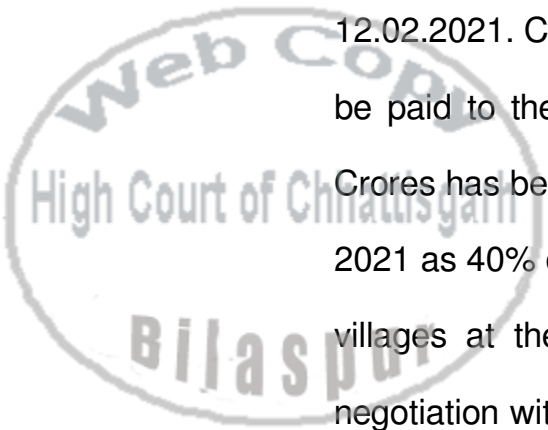
- 16.** Thereafter, this Court had further directed vide order dated 21.07.2022 to file another affidavit pursuant to which the State/respondent No. 1 and 2 have filed their affidavit stating that the Hon'ble court vide its order dated 21.07.2022 noted that the affidavit filed on 25.02.2022 on behalf of the respondents No. 1 and 2 was not clear as to whether the work of preparation of a master plan/vision document for the works relating to identification of mining affected areas/persons (direct or indirect), necessary survey, supervision of projects and social audits thereof, was completed or not and that pursuant to the notice inviting tender dated 11.08.2020, the work order was issued in favour of respondent No. 3 on 09.02.2021. It has already been on record of this Hon'ble Court that pursuant to the NIT, the work order was issued in favour of respondent No. 3 on 09.02.2021. After issuance of the work order dated 09.02.2021, an agreement dated 10.02.2021 has been executed between the respondent No.3 and respondent No.2. On the basis of and in terms of the agreement dated 10.02.2021 Administrative Sanction Order dated 12.02.2021 (hereinafter referred to as "AS") was issued. The petitioner has challenged only to the work order dated 09.02.2021 in its original petition whereas it has not challenged the AS dated 12.02.2021.

- 17.** The NIT dated 11/08/2020 was issued for the work of preparation of a master plan/vision document for the works relating to identification of mining affected areas/persons (direct or indirect), necessary survey, supervision of projects and social audits thereof whereas the AS dated 12.02.2021 was issued for preparation of a five year plan/ vision document





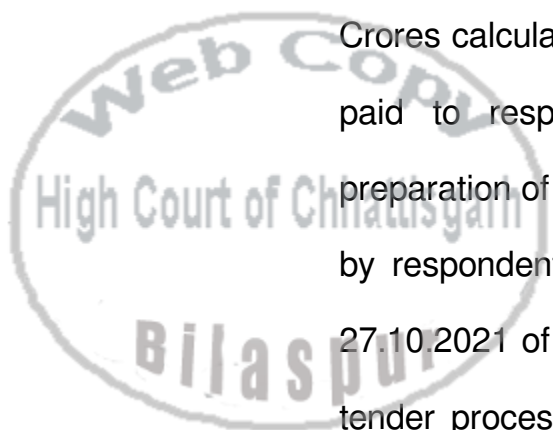
for the interest and benefit and overall development of the directly/ indirectly affected areas/ individuals. Identification of mining affected areas/persons (direct or indirect) and supervision of projects is the task of DMF authorities. The process of social-audit is conducted in two phases; first phase is related to the identification of requirements of the affected area and the second phase is related to implementation and quality of the relevant works. Respondent No.3 was responsible for and has completed first phase of social-audit whereas second phase of the social-audit is related to execution/implementation level. The directly affected areas/ peoples are having priority over indirectly affected areas/ peoples. Therefore, AS dated 12.02.2021 was initially issued for directly affected areas/ individuals only which is implied under clause 14 of the AS dated 12.02.2021. Clause 14 above stipulates that 40% of the total amount shall be paid to the selected institution initially. In the present case Rs. 1.80 Crores has been initially paid to respondent No.3 in the month of February 2021 as 40% of the Total amount Rs. 4.51 Crores for 429 directly affected villages at the rate (Rs. 1,05,000/- per village) as agreed upon after negotiation with the tendered rate and further payment has been made as per clause 14 of the AS. In compliance to the AS dated 12.02.2021, respondent No.3 submitted the Five-Year Master Plan for all 429 directly affected villages on dated 08.09.2021. In the verification, respondent No.2 found that based on baseline survey, fundamental data collection of villages and analysis of existing infrastructures/ resources and in meeting with the villagers (Gram Baithak), list of proposed tasks and works finalized on priority basis and the master plan have been prepared for per individual villages by the respondent No.3 with the approval of gram Panchayat. All this was done for same to 429 directly affected villages. After such verification, completion certificate with respect to directly affected villages was issued in favour of respondent No.3 on 14.09.2021. As per the terms and conditions of the NIT, which is impliedly incorporated





in the AS dated 12.02.2021 also; satisfactory and successful completion of the work awarded is the pre-requisite for further awards. It is respectfully submitted that respondent No. 3 has completed first phase (directly affected villages) of the work awarded satisfactorily and successfully therefore completion certificate was issued and final installment of remaining 10% of total amount was released in favour of respondent No.3 and thereafter respondent No.3 has become eligible to get further extension of two years. In terms of the clause 17 of the agreement dated 10.02.2021 and clause 18 of the AS dated 12.02.2021, work for preparation of a five year plan/vision document for the interest and benefit and overall development of the indirectly affected areas/ individuals has been extended in favour of respondent No.3 and an amount of Rs. 1.93 Crores calculated as per clause 14 of the AS dated 12.02.2021 has been paid to respondent No.3 on 14.09.2021. The extended work for preparation of five year plan for indirectly affected villages was being done by respondent No.3 which is stayed in compliance of the order dated 27.10.2021 of the Hon'ble Court. As such, it was lastly submitted that the tender process is not suffering from any illegality, irrationality, malafide, perversity or procedural impropriety. As far as possible, respondent No.2 is acting according to the intention of the author of the tender documents.

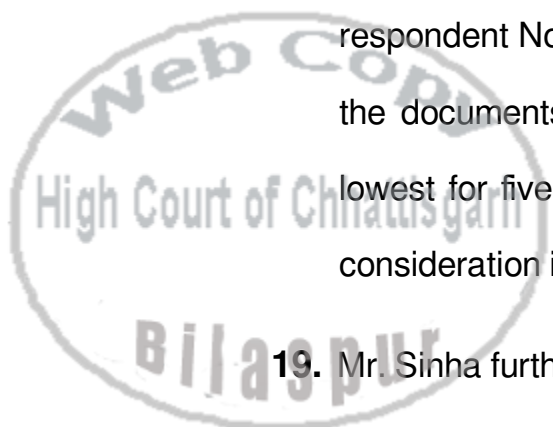
- 18.** Mr. Abhishek Sinha, learned Senior Advocate assisted by Mr. Somkant Verma, learned counsel appearing for the respondent No. 3, also submits that the technical bid of all the tender were opened on 16.09.2020 in presence of the representative of petitioner and thereafter the work order has been issued on 09.02.2021. After the work order, the respondent No.3 has prepared the master plan and prepared five-year plan/vision document of the directly affected area and submitted it to the department which has been accepted and payment made. As per paragraph-14 of AS order dated 12.02.2021, the petitioner has never impugned order dated 12.02.2021. The present petition has been filed only on 28.07.2021 which





in the facts and circumstances of the petition is extra-ordinarily delayed without there being any explanation under para 7 of the petition. Delay has resulted in execution of work and creation of right to execute the contract. The present writ filed under most of the work under the contract being done deserve to be dismissed only on the ground of delay and laches. The petitioner has not filed the complete relevant documents and has chosen to file only selective documents. Mr. Sinha submits that the bid was in two parts technical and financial and the petitioner has chosen not to file the financial bid submitted by him and rates quoted by him were the lowest (though L-1 was not the criteria for award of contract but it was quantity cost-based system) but the bid submitted by him for five years of work is Rs. 1,53,046/- as against the accepted bid of Rs. 1,10,000/- of the respondent No. 3. It is for the said reason the petitioner has chosen not file the documents so as to suppress the material fact of his bid not being lowest for five years. The conduct of the petitioner disentitles him of any consideration in equity writ jurisdiction before this Hon'ble court.

19. Mr. Sinha further submits that one of the ground of challenge in this petition is that the respondent No. 3 had not submitted a certificate issued by the Chartered Accountant of the average yearly turnover and therefore his bid has wrongly been considered to be valid and eligible. In fact, the requirement under NIT stipulates that the bidder has to submit the complete statement of turnover duly audited and the answering respondents has submitted the previous three years of complete turnover statement duly audited by the Chartered Accountant, from which the yearly turnover is clearly discernible. Therefore, it substantial compliance and certificate of CA is just formal. The respondent No. 3 has submitted the average yearly turnover self-attested and has accordingly accepted the bid. It is not the case of the petitioner that the respondent No. 3 does not have the requisite yearly turnover required for being eligible. The three years audited report has not been disputed. Thus, the objection of the





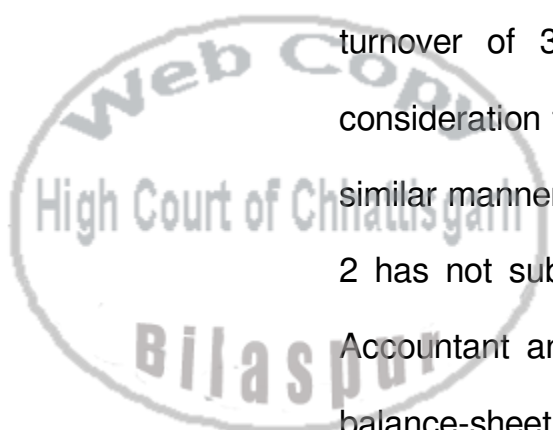
petitioner is hyper technical and not tenable as there has been substantive compliance and the answering respondents is technically eligible for being awarded the work under the NIT. Further, the respondent No. 3 adopts the reply and the stand take by respondent No.1 and 2. In any event there is no fault on part of the respondent No. 3 as it not as case of misrepresentation of eligibility. The work under the contract has been performed and the part payment has also been done on successful completion. The respondent No.3 filed all relevant documents alongwith its application, the Committee considered application of respondent No.3 and others and examined the documents filed by the respondent No.3 and after verification of documents, the Committee decided and found the respondent No. 3 eligible/fit and subsequently, by its order dated 09.02.2021 work order has been issued in favor of respondent No. 3. The basis of certificate of total turnover is three years audit report of financial year 2016-2017, 2017-2018, 2018-2019, the financial audit report is not questioning by the petitioner, it means the financial audit report of the respondent No.3 is correct, accepted by the petitioner and is undisputed. After issuance of work order in favor of answering respondent, work has been completed and on 14.09.2021, competent authority issued work completion certificate in favor of answering respondents, till date, there is no complaint regarding work of the respondent No. 3 and the State/respondent No. 1 and 2 are fully satisfied from work of respondent No. 3.

- 20.** We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
- 21.** From perusal of the averments and pleadings made in the petition, it transpires that the petitioner is aggrieved by award of tender to the respondent No. 3 as according to the petitioner, the respondent No. 3 does not fulfill the criteria as prescribed by the tendering authority.



22. So far a submission of the copy of the Average Annual Turn Over issued by a Competent Authority/qualified Chartered Accountant and copy of statement issued by a Competent Authority/Chartered Accountant, showing the total Consultancy Turn Over with regard to past three years, are concerned, the State, in its reply at paragraph 7 has explained that admittedly, the respondent No. 3 along with other bidders had submitted the audited balance-sheet for the last 3 financial years which bears the signature of Chartered Accountant. Sub-condition No. 3 of Essential Condition No. 5 provides for the submission of the documents which shows that the bidder has achieved the turnover of 30% of the amount they have proposed for their NIT. Since, none of the bidders which include the petitioner also have disclosed this fact that they have achieved the turnover of 30%, the Tender Evaluation Committee has taken into consideration this fact and relaxed the condition for all the persons. In the similar manner, during the valuation, it was found that the respondent No. 2 has not submitted the turnover certificate duly certified by Chartered Accountant and by looking to the other documents submitted with the balance-sheet which is duly certified by the Chartered Accountant and taking into consideration the substantial compliance of the tender condition No. 5, the Tender Evaluation Committee has considered the candidature of the respondent No. 3 in technical ground also.

23. According to learned counsel for the respondent No. 3, the petitioner has not even come before this Court with clean hands as the petitioner had not filed the relevant documents and had chosen to file only selective documents. The petitioner has not filed the financial bid submitted by him and the rates quoted were the higher than that of the petitioner as the price quoted by the petitioner was Rs. 1,53,046 whereas the offer of the respondent No. 3 was 1,10,000/-. Even otherwise, the NIT in question was not based on the lowest price but was under the quantity cost based system. So far as the contention of the petitioner that in the peak of covid



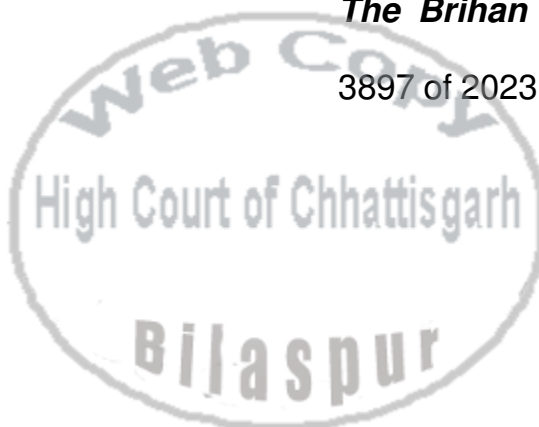


19 pandemic, the respondent No. 3 has surveyed 450 villages, is noticed to be rejected as the said issue cannot be decided by this Court. It is for the tendering authority either to accept the survey report submitted by the respondent No. 3 and to ascertain as to how and in what manner the respondent No. 3 has done the survey work.

24. Even otherwise, as stated by the learned counsel for the respondents, the first phase of the survey has been completed and payments in that regard has also been made, this Court does not deem it proper to interfere at this stage especially in the light of catena of decisions rendered by the Apex Court relating to tender matters.

25. A three-Judge Bench of the Supreme Court, in **Tata Motors Limited v. The Brihan Mumbai Electric Supply & Transport**, Civil Appeal No. 3897 of 2023, decided on 19.05.2023, had observed as under:

“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.”

26. In view of the settled principles of law with regard to contractual disputes and award of tender as aforesaid, we are of the view that this is not a fit case so as to interfere with the decision of the respondent No. 1 and 2.

27. Resultantly, this petition stands **dismissed**.

Sd/-
(Sachin Singh Rajput)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

