

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.26798 of 2015 (O&M)
DATE OF DECISION: 29.03.2016

Hero EcoTech Limited

....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Piyush Kant Jain, Advocate for the petitioner

Mr. Rahul Dev Singh, DAG, Haryana

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral):

CM Nos.3495 and 3499 of 2016:

The replication are allowed to be taken on record
subject to all just exceptions.

Applications stand disposed of.

CWP-26798-2015:

The petitioner has challenged a term in the notice
inviting tenders (NIT) for the supply of approximately 27000
bicycles which stipulates that only five makes/brands may be
supplied.

2. This matter is covered by a judgment of this Court dated
14.08.2012 in the case of *M/s Vishal Cycles Pvt. Ltd. vs. State of
Haryana and others*, CWP No.13647 of 2012. That case also contained
an identical term in the NIT. The entire decision making process
leading to the introduction of this term is the same. The
respondents had constituted a committee and the committee, after

due deliberations, decided to restrict the procurement of bicycles of only five brands, namely, 'Atlas', 'Avon', 'Hero', 'Hercules' and 'BSA'.

3. We are bound by the judgment. The only ground on which the judgment was sought to be distinguished was that the attention of the Division Bench had not been invited to Rules 4 and 14 of the Store Purchase Rules contained in Appendix-14 to the Punjab Financial Rules, Vol.II issued vide Finance Department Notification dated 23.08.1961. Upon bifurcation of the erstwhile State of Punjab, the Haryana Government also adopted these rules. Rules 4 and 14 read as under:-

"Rule 4

Indents with complete specifications and drawings in accordance with which the stores are required shall be placed with Directorate of Supplies and Disposals, Haryana. If no specifications or drawings exist, the indenting Officer shall indicate if stores of trade pattern are acceptable. In case of uncommon items two approved samples or pattern shall be furnished for guidance. A reference to previous supply shall be made when the same stores are required again but in no case shall particular make or brand be insisted upon, as this restricts competition to the disadvantage of buying departments.

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Rule 14

In case of large variety of materials for which rigid standards cannot be laid down, the alternative approved brands of various makers shall be specified in the tender notices and purchases made direct from the manufacturers or their accredited agents, representatives or stockists rather than from the retailers."

4. Rule 4 does not place an absolute bar upon the party inviting tenders to procure material only of a particular make or brand. Rule 14 must be read as limited to those cases in which there is no justification/reasonable ground for stipulating such a

condition. There are cases where the nature of the equipment may be such that it would be necessary to insist upon only certain makes or brands.

5. We, however, do not intend expressing any opinion as to whether the present case would justify an exception to the general rule that particular makes or brands ought not to be insisted upon as the same restricts competition. This is in view of the judgment of this Court. We are unable to hold that the judgment is *per incurium* on account of attention of the Division Bench not having been invited to these rules.

6. In the circumstances, the petition is dismissed.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

29.03.2016
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(ARUN PALLI)
JUDGE