

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.838 of 2016**

Raipur Rasayan Udyog, A Proprietorship Firm & Manufacturers of Ferric Non-ferric Alum, having Its Unit at 410-411B, Sector-C, Urla Industrial Area, URLA, Raipur 493 221 (CG), Civil & Revenue District Raipur (Chhattisgarh) through its partner Sanjay Agrawal

---- Petitioner**versus**

1. State of Chhattisgarh through the Secretary, Department of Urban Administration & Development, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)
2. Municipal Corporation Raipur through its Commissioner, Raipur (Chhattisgarh)
3. Executive Engineer, Municipal Corporation, Raipur (Chhattisgarh)
4. Chhattisgarh State Industrial Development Corporation Ltd., Udyog Bhawan, Ring Road No.1, Telibandha, Raipur (CG) through its Managing Director

---- Respondents

For Petitioner	:	Shri Ashish Shrivastava, Advocate
For State/Respondent No.1	:	Shri Yashwant Singh Thakur, Deputy Advocate General
For Respondents No.2 & 3	:	Shri Pankaj Agrawal, Advocate
For Respondent No.4	:	None

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board**Per Deepak Gupta, Chief Justice****14/6/2016**

1. The interesting question which arises in this petition is, "Whether the Municipal Corporations are bound to purchase items mentioned in Schedule – 1 attached to the Chhattisgarh Store Purchase Rules, 2002 (as amended in 2004) (henceforth 'the Rules') only from the companies approved by the Chhattisgarh State Industrial Development Corporation (henceforth 'the CSIDC') at the rates approved by the CSIDC".
2. To appreciate the issue involved, it would be apposite to mention that the State of Chhattisgarh formulated the said Rules, which were amended in 2004. For the purpose of this case we are mainly concerned with Rules 2 and 3.

3. Rule 2 of the Rules reads as follows:

“2. These Rules shall be applicable to purchases made by the administrative departments.”

Rule 2.1 of the Rules reads as follows:

“2.1. In addition to the administrative departments, the Rules shall also be applicable to the Chhattisgarh State Electricity Board, all the State Government Undertakings, Boards, Zila Panchayats, Janpad Panchayats and Municipal Bodies.”

Rule 3 of the Rules reads as follows:

“3. The Chhattisgarh State Industrial Development Corporation shall determine the rates and other terms and conditions for supply of items mentioned in Schedule – 1 attached to the Rules and purchases may be made by the departments on such rates and terms and conditions as settled by the Chhattisgarh State Industrial Development Corporation. Those items which are not mentioned in Schedule – 1 attached to the Rules may be purchased by following the procedure laid down in Rule 4 of the Rules.”

4. Reference may also be made to Rule 7 of the Rules, which basically provides that the departments can make purchases directly from the bodies/units approved by the CSIDC on the rates and terms and conditions fixed by the CSIDC.

5. Pursuant to the Rules, the CSIDC floated a notice inviting tender for supply of Ferric Alum which undisputedly falls in the category of items falling in Schedule – 1 attached to the Rules. The Petitioner Firm submitted its tender and it was found to be the lowest tenderer. The CSIDC approved the tender of the Petitioner and some other Units for supply of Ferric Alum at the rate of Rs.12,900/- per metric tonne F.O.R. Destination (anywhere in Chhattisgarh State) excluding Excise Duty not applicable and Value Added Tax extra as applicable. This rate contract which has been granted to the Petitioner was valid from 27.10.2015 to 26.10.2016.

6. Thereafter, the Municipal Corporation, Raipur, i.e., Respondent No.2 herein floated a notice inviting tender for supply of the same item.

The Petitioner company raised an objection to the floating of the tender itself. Despite that the Municipal Corporation, Raipur continued with the tender process.

7. The contention of the Petitioner company is that once the rates for supply of Ferric Alum have been determined by the CSIDC, the Municipal Corporation, Raipur in terms of the Rules is bound to purchase the item at the said rate from any one of the Units approved by the CSIDC. The contention of the Petitioner has been supported both by the CSIDC and by the State of Chhattisgarh. The Petitioner therefore by means of this petition has prayed for quashing of the tender process initiated by the Municipal Corporation, Raipur mainly on the ground that in view of the provisions of Rules 2 and 3 of the Rules the Municipal Corporation is bound in terms of the Rules to make purchases from the Units approved by the CSIDC at the rates fixed by the CSIDC.

8. The stand of the Municipal Corporation, Raipur is that though the Rules may be applicable to the Municipal Corporations, these Rules especially Rule 3 of the Rules does not debar the Municipal Corporation from floating a tender. According to Learned Counsel appearing for the Municipal Corporation, Raipur, Rule 3 of the Rules enables the departments or the bodies/units to purchase the items at the rate fixed by the CSIDC, but does not debar such bodies/units especially Municipal Corporations from floating tender and ensuring that supplies are made at a rate lower than the rate approved by the CSIDC. To buttress his argument, Learned Counsel for the Municipal Corporation, Raipur has submitted that though the tender process has not been completed, if the lowest tenderer is now awarded tender then supply of Ferric Alum would be made at Rs.11,610/- per metric tonne inclusive of all taxes and thus the Municipal Corporation, Raipur will save lakhs of rupees.

9. Learned Counsel appearing for the Petitioner company has countered the arguments advanced by Learned Counsel for the Municipal Corporation, Raipur by urging that the rates of the Petitioner having been disclosed in the tender process initiated by the CSIDC it was put under disadvantage by not being able to submit its tender at a lower rate in the tender process initiated by the Municipal Corporation, Raipur and merely because the price now quoted is lower is not a ground to ignore the Rules.

10. Rule 2 of the Rules only makes the Rules applicable to the Government Departments. However, Rule 2.1 of the Rules extends the applicability of the Rules to the Chhattisgarh State Electricity Board, State Government Undertakings, Boards, Panchayats and Municipal Bodies etc. Rule 3 of the Rules deals only with items mentioned in Schedule – 1 attached to the Rules. This rule can be divided into two parts. The first part of this rule mentions that the rates for supply of items mentioned in Schedule – 1 and the terms and conditions for supply of such items shall be determined by the CSIDC. The second part of the rule is followed by the word “and”, and, therefore, has to be read in conjunction with the first part. The second part of the rule provides that the departments may purchase these items at such rate and on such conditions as are determined by the CSIDC from the approved units. We are not concerned with the remaining portion of Rule 3 of the Rules which relates to items not falling in Schedule – 1 attached to the Rules for which the procedure mentioned in Rule 4 has to be followed.

11. The main issue which arises is whether Rule 3 debars a Municipal Corporation from initiating a separate and transparent process for purchase of items mentioned in Schedule -1 despite the fact that the CSIDC may have determined the rates and fixed the terms and conditions for supply of such items. The language of the Rules is ambiguous. There

is no clear cut bar in the Rules. The question that arises is whether this Court by interpretation of the Rules in the manner submitted by Learned Counsel for the Petitioner company should introduce such a bar where no such bar exists in the Rules. We are clearly of the view that it would not be legally proper to introduce such a bar which does not exist in the said Rules. No doubt if there is an ambiguity, the Court should follow the doctrine of purposive interpretation to ensure that the letter and spirit of the Rules is followed. To introduce such a bar would in our opinion violate the spirit of the Rules which is to ensure transparency in procurement of supplies at minimum cost.

12. We also cannot lose sight of the fact that a Municipal Corporation is an elected body which is a body corporate having perpetual succession in the terms of Section 7(3) of the Chhattisgarh Municipal Corporation Act, 1956. We are not going into the question whether the State has power to direct a Municipal Corporation to make purchases in a particular manner or not because that question has not been raised before us. Assuming that the Rules are applicable to the Municipal Corporations also, the question is whether these Rules debar a Municipal Corporation from initiating its own tender process for purchase of items.

13. Another aspect of the matter is that Rule 2 of the Rules consists of two parts. The first part as already mentioned above deals with departments of the State Government and Rule 2.1 of the Rules makes the Rules applicable to the Chhattisgarh State Electricity Board, State Government Undertakings, Municipal Bodies etc. However, in Rule 3 of the Rules, again the Rule making authority in its wisdom has only used the word "*Vibhagon*" (Departments) and has not made mention of any other authorities. It could have easily added departments and other bodies which would have made the Rules clearer. That having not been done, it would not be possible for this Court to interpret the Rules in such

a manner as to impose a bar on a Municipal Corporation from making purchases by a different method. It is not disputed before us that the tender process initiated by the Municipal Corporation, Raipur was an open tender process which is a fair tender process and nobody has raised questions about the fairness or transparency of the process.

14. It has been contended before us that the intention of the Rules is to ensure that there is a fixed rate throughout the State and there is uniformity in the purchases made. We appreciate this aspect of the Rules, but on the other hand, we cannot lose sight of the fact that by means of the second tender floated by the Municipal Corporation, Raipur, the rates which have been submitted by the tenderers are almost 10% lower than the rates approved by the CSIDC. While nobody can deny that there should be uniformity of rates, public interest also demands that public funds are not frittered away. It is the duty of all Government Officials and Departments to ensure that there is maximum utilisation of public funds and if some goods of the same quality can be purchased at a lower rate, there should be no reason why a Municipal Corporation should be bound to pay a higher price for the same.

15. This petition has been filed under Article 226 of the Constitution of India invoking the extra-ordinary jurisdiction of this Court. In a case of this nature, where more public funds will have to be spent to purchase the same item if the writ petition is allowed, we would not exercise our extra-ordinary jurisdiction because that would mean spending more public money for purchase of goods which can be purchased at a cheaper rate.

16. To ensure that public funds are not wasted, we interpret the Rules to mean that in case even if tenders are floated by any body covered under Rule 2.1 of the Rules, it cannot award the tender at a rate higher than the rate approved by the CSIDC.

17. We also find that in the Rules, there is no bar to the persons of the Units whose rates have been approved by the CSIDC to participate in any other tender process and they shall be free to do so if not specifically debarred by any specific condition of the tender floated by the CSIDC or any rule in this regard.

18. In view of the above discussion, we find no merit in the instant petition. It is accordingly dismissed. Interim order, if any stands rejected.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay K. Agrawal)
JUDGE

Writ Petition (C) No.838 of 2016

Raipur Rasayan Udyog

versus

State of Chhattisgarh and others

Head Note

Directions with regard to proper utilization of public funds by Government officials and Departments issued qua the Chhattisgarh Store Purchase Rules, 2002 as amended in 2004.

2004 में संशोधित छत्तीसगढ़ भंडार कय नियम 2002 के रूप में शासकीय अधिकारियों एवं विभागों द्वारा लोक निधि का उचित प्रयोग करने के संबंध में निर्देश जारी किया गया।