

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1409 of 2017**

M/s Rakesh Kumar Choubey, Registered Address: Rajpayaga Road, Naya Bazaar, Near DAV School, Lashkar, District Gwalior (M.P.) Pin Code- 474009. Through Its Proprietor: Rakesh Choubey, S/o Late Shri Mahadev Prasad Choubey, Aged About 54 Years, R/o- Rajpayaga Road Naya Bazaar, Near DAV School, Lashkar, District- Gwalior (M.P.) Pin Code- 474009.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Principal Secretary, Department Of Health & Family Welfare, Government Of Chhattisgarh Mantralaya, Mahanadi Bhawan, District- Raipur, (Chhattisgarh). Pin Code- 492002.
2. Managing Director, Chhattisgarh Medical Services Corporation Limited (CGMSC), 3rd Floor Govind Sarang Vyavasayik Parisar, New Rajendra Nagar, District-Raipur, (C.G.) Pin Code-492001.
3. General Manager, Technical, Chhattisgarh Medical Services Corporation Limited (CGMSC) 3rd Floor, Govind Sarang Vyavasayik Parisar, New Rajendra Nagar, District- Raipur, (C.G.) Pin Code- 492001.
4. Chhattisgarh Infotech Promotion Society (CHIPS) Through Its Chief Executive Officer, 3rd Floor State Data Centre Building, Opposite New Circuit House, Civil Lines, District- Raipur, (Chhattisgarh). Pin Code- 492001.
5. Raj Kumar Agrawal, General Manager- Technical Chhattisgarh Medical Services Corporation Limited (CGMSC)), 3rd Floor, Govind Sarang Vyavasayik Parisar, New Rajendra Nagar District- Raipur (C.G.) Pin Code- 492001.
6. Jai Kumar Pankaj Kumar, Loha Bazaar District- Bhopal (M.P.)

---- Respondents

For Petitioner	: Shri K.Rohan, Advocate
For State	: Shri R.K. Gupta, Deputy Advocate General
For Respondents No.2,3 & 4	: Shri CJK Rao, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, Chief Justice

30/06/2017

1. This writ petition is filed seeking intervention with the decision of the Chhattisgarh Medical Services Corporation Limited (hereinafter referred to as 'CGMSC') to reject the offer made by the petitioner in response to a Notice Inviting Tender floated by it following process prescribed through Annexure P/2.
2. We have heard learned counsel for the petitioner, the learned State counsel and the learned CGMSC.
3. The fact of the matter remains that the petitioner uploaded his offer online on <https://eproc.cgstate.gov.in> which was the prescribed point to which uploading ought have been done. Annexure P/7 discloses that the petitioner's bid had certain defects and information was given to the petitioner to cure those defects. Such information was made available to the petitioner by uploading the data in the website of CGMSC. In the meanwhile, according to the petitioner, he came to know on telephonic information on his query that the time for rectification was enlarged. He thereupon was told that certain corrigenda were issued by CGMSC.
4. The short issue on which the dispute revolves is as to whether the petitioner could be tied down to the information disseminated by CGMSC through the different corrigenda which were stated to have been published in the official website of the CGMSC, that is to say,

www.cgmsc.gov.in; or whether the petitioner's offer should be permitted to be considered for competition along with the other offers if the petitioner has rectified the defects pointed out by CGMSC. By now the situation is that the petitioner's financial bid is already available with CGMSC. Therefore, even if the financial bid of the other competitors have been opened, the petitioner will have no opportunity to submit a further financial bid after noticing the competitive offers made by the other participants in the tender. Therefore, the financial interest of CGMSC which deals with purchase and supply of medicines would also be appropriately taken care of if the petitioner's offer is also considered and his financial bid is also taken up for competitive consideration along with the other bids which are available now with CGMSC. We say this particularly because when the bids were required to be uploaded in a given online site, in the normal course of human conduct it would have to be expected from all concerned that they will look for further materials and inputs and outputs as between the parties, essentially through that site. We are not oblivious of the fact that the summary sheet of cover-A, which is Annexure P/7 was actually published in the website of CGMSC. But, the uncontroverted pleading of the petitioner is that he came to know about the publication of such summary sheet and the corrigendum only on a telephonic query with the office of CGMSC. On the totality of the facts and circumstances, we are of the view that the best interest of the proposed contract would be subserved and the petitioner's interest will be protected by CGMSC taking up the financial bid of the petitioner as well, for consideration on competitive basis in terms of Annexure P/2 Invitation for Tenders, if the petitioner has satisfied the

requirement to rectify the defects pointed out by CGMSC in Annexure P/7.

5. In the light of the view that we have taken above, respondents No. 2 to 4 are directed to do the needful in terms of what is stated in the immediate preceding paragraph. This writ petition is ordered directing accordingly. Having regard to the larger interest of the proposed contract, CGMSC will conclude on the offers at the earliest.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge