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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1811 of 2016**

Mahila Audyogik Utpadak Sahakari Sanstha Maryadit Sadak-Arjuni, Gondia, A Co-Operative Society, Through Its Authorised Representative Shri Jitendra Agrawal, S/o Shri Kishan Lal Agrawal, Age 46 Years, R/o Tahsil And Post Sadak-Arjuni, District Gondia (Maharashtra).

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Principal Secretary, Department Of Food, Civil Supplies And Consumer Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh State Co-Operative Marketing Federation Limited, Through Its Managing Director, 880, Civil Lines, Headquarters, Raipur, District Raipur, Chhattisgarh.
3. Managing Director, Chhattisgarh State Co-Operative Marketing Federation Limited, 880, Civil Lines, Headquarters, Raipur, District Raipur, Chhattisgarh.

---- Respondents**And****Writ Petition (C) No. 1772 of 2016**

Agrawal And Sons A Proprietor Ship Concern, Through Its Proprietor Shri Arvind Kumar Agrawal Status HUF S/o Late Shri Kumbhaj Lal Agrawal, Aged 50 Years, R/o Dauji Niwas Gandhi Chowk Neora, District Raipur Chhattisgarh 493114

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Principal Secretary, Department Of Food, Civil Supplies And Consumer Affairs, Mahanadi Bhawan Mantralaya, Naya Raipur Chhattisgarh
2. Chhattisgarh State Co Operative Marketing Federation Limited, Through Its Managing Director, 880, Civil Lines, Headquarters, Raipur Chhattisgarh
3. Managing Director, Chhattisgarh State Co Operative Marketing Federation Limited, 880, Civil Lines, Headquarters, Raipur Chhattisgarh

---- Respondents

For Petitioner	: Shri Anand Dadariya, Advocate.
For Respondent/State	: Shri Prafull N. Bharat, Additional Advocate General.
For Respondents No.2 and 3	: Shri Ashish Surana, Advocate.

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

Order on Board

Per Deepak Gupta, Chief Justice

30/08/2016

1. These two petitions are being disposed of by this common order since common questions of fact and law arise in these two petitions.
2. The Chhattisgarh State Co-operative Marketing Federation (hereinafter called as 'the Federation') floated a tender for sale of paddy which had become unfit for human consumption. This paddy was categorised into various categories. Feed-I which can be used for animals, Feed-II which can be used for cattle and Feed-III which can be used for poultry. In addition thereto, there is some paddy which can be used for industrial purpose and some paddy can be used for manure. The rest has to be dumped. The paddy was also classified by the year of its procurement.
3. The Petitioners submitted their bids for various categories. Petitioner-Agrawal and Sons was the highest bidder for Feed-III category in Pendra Road-I and Pendra Road-II and Petitioner-Mahila Audyogik Utpadak Sahakari Sanstha Maryadit was the highest bidder for Feed-II and Feed-III categories in Thelkadih and Nagar Kohra, District Rajnandgaon. Though the bids of the Petitioners were highest, they were not awarded the tenders for these places basically on the ground that their highest bids was not equal to offset price. The Petitioners had also submitted their bids for industrial manure category, but in these categories also according to the Federation, the bids of the Petitioners were very much on the lower side

and in fact, according to the Federation, the Petitioners are not the highest bidder except for two categories mentioned hereinabove.

4. The case of the Petitioners is twofold. With regard to the Feed category for which they are highest bidders in four stations, the case of the Petitioners is that there was no condition of offset price in the tender document and therefore, the Federation cannot enforce a condition of minimum price or offset price at a stage after negotiations had been held. With regard to the other categories, the argument of the Petitioners is that though they may not be highest bidders, none of the bidders, whose bid is higher than the Petitioners, has a license to use the paddy for industrial purpose or manure purpose and therefore, this paddy cannot be sold to any other person and resultantly, the Petitioners are the highest bidders and they may be allotted the same at the price offered by them. In the petition it is now stated that for industrial use and manure they are willing to pay Rs. 350/- for manure and Rs.155/- & 150/- respectively, for dumping. Admittedly, the Petitioners are not the highest bidders as far as the paddy meant for industrial use and manure is concerned. The Petitioners have filed these petitions with a prayer that the Respondents be directed to award tender in favour of the Petitioners for all categories in all the places.

5. On behalf of the Respondent-Federation, Shri Ashish Surana submitted before us a comparative chart and on going through the chart and the minutes of the meeting which have been annexed with the reply, we find that for paddy of the same year in different stations, the rates quoted by the Petitioners are very much lower than the rates quoted by other bidders. It may be true that the rates quoted are in different stations, but the difference is too large to be ignored. With the reply a copy of the

note has been attached, which shows that for the paddy of the year 2011-12 of Feed-III category, after negotiations, the Federation have been able to get a rate of Rs.565/- per quintal. For the year 2012-13, after negotiations, the Federation, for Feed-II category have been able to get a rate of Rs.795/- per quintal and for Feed-III category, a rate of Rs.663 and 667/- respectively per quintal. On the other hand, Petitioner-Agrawal and Sons for the year 2012-13 has only offered Rs.430/- per quintal and Petitioner-Mahila Audyogik Utpadak Sahakari Sanstha Maryadit offered Rs.400/- per quintal. The Federation has taken a decision not to accept the tenders of the Petitioners on the ground that the tenders are very much on the lower side.

6. The argument of the Learned Counsel for the Petitioners is that there is a policy that the some of the paddy should not be re-tendered again and again. It is also urged that since the offset price is not fixed in the tender, this cannot be done at the stage of negotiations. It is lastly urged that by re-tender, the whole process will be reopened again.

7. On the other hand, Learned Counsel for the Federation argued that the chart clearly depicts that the bids submitted by both the Petitioners are much lower than the bids submitted for similar categories of paddy by other bidders. It may be true that these bids were in different areas of the State but the difference cannot be so much. The rates quoted by the Petitioners are very much on the lower side. Any party who is selling its property including the State has a right to deal with the property in a fair manner. It is not the right of the Petitioners to get the paddy even if they are the highest bidders because if their bids are not comparable with the bids which the Federation has obtained in the other parts of the State, why should the

Federation sell the paddy at these station at a lower rate. We are not in agreement with the submission of Learned Counsel for the Petitioners that the offset price cannot be introduced at a later stage. It may be true that in the tender no offset price was fixed but if the bid is very much on the lower side, then the person who is selling his goods has a right not to sell his goods at such a low rate. Merely because the seller is a government body or government undertaking, does not mean that it is bound to sell the paddy to highest bidder, even if the price is much less than the market price. We are therefore not in agreement with the Learned Counsel for the Petitioners.

8. As far as industrial use and manure of the paddy is concerned, the main grievance of the Petitioners is that other bidders who have bids higher than them are not entitled to purchase this paddy because they did not submit any license to show that they are entitled to use this paddy for industrial use or for the purpose of manufacturing manure. We may however add that alongwith tender an undertaking was sought from all the bidders that the paddy will be used only for the purpose for which it is sold meaning thereby it is sold for Feed-III category, it will not be used for Feed-II category or similarly it is sold for Feed-II category, it will not be used for Feed-I category.

9. The Petitioners are right when they submit that to safeguard the public interest this paddy is not misused and the paddy should be sold only to those who have a license to use it for the purpose for which it is sold. This fact has now been admitted by the Federation also. In fact, the case of the Federation is that after it was evaluating the bids of others on the basis of undertaking, the Petitioners made a complaint that the bids of others should

not be accepted. However, the Federation found an anomaly in the notice inviting tender inasmuch as that though undertaking has been sought as mentioned by us earlier, there was no condition in the tender document that the bidder must hold a valid license. The Federation wants to rectify this by withdrawing the earlier tender and issuing a fresh tender.

10. Learned Counsel for the Petitioners urged that in fact if this is done, a lot of the paddy may not be sold. To avoid this situation, we can have a very simple solution. Instead of floating a fresh tender, the Federation is permitted by order of this Court to seek industrial license from any one of the earlier bidders. We are giving this direction because earlier also there was a condition in the tender document that an undertaking will have to be given by the tenderers that the paddy will be used only for the purpose for which it is sold. We are also giving this direction because if we re-start the process of re-tendering, some paddy will become older and may fall in a lower grade and that would cause loss to the public. We have to balance the rights of the Petitioners alongwith claim of the Federation and the larger interest of the public to ensure that the best price is obtained for the paddy, no paddy goes waste and lastly no paddy is misused. We therefore dispose of this petition with the following directions:-

- (i) That where the Petitioners are the highest bidders for Feed category i.e. in Pendra-I and Pendra-II as far as the Petitioner-Agrawal and sons is concerned and in Thelkadih and Nagar Kohra as far as the Petitioner-Mahila Audyogik Utpadak Sahakari Sanstha Maryadit is concerned, they may within one week make fresh offers and if their offers are comparable to others in the State, then the Federation is free to sell the same to the Petitioners. In case,

however, the offer of the Petitioners is not comparable to the offer of other bidders in the State, then the Federation shall be free to float fresh tender for these four centers only.

(ii) As far as industrial use and manure category of the paddy is concerned, we direct the Federation to issue letters to all the bidder including the highest bidders asking them to submit all the requisite permission and licenses showing that the bidders are licensed to use the paddy for the purpose for which it is sold as on 05.04.2016. In case, the highest bidder submits such certificate, the paddy can be sold to the highest bidder. If the highest bidder cannot submit such certificate then the paddy can be sold to the next higher bidder having such license.

(iii) Needless to say that the Respondent-Federation may enter into negotiations, but negotiations will be entered into only with those persons who had a manufacturing license as on 05.04.2016 i.e. the date of opening of the technical bid. In case, there are no eligible bidders, negotiations can be held with the Petitioners but if the price of the Petitioners is not satisfactory, then the Federation can float fresh tender.

(iv) We make it clear that this process as per the old tender should be completed latest by 30.9.2016 and if fresh tender has to be floated, then it should be floated latest by 15.10.2016.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay K. Agrawal)
JUDGE