

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Civil) No. 2188 of 2015**

Earthco Spares, A Proprietorship Firm, Through Its Proprietor/ Manager, Rajeev Jhunhunwala, Son Of Shri Kirti Kumar Jhunhunwala Aged About 45 Years, Having Its Office And Works At 28 B, Keshab Chandra Sen Street, Kolkata 700007 (West Bengal)

---- Petitioner**Versus**

1. South Eastern Coalfields Limited Through Its Chairman Cum Managing Director/ HQD, Seepat Road, Bilaspur 495006, Chhattisgarh
2. South Eastern Coalfields Limited, Through Its Chief General Manager (MM)/HQD, Seepat Road, Bilaspur 495006, Chhattisgarh.
3. South Eastern Coalfields Limited, Through Its Chief General Manager, (E&M)/HQD, Seepat Road, Bilaspur 495006, Chhattisgarh.
4. South Eastern Coalfields Limited, Korba Colliery Through Its Chief/ General Manager, Central E&M Workshop, Material Management Department, P.O. Korba Colliery, Korba 495677, Chhattisgarh.
5. Coal India Limited, Through Its Chairman, #10, Netaji Subhash Road, Kolkata 700001, West Bengal
6. Union Of India, Ministry Of Coal, Through Its Secretary, Shashtri Bhawan, New Delhi
7. M/s Bharat Conveyor Systems, 1, New Industrial Area, Rajgamar Road, Korba, Chhattisgarh
8. M/s Prathama Industries, CSIDC Plot No. 107 B, Sector B, Sirgitti Industrial Area, Bilaspur, Chhattisgarh.
9. M/s Sanjay Industries, Shed No. 5, New Industrial Area, Rajgamar Road, Korba, Chhattisgarh.
10. M/s Shakti Roller System, AA-1, Gali No. 4, Anand Parwat Industrial Area, New Delhi 110005

---- Respondents

For Petitioner	:	Smt. Fouzia Mirza and Shri Romir Sumit Goyal, Advocates.
For Respondent/SECL	:	Shri H.B.Agrawal, Senior Advocate with Shri Vinod Deshmukh, Advocate.

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

Order on Board

Per Navin Sinha, Chief Justice

06/01/2016

1. The Respondent-South Eastern Coalfields Limited published a Notice Inviting Tender (hereinafter called 'the NIT') dated 23.7.2015 for "procurement of Integrated Pre-Lubricated Cartridges as per specifications". The NIT provided for exemption from payment of Earnest Money Deposit (hereinafter called 'the EMD') by an intending bidder if it was registered with the National Small Industries Corporation (hereinafter called 'the NSIC') for tendered items subject to uploading of necessary documents in support of the same. The tender was liable to be rejected in absence of the requisite EMD or absence of necessary documents claiming exemption. The Petitioner as a bidder did not submit EMD claiming exemption as a Unit registered with the NSIC regarding the tendered item. The NSIC store details in support of the same were also uploaded. The technical bid of the Petitioner was rejected on 28.11.2015, stating that Integrated Pre-Lubricated Cartridge was specifically not covered in the NSIC store details submitted by it. It was therefore not eligible for exemption from EMD and had failed to submit EMD rendering its bid ineligible for consideration.

2. Learned Counsel for the Petitioner submitted that the NIT was in respect of a single item, Integrated Pre-Lubricated Cartidge which had to be in accordance with the specifications mentioned in the NIT at Annexure 'A'. It is the further case of the Petitioner that the NSIC store details mentioned in its NSIC certificate at serial No. 1 are but the ingredients of Integrated Pre-Lubricated Cartridge which is the end product. The rejection of its bid was therefore not justified.

3. The action of the Respondent in rejecting the bid on the aforesaid ground was also assailed as being arbitrary and discriminatory with reference to an earlier NIT published by the Respondent on 7.11.2013 also for Integrated Pre-Lubricated Cartridge as per the specifications which were likewise mentioned at Annexure 'A'.

4. Learned Counsel for the Petitioner submitted that in response to the latter NIT, identical NSIC store details had been furnished and exemption claimed from submission of EMD. The Respondent did not raise any objection that the NSIC store details did not mention Integrated Pre-Lubricated Cartridge specifically. Furthermore, on a challenge by one Pratham Industries to the award of contract under the NIT dated 7.11.2013 to the Petitioner in Writ Petition (C) No. 1068 of 2014, the Respondent justified the award of the contract to it as fulfilling the requirements of the tender which includes the exemption from payment of EMD accepting that it was duly registered with the NSIC for the tendered item-Integrated Pre-Lubricated Cartridge.

5. The NIT dated 7.11.2013 was published by the office of the General Manager, Hasdeo Area and the NIT dated 23.7.2015 has been published by the office of General Manager, Korba. The Respondent cannot have two different interpretations at its two different units with regard to the same NSIC store details for similar tender notices with regard to supply of Integrated Pre-Lubricated Cartridges as per specifications. Even if the specifications of the Integrated Pre-Lubricated Cartridge vary from one NIT to another, it would not change the eligibility for exemption from payment of EMD so long as the bidder was duly registered with the NSIC and it would include the components of an Integrated Pre-Lubricated Cartridge which is but only a final product. The action of the Respondent was therefore violative of Article 14 of the Constitution suffering both from arbitrariness and discriminatory attitude with regard to the same petitioner under two different contracts for the same item.

6. Learned Senior Counsel for the Respondent supporting the rejection of the Petitioner's technical bid submitted that there has been no arbitrariness or discriminatory behaviour. Under the tender notice dated 7.11.2013, Annexure 'A' provided for the specifications of the components of the Integrated Pre-Lubricated Cartridge. The specifications with regard to the components were covered by the NSIC store details submitted by the Petitioner. Under the present NIT, no separate specifications for the ingredients of the Integrated Pre-Lubricated Cartridge was mentioned. The specifications of the Integrated Pre-Lubricated Cartridge only as a final product was mentioned. Therefore, the two NITs were fundamentally different in nature and the question of any comparison between them to urge discrimination does not arise. It was specifically denied that the Korba Unit of the Respondent had acted contrary or in a discriminatory manner than the Hasdeo Unit under a similar contract with regard to a common NSIC store certificate.

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

8. The present is a matter relating to contract involving what we consider as a technical issue with regard to a product called an Integrated Pre-Lubricated Cartridge as a final product and the ingredients which go to make up the cartridge. The Court does not possess the expertise in these matters and therefore it is considered necessary to pass the following order.

9. Both the NITs are specific with regard to Integrated Pre-Lubricated Cartridge as per specifications being tendered items. There are certain components which go to make an Integrated Pre-Lubricated Cartridge. It is not in dispute that the components are mentioned in the NSIC store details furnished by the Petitioner. On the earlier occasion, the specifications of the components had also been mentioned in the Annexure to the NIT. Presently, the Respondent has chosen not to mention different specifications of the components but only Integrated Pre-Lubricated Cartridge of different specifications. So long as the

NIT is for supply of Integrated Pre-Lubricated Cartridge, it does not detract from that product merely because certain specifications of the ingredients and components which go to make the same may differ. If the specifications are not followed, the Integrated Pre-Lubricated Cartridge can be rejected as a whole. We find it a little difficult to appreciate that if in the earlier NIT also, the product to be supplied was an Integrated Pre-Lubricated Cartridge and the specifications mentioned separate details of the individual components, and the NSIC store details submitted by the Petitioner mentioned those components, the Respondent found it acceptable, but even though, the NIT dated 23.7.2015 was for the same product not with different specifications of the components but only the final product how it becomes a different product completely and is required to be mentioned separately in the NSIC store details as being one of the tendered items.

10. *Prima facie*, it appears to us that two Units of the Respondent at Hasdeo and Korba appear to be having different views on the subject. The submission of the Learned Senior Counsel to distinguish the two tendered notices has not appealed to us. It is therefore considered necessary to direct the General Manager (Contract Management Cell), South Eastern Coalfields Limited at Bilaspur to decide the eligibility of the bid submitted by the Petitioner by reasoned and speaking order within a maximum period of 15 days from the date of receipt and/or production of a copy of this order.

11. The writ petition is disposed in the aforesaid terms.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE