

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.1632 of 2015**

Rosmerta Technologies Limited, Through its Authorised signatory, Shri Pankaj Madan, S/o Late Shri Charanjeet Madan, aged about 43 years, Presently working as Director, Rosmerta Technologies Limited, 137, Udyog Vihar, Phase - I, District - Gurgaon (Haryana), Pin code - 122 016

---- Petitioner**versus**

1. State of Chhattisgarh, through Principal Secretary, Department of Transport, Chhattisgarh Government, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh), Pin code - 492 001
2. Transport Commissioner, Transport Department, Government of Chhattisgarh, O/o Transport Commissioner, New Bus Stand, Pandri, District Raipur (Chhattisgarh), Pin code - 492 001
3. Special Secretary, Transport Department, Chhattisgarh Government, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh), Pin code - 492 001

---- Respondents

For Petitioner	: Shri R.N. Singh, Senior Advocate with Shri Siddharth Seth and Shri K. Rohan, Advocates
For State/Respondents	: Shri Prafull N. Bharat, Additional Advocate General

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board**Per Navin Sinha, Chief Justice****14/9/2015**

1. The Respondents invited bids on 7.11.2012 with regard to High Security Registration Plates in conformity with Rules 50 and 51 of the Central Motor Vehicles Rules, 1989. Suffice it to notice that the bid of the Petitioner having been found to be technically compliant and financially viable, it was declared L-1 and called for negotiations. On 30.9.2014, the Respondents made a formal communication of acceptance to the Petitioner and also issued the letter of intent. The Petitioner was required to deposit Rs.40 Lakhs as performance security under Clause 2.29.1 of the tender

document within fifteen days from the date of issuance of the letter of intent and to depute a representative for signing of the contract agreement. It is the case of the Petitioner that it complied with the requirement for deposit of performance security within the time indicated and also participated in discussions for signing of the agreement. The letter of intent has then been cancelled on 22.5.2015 stating that on examination of its bid documents it was found that the Petitioner was not fulfilling the essential qualifications.

2. Learned Senior Counsel for the Petitioner submits that it is not the case of the Respondents that it has not complied with the terms and conditions of the letter of intent. The order of cancellation on the face of it is arbitrary because if it was not fulfilling the essential conditions of the tender, the question of acceptance of its technical bid followed by financial bid, communication of acceptance by the State Government with a direction to deposit performance security along with a letter of intent would not have followed. All necessary documents called for have already been furnished to the Respondents. The order of cancellation therefore on the face of it is arbitrary and is motivated on a complaint at the behest of an unsuccessful competitor.

3. Learned Additional Advocate General submitted that in absence of instructions and proper counter affidavit he is in a position to state only that no indefeasible right accrues to a person because a letter of intent may have been issued. Unless a final agreement is signed, no vested rights are created in the person and the letter of intent can be cancelled for valid reasons. It was lastly submitted that on account of certain complaints received, the Petitioner was asked to appear with the original documents to which it did not respond.

4. We have considered the submissions on behalf of the parties and are satisfied that given the limits of judicial review, not to call for a counter

affidavit at this stage, because we are otherwise satisfied from the official documents brought on record by the Petitioner that the order dated 22.5.2015 is not sustainable in its present form.

5. Obviously, the technical and financial bids of the Petitioner having been found to be compliant and viable in accordance with the notice inviting tender and having qualified in the same, it was declared L-1 and formal acceptance of the offer communicated to it. Pursuant to the same, it was asked to deposit performance security which is stated to have been done also. It does not appear from the order dated 22.5.2015 that any ground has been mentioned with regard to non-fulfillment of the conditions of the letter of intent to justify cancellation of the same.

6. The recital in the impugned order dated 22.5.2015 that the Petitioner was not fulfilling the essential conditions of the notice inviting tender to justify cancellation of the letter of intent, without spelling out which essential condition was not fulfilled makes the order non-speaking and thus arbitrary. If an essential condition of the tender was not fulfilled by the Petitioner, the question for acceptance of its offer, declaration as L-1 and communication of acceptance followed by issuance of letter of intent would not have arisen. Even otherwise, the order of cancellation is not speaking why and how formal acceptance was communicated notwithstanding the same.

7. If there are no allegations for non-compliance of the conditions of the letter of intent and the Respondents were purporting to make inquiries on a complaint made at the behest of a rival competitor, needless to state that the principles of natural justice have to be followed. An order of a public authority must be speaking in nature. It must not contain ambivalent and unambiguous reasons as the order of a public authority has to be tested on basis of the recitals contained in the order and cannot be supported by explanations to be furnished in a counter affidavit. If an ambivalent public

order is accepted, it may be giving a leverage to the Respondents to put forth grounds in a counter affidavit which may not even have existed when the order was issued. The order dated 22.5.2015 is therefore held to be not sustainable in its present form. It is accordingly set aside and the matter is remitted to the Special Secretary, Transport Department for passing a fresh reasoned and speaking order disclosing full application of mind to the facts and issues so that judicial review if required is facilitated. Needless to state that if the Respondents propose to act upon any complaints received, more particularly at the behest of rival competitor, they are required to furnish all materials to the Petitioner with a proper opportunity of defence and then pass orders in the manner discussed. Let such fresh appropriate orders be passed within a maximum period of eight weeks from the date of receipt and/or production of a copy of this order.

8. The writ application is disposed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE