

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1082 of 2015**

M/S Nidhi Kumar Bagh Through The Proprieter Nidhi Kumar Bagh,
Aged 34 years, S/o Sadhu Bagh R/o Mata Nagar, Near RSD Orrissa
Concrete WRS Colony, Raipur, PO WRS Colony, Raipur, District
Bilaspur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through Secretary, Department of Public Health & Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur
2. The Director, Health Service, Chhattisgarh, HQ Indrawati Bhawan, Naya Raipur
3. Civil Surgeon Cum Chief Hospital Superintendent, Durg (CG)

---- Respondents

For Petitioner	:	Shri R.K. Kesharwani, Advocate.
For Respondents/ State	:	Shri U.N.S. Deo, Government Advocate

HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.

Order On Board**Per NAVIN SINHA, C.J.****26/6/2015**

1. We have Heard Learned Counsel for the Petitioner and the State.
2. In this application, the Petitioner raises a grievance that the Tender Notice in question dated 15.4.2015 published in Hindi daily 'Nav Bharat' on 18.4.2005, did not provide complete 30 days for submission of offers as required by Rule 4.5 of the Chhattisgarh Government Store Purchase Rules, 2002 (hereinafter referred to as 'the Rules').

3. Learned Counsel for the Petitioner submits that even if he was not a bidder in response to the Notice Inviting Tender, yet if the Respondents have published an advertisement contrary to the Rule, granting only two weeks' time for submission of offers and which has therefore caused him prejudice as may have been able to apply if the period of 30 days had been granted in accordance with the Rules, the writ petition is maintainable and he has a cause of action. It is next submitted that the Contract of the earlier Tenderer was cancelled prematurely, but due to certain orders passed by this Court he has been permitted to operate till 31st July, 2015. There was no urgency in the matter and thus there is no justification for the Respondents to violate the Rules. Repeated representations by the Petitioner on 18.5.2015 and 6.6.2015 having evoked no response, the writ petition has been filed. The Respondents may be restrained from proceeding with the Tender in question and be directed to publish fresh Tender notice in accordance with the Rules. The Tender Notice does not mention that any power of relaxation was there and had been exercised in providing only two weeks for submission of offers.

4. Learned Counsel for the State submitted that there was an urgency in the matter for supply of food to pregnant women admitted in the Delivery Ward and it brooks no delay at all. The period of two weeks for submission of Tenders was the result of consideration in view of the urgency of supplies. The existing Tender was cancelled with effect from 15.5.2015 by notice dated 11.5.2015. There had to be continuity to ensure supply of food to the pregnant women in the Delivery Ward.

5. We have considered the submissions on behalf of the parties.

6. There can be no two opinions that supply of food to pregnant women in the Delivery Ward is a matter of urgency. Even otherwise, the Court cannot sit in judgment over the satisfaction of the Respondents on this aspect which is purely in their administrative domain. The advertisement dated 15.4.2015 was published on 18.4.2015. The last date for submission of bids was 7.5.2015. The Petitioner submitted his representation for the first time on 21.5.2015 nearly two weeks later and definitely after expiry of the 30 days period under Rule 4.5 of the Rules sought to be relied upon. Another representation is alleged to have been submitted on 6.6.2015, but which bears no acknowledgement unlike the representation dated 18.5.2015. The submission of the representation therefore itself remains in the realm of speculation. Even otherwise, it is trite law that mere filing of representations is no explanation for delay unless a legal remedy was being pursued. The writ petition does not even state on what date the Petitioner learnt about the advertisement. If it had been published on 18.4.2015 in a Newspaper, which itself amounts to public notice, the Petitioner was clearly aware before the expiry of the last date for submission of offers i.e. 7.5.2015, that the Tender notice was not in compliance with Rule 4.5. He could easily have moved the Court before the last date for submission of offers or alternately within a period of 30 days from publication as claimed. On the contrary, the writ petition itself has been filed much belatedly on 23.6.2015. There is no allegation that the Respondents have acted mala fide to favour another or with any other oblique motive.

7. We have already observed that in the nature of the works there was an inherent urgency for selection of the competent supplier. Rule 16 provides that in special circumstances, the Rules could be relaxed. Again

there is no averment that this may have been done mala fide though Learned Counsel for the Petitioner in reply to our question did try to persuade us that the exercise of the power of relaxation was itself mala fide, a submission which is unacceptable. The Petitioner was never a bidder and therefore also has no locus to maintain the writ application.

8. In the entirety of the matter, we find no reason to interfere with the Tender notice. The writ application is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE