

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 265 of 2017**

- Ghrit Farms Pvt. Ltd. (A Private Limited Company), Through Its Director, Harish Kumar Agrawal, Aged About 37 Years, Office At Adarsh Nagar, Charoda, B M Y, Bhilai 3, District Durg (Chhattisgarh) India

---- Petitioner

Versus

- Chhattisgarh Rajya Beej Evam Krishi Vikas Nigam Ltd. (A Government Of Chhattisgarh Undertaking) Mukhyalaya Beej Bhawan, Ravigram, Telibandha, G E Road, Raipur, (Chhattisgarh)

---- Respondent

For Petitioner	:	Mr. R.S. Goyal, Advocate
For Respondent	:	Mr. A.S. Kachhwaha, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board**Per Thottathil B. Radhakrishnan, Chief Justice****28.03.2017**

1. This Writ Petition has been instituted on 30.01.2017 challenging the decision communicated through the letter dated 03.03.2016 by which the Managing Director of the Respondent which is a Government undertaking expressed its decision to cancel the tender floated for supply of RCO-29 Greenhouse, Poly House, Net House, Shade Net, Mist Propagation Chamber, Plastic Tunnel and Root Trainer. The Tender was floated for the year 2015-2016 and last date of submission was 05.08.2015. The date of opening of the technical bid was 14.12.2015. Ultimately Annexure P/1 was issued stating that out of three tenderers one did not qualify in the

technical bid and when the financial bid was considered, the other two, including the Petitioner had quoted same rate and that, therefore, the Respondent has decided to cancel the tender.

2. The Respondent, though a Government undertaking, was not dealing with a statutory contract. It was one of the transactions in the course of its activities in relation to the purpose for which it has been established. It is within its official wisdom to have concluded that the competing tenders which had the same quoted rates are not to be considered for award of the contract.
3. Learned Counsel for the Petitioner made reference to the Chhattisgarh Sasan Bhandar Kraya Niyam 2002 and argued that the Petitioner being manufacturer and that too being an establishment within the State of Chhattisgarh, is entitled to preferential treatment.
4. The factual matter remains that a preferential treatment rule by itself is not decisive. It is too late for the Writ Court to interfere with a decision of the Respondent to cancel the tender when there is a case of time lag between 03.03.2016, the date of the impugned communication (Annexure P/1) and the institution of this Writ Petition on 30.01.2017. Also, from the minutes of proceeding in this Writ Petition, the Bench had raised question of laches and delay and the Petitioner has responded by placing on record an affidavit along with interlocutory application. The contention in the interlocutory application and the affidavit is that the Petitioner has been pursuing the matter with the Respondent by making repeated representations. The time lag is about a year and the matter relates to

contract. We are unable to take cognizance of the fact that the Petitioner had eligibility to excuse the latches even if it had bonafidely awaited for a decision in its favour from the Respondent. In commercial matters, when the bargain between the parties and the substratum of which, are matters that keep changing from time to time, having regard to change of the purchase rates and requirement of the establishment, etc., it would not be within the domain of the Writ Court to compel Respondent to grant the contract in favour of the Petitioner or to force the Respondent to consider the two tenders which were successful in the technical bid and then to proceed to consider the financial bid.

5. For the aforesaid reasons we are of the view that this is not the case where this Court would exercise its jurisdiction under Article 226 of the Constitution of India to come to the aid of the Writ Petitioner, particularly when the Respondent has decided to cancel the tender.
6. For the aforesaid reasons the Writ Petition fails and the same is accordingly dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge