

\$~24

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4506/2017, C.M. APPL.19681/2017 & 28471/2017**

NEW ENGLAND RESEARCH INC & ANR Petitioners
Through : Sh. Sudhir Nandrajog, Sr. Advocate
with Sh. Hameed. S. Shaikh and Sh. Nitin Yadav,
Advocates.
versus

**THE COUNCIL OF SCIENTIFIC & INDUSTRIAL RESEARCH &
ANR** Respondents
Through : Sh. Jayesh Unnikrishnan and Ms. Adrija
Mishra, Advocates, for Respondent Nos. 1 and 2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.P.GARG

ORDER
% **09.08.2017**

1. The petitioners' complain that the cancellation of the Notice Inviting Tender (NIT) dated 12.07.2016, issued by the respondents [hereafter called "the CSIR"] and the tender, is arbitrary.
2. The brief facts are that on 12.07.2016, the NIT was issued for procurement of *Multipurpose Cyclic Rock Triaxial System*; the last date for the submissions of the bids from interested parties was 24.08.2016.
3. As in other cases, the tender involved evaluation at two stages, i.e. technical and financial bid. The pre-bid conference was held on 25.07.2016 by the CSIR. Thereafter apparently, the tender was republished after changing some specifications and a corrigendum was issued on 19.08.2016. The petitioners furnished their fresh tender

on 09.09.2016. It is contended that during technical evaluation, certain clarifications were sought which were responded to satisfactorily. It is, however, stated that the petitioners' financial bids were opened along with those of other successful bidders who had cleared the technical bid stage. The petitioners' bid was considered the lowest. It was submitted that in the circumstances the petitioners reasonably expected to be awarded the contract.

4. The petitioners' complaint is that on 09.03.2017, they received a letter stating that CSIR had closed the tender, i.e. in effect cancelled the process. The said communication reads as follows:

*“CSIR-Central Institute of Mining & Fuel Research
(Council of Scientific & Industrial Research)
Barwa Road, Dhanbad-826015, Jharkhand, India*

To,

Mr. Gregory. J. Martin,

Vice President,

New England Research Inc.

33, Olcott Drive, Suite L1,

White River Junction, VT 0500 1 USA

E-mail: gmartin@ner.com

*Subject: Procurement of Multi-purpose Cyclic Rock
Triaxial System.*

Sir,

Kind attention is invited to the above referred tender.

In this connection I am directed to inform you that Director, CSIR-Central Institute of Mining & Fuel Research, Dhanbad (Jharkhand) has approved the closure of the said tender. Accordingly, the said procurement process is stopped and earnest money

*deposit submitted by M/s. Ultra Technologies Pvt. Ltd.,
New Delhi is returned to them.*

Inconvenience is regretted.

*Yours faithfully,
Sd/-
Stores & Purchase Officer
CSIR-CIMFR”*

5. It is submitted that the respondents/CSIR, being a public authority and indeed even considered a “State” under Article 12 of the Constitution is duty-bound to act reasonably. The petitioners contend that the rationale submitted during the course of hearing - that the tender process had to be cancelled because of conflict on the part of Dr. Mani Ram Saharan [hereafter “Dr. Saharan”] who had participated in the tender evaluation as a Member of the Committee is utterly unfounded.

6. Learned counsel for the petitioner contended that the argument that Dr. Saharan’s so called association with one Sparsh Blasting Research Private Limited (hereafter called “Sparsh”), which in turn was co-founded by the Director of the second petitioner, was not known, is without any basis. Learned counsel relied upon certain documents shown to the Court during the course of the hearing and the minutes of meeting to decide the terms of reference to sign agreement with CSIR and Central Institute of Mining and Fuel Research, on the one hand, and Sparsh, on the other, dated 12.01.2016; the minutes of meeting dated 04.02.2016 and the copy of Dr. Saharan’s resignation from Sparsh has also been placed on the

record. Furthermore, the petitioners rely upon an email written to Krishan Pal Singh, the co-founder of Sparsh.

7. Pursuant to the orders of the Court, CSIR produced the original file. The relevant documents contained in the file would show that a meeting was held which recommended the constitution of a Review Committee to verify the genuineness of allegations of one bidder with respect to the participation of Dr. Saharan. It is not in dispute that Dr. Saharan is one of the members of the Technical Evaluation Committee of the CSIR which had the occasion to consider the technical and financial bids and made recommendations which ultimately were to benefit the present petitioners. The Review Committee comprising five members held its meeting on 08.02.2017 pursuant to which appropriate responses were sought. Dr. Saharan's response too in this regard was sought.

8. The record also shows that there was a meeting of the Review Committee on 23.02.2017 which considered the information provided by Dr. Saharan. Thereafter the committee recommended closure of the entire tender in the following manner in its meeting on 04.03.2017:

“Minutes of the Technical & Purchase Committee Dated 04.03.2017

Subject: Considering the recommendations of the Review committee

Reference: Alleged complain against one of the TSC member (file reference: CIMFR/PUR-14(6)2016

T&PC has gone through the recommendations of the Review Committee meeting dated 23.2.2017 submitted to

D’CIMFR, and is of the opinion that the file cannot be processed further under current circumstances and thus it may be treated as closed. The intimation should be sent to Shri VD Singh, Ex CGM (washery) who is an independent monitor engaged for the case. Further T&PC recommends that EMD of two technically qualifying firms, i.e. M/s MTS Systems and M/s New England Research Inc, USA may be returned back.

*Sd/- Sd/- Sd/-
SPO F&AO IO/PL*

*Sd/- Sd/- Sd/-
Member Member Member”*

9. It is quite apparent from the above factual discussion that what impelled the CSIR to decide as it did and close/cancel the tender was the participation of Dr. Saharan. The endeavour of the learned senior counsel was to say that Dr. Saharan’s involvement or interaction with Sparsh was known all along. Reliance is also placed in this regard on the minutes of meeting for deciding the terms of another agreement. These minutes disclose that Dr. Saharan apparently sought to report to CSIR and file an application for patent which it did not approve. Furthermore, the minutes also clearly show that Dr. Saharan had never sought permission to float Sparsh.

10. The minutes of the meeting undoubtedly show that in a general sense, at least some official of the organization had some knowledge of the organization. At the same time, that knowledge cannot, in the opinion of the Court, be reasonably attributed to CSIR. Strangely, the petitioners have been able to procure the resignation letter of Dr.

Saharan from Sparsh dated 29.02.2016.

11. We need not comment more than to notice that the minutes of the meeting relied upon on behalf of the petitioners itself shows that Dr. Saharan never sought permission of CSIR to form a private company when he continued as an officer of the organisation.

12. Having regard to these circumstances, the Court is of the view that the complaint of arbitrariness is absolutely unfounded. On the other hand, if the CSIR had continued to proceed with the bid, it would have been an instance where the impartiality of the process would have been compromised and at the least, some undue benefit would be conferred on the petitioners. In these circumstances and having regard to the fact that the petitioners' rights had not crystallised as a party which had received the purchase order or formally entered into a contract, the cancellation of the tender was in public interest. The petition is, therefore, dismissed as unmerited.

S. RAVINDRA BHAT, J

S.P.GARG, J

AUGUST 09, 2017/ajk