

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1027 of 2019**

- Shashi Kapoor Upadhyay S/o Late Ramsubhag Upadhyay Aged About 49 Years R/o Station Road, Naila, Janjgir, Champa, District Janjgir Champa Chhattisgarh.

---- Petitioner**Versus**

1. Chhattisgarh State Marketing Corporation Ltd. Through - Managing Director, Abkari Bhawan, Near Chokra Nala, Labhandih, Raipur, Chhattisgarh
2. General Manager Chhattisgarh State Marketing Corporation Ltd. Abkari Bhawan, Near Chokra Nala, Labhandih, Raipur Chhattisgarh
3. M/s Vijay Trading Co., Proprietor - Vijay Chadda, S/o Surendra Mohan Chadda, A/o 36, Years, R/o House No. 604, H.R. Tower, Raimura Apartment, D.D. Nagar, Raipur, District Raipur, Chhattisgarh. (Declared L - 1 In Tender Proceedings)

---- Respondent

For Petitioner
For Respondents 1 & 2

Mr. Saurabh Dangi, Advocate
Mr. Rajeev Shrivastava, Advocate

For Respondent No.3

Mr. Mateen Siddique, Advocate

Hon'ble Mr. P.R. Ramachandra Menon, Chief Justice &

Hon'ble Mr. Prashant Kumar Mishra, Judge

Order On Board By

P.R. Ramachandra Menon, Chief Justice

10/5/2019

1. Heard.

2. The alleged arbitrary rejection of the technical bid of the petitioner in response to Annexure P/1-tender made the petitioner to approach this Court challenging the course pursued by respondents 1 & 2 in confirming the bid in favour of the third respondent.

3. The prayers are in the following terms:

“(i) That the Hon'ble Court may kindly be pleased to declare the conduct of the respondent authorities in rejecting the commercial bid of the petitioner as illegal and arbitrary.

(ii) That the Hon'ble Court may kindly be pleased to direct the respondent authorities to quash the tender proceedings initiated under tender No.CSMC/Tender/2019-20/01(A) dated 31.01.2019 (Annexure P/1).

(iii) That the Hon'ble Court may kindly be pleased to direct the respondent corporation to call fresh bids for the above mentioned tendered work.

(iv) Any other relief, which this Hon'ble Court deems, fit in the facts and circumstances may also be granted in favour of the petitioner.”

4. Heard Mr. Saurabh Dangi, learned counsel for the petitioner, Mr. Rajeev Shrivastava, learned counsel for respondents 1 & 2 and Mr. Mateen Siddique, learned counsel for respondent No.3 at length.

5. When the matter came up for consideration earlier before this Court, we required learned Standing Counsel for respondents 1

& 2 to be ready with the relevant records in connection with the tender. Today, the relevant documents are procured and placed for consideration before this Court.

6. The matter is subjected to scrutiny in such circumstances.
7. The first respondent-Corporation issued Annexure P/1- tender for transportation of liquor, both foreign and country made, to various destinations inviting offers from transporting contractors, who owned minimum of 15 transport vehicles (transport vehicles having pay load of 5 to 10 tonnes).
8. While stipulating the eligibility conditions, it was stated that copies of the registration cards of the vehicles should be submitted along with the tender, adding that the registration should be in the name of the firm or in the name of proprietor of firm. The scheme of the tender involved 'commercial bid' or technical bid and 'price bid', to be submitted separately.
9. Cover 'A' was to be labelled as "Commercial Bid", whereas, the Cover "B" was to be labelled as "Price Bid", both addressed to the Managing Director of the respondent-Corporation so as to reach within the stipulated time. It was further stipulated that the Commercial Bid should consist of the application in 'Appendix I' and Demand Draft towards the earnest money deposited.
10. The case of the petitioner is that he was having the requisite number of vehicles being the owner and since he satisfied all the qualifications, he sought to participate in the bid by

submitting Cover 'A' and Cover 'B'. The last date of submission of tender was on 21.2.2019 at 4:00 p.m., which came to be subsequently extended to 26.2.2019 by issuing Corrigendum Notification.

11. The grievance of the petitioner is that his commercial bid or technical bid came to be rejected for want of producing requisite materials to prove the vehicle capacity, which according to him is not correct, as he had produced copies of the registration certificates of the vehicles concerned. Earlier, the petitioner was given to understand that the rejection was for non production of copies of the insurance cover and fitness certificates. It is stated that the documents regarding insurance cover and the fitness of the vehicle were to be substantiated only by the successful bidder and that the said stage was not reached.

12. Reference is made to clause 2 of Annexure P/1 under the heading **"Agreement"** with particular reference to clause (a) and (h), which are reproduced below :

"a) The successful tenderer should execute an agreement for the fulfillment of the contract in the stamp paper within three days from the date of acceptance of the Tender (The terms and conditions contained in this tender document will be converted in to contract). The format of agreement is enclosed at **Appendix-5.**

h) He will deposit the R.C. Book, fitness certificate, Insurance certificate and other documents of the

Lorries/Mini Notarised copies to the District Manager, CSMC LTD., till Termination of his contract. The same can be taken by him in written request for payment of Tax and renewal of Insurance. However, the same R.C. books to be returned to the Managing Director's office immediately on completion of the specific work."

13. Learned counsel for the petitioner asserts that the said documents are required to be produced only if the person concerned becomes successful in the tender proceedings and since the said stage was yet to be reached, rejection of the tender submitted by the petitioner for want of the said documents was not correct or sustainable and hence, liable to be entertained by this Court. Learned counsel submits that the only requirement as to the submission of documents along with the tender is as envisaged under clause 1.1 and 1.1.1. i.e. production of the registration card, which part has already been satisfied by him. Since no other document was required to be produced along with the tender, rejection of the tender of the petitioner and awarding the tender to the third respondent is colourable exercise of power and is not correct or sustainable.

14. Learned Standing Counsel for first and second respondents as well as learned counsel for the third respondent submit that the idea and understanding of the petitioner is thoroughly wrong and misconceived. It was for the participant in the bid to have substantiated the credentials, particularly with reference to the ownership of the vehicle and the load capacity. This is very important in view of the nature of the contract. The load capacity of the vehicle is not reflected from the certificate of

registration, which alone was the only document produced by the petitioner. Learned counsel for the Corporation also submits that the third respondent had submitted all the relevant documents including the proof of ownership as also load capacity and accordingly, the tender was awarded to the third respondent, being 'L1'.

- 15. The Corporation placed the relevant file for perusal of the Court and we have perused the same.
- 16. It is seen from the proceedings in the file that the third respondent had virtually produced a copy of the 'permit' in respect of the vehicles concerned, issued in terms of the relevant provisions of the Motor Vehicles Act, 1988, read with Rule 73 (1) (c) of the CG Motor Vehicle Rules, 1994.
- 17. As per the said rules, 'permit' has to be issued in the prescribed format. It would be worthwhile to extract the 'Form' as part of the proceedings, for easy understanding:

FORM M.P.M.V.R.-50 (G.C.P.)

[See Rule 73 (1) (c)]

GOODS CARRIAGE PERMIT

OFFICE OF THE TRANSPORT AUTHORITY.....(M.P.)
(Permit granted *vide* STA/RTA order dated..... passed in
Case No. under Section 79 of the Motor Vehicle Act, 1988)
G.C.P. No.....

- 1. Name of the Holder
(Name of Father/Husband).....
- 2. Full address
- 3. Area for which permit is valid
- 4. Type and capacity of vehicle (including Trailers and the alternative trailers of articulated vehicle)-

Registration mark of vehicle	Type (Make and Model of body)	Load capacity (Kgs.)	Gross Vehicle weight (Kgs.)	Unladen Weight (Kgs.)
(1)	(2)	(3)	(4)	(5)

5. Date of expiry of permit.....w.e.f.....
6. Nature of goods to be carried:-
.....
7. This permit shall be subject to the conditions specified below in addition to the conditions laid down in sub-sections (2) and (3) of Sections 79 and 84 of the Motor Vehicles Act, 1988 :-

(a) The records to be maintained and the dates on which returns are to be made to the Transport Authority.

(b) Arrangements stated in the application for housing, maintenance and repair of the vehicle(s) and for storage and safe custody of goods will be maintained;

(c) The Regional Transport Authority may after giving notice of not less than one month :-

(1) vary the conditions of the permit;

(2) Attach to the permit further conditions.

Secretary,

Dated

.....Transport Authority
.....(M.P.)

Renewed from to vide Secretary STA/RTA order dated passed in Case No. and also valid in regions on usual terms and conditions and following further conditions:-

Secretary,

Dated.....

.....Transport Authority
.....(M.P.)

18. There is a specific column ('column No.3') in the table given under clause 4 to show the 'load capacity' in Kgs, besides the Registration mark of the vehicle; Type (make and model of

body); Gross weight Vehicle; Unladen Weight, as shown in columns 1, 2, 4 & 5 respectively.

19. Learned counsel for the petitioner submits that 'permit' is not at all necessary, as the vehicles' load capacity is discernible from the certificate of registration itself, copies of which have been produced as Annexure P/3 (page 33 onwards). It is stated that the first figure under the heading 'weight' is "Unladen Weight" and the next figure is the "Rear Extension Weight". According to the learned counsel for the petitioner, these figures have to be added together to find out the load capacity.

20. We fail to understand the basis of this submission.

21. In fact, how the 'loading capacity' of the vehicle is to be calculated, need not be in the knowledge of the respondent concerned. Insofar as their concern is only with regard to the certified extent of load capacity, which is to be substantiated by proper documents issued by the competent authority. The said authority is none other than be the authorities under the Motor Vehicles Department and how the load capacity of the vehicle has to be assessed is within the knowledge of such experts/competent body and not within the purview of this Court or the respondents herein.

22. Learned counsel for the petitioner further submits that at no point of time, was the petitioner called upon to produce copy of the 'permit', which otherwise would have been produced then and there. This being the question, there is a loss of

opportunity, which requires interference.

23. This is sought to be answered by learned Standing Counsel for the Corporation pointing out that the petitioner cannot plead ignorance as to the requirements in this regard, as the petitioner himself had produced copy of the 'permit' of some other vehicle in respect of a different route. He submits that, in respect of Bastar Division, on the basis of the said documents, the petitioner was declared as qualified and his technical bid was accepted, but since the petitioner did not turn to be L-1, the contract could not be awarded to him.

24. This Court finds that there is considerable force in the said submissions insofar as the petitioner has already submitted copy of the relevant 'permit' to show the 'load capacity' of the vehicle concerned in respect of Bastar Division. Then, what made him to shy away from by not producing similar documents in respect of the other divisions is a matter of mystery. The pleading of ignorance does not weigh in any manner.

25. It is also relevant to note that in clause 1.1.1 of Annexure P/1, production of registration card of the vehicle is clearly stated which is to **prove the ownership** and nothing else. The vehicle capacity is sought to be proved by producing relevant documents separately, as per the contents of Appendix 1 at column No.6 (which is in connection with **number** of lorries; number of vehicles **owned**, and as also with regard to the **load capacity**).

26. Though the petitioner could contend that he has succeeded in proving the ownership and the number of vehicles owned by him, he has not proved the 'load capacity' on the strength of valid and reliable documents issued by the competent authority.

27. In such circumstances, we are of the view that the challenge raised by the petitioner does not contain any pith and substance. The writ petition is accordingly dismissed.

28. The file produced by the respondent-Corporation is returned to the Standing Counsel for the Corporation.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Prashant Kumar Mishra)
Judge

29. During the course of hearing, learned counsel appearing for the State, submits that there is some change in the development by virtue of letter dated 9.5.2019 issued by the Ministry of Road Transport and Highways for further course of action. The said letter is addressed to the Chief Engineer (NH), PWD, Raipur, Chhattisgarh. The same reads as follows :

No.12027/12/2010-CG/Part-Zone-4
Government of India
Ministry of Road Transport & Highways
(Zone-IV Section)
Transport Bhawan, 1, Parliament Street, New Delhi-110001

Dated:09.05.2019

To,
Chief Engineer (NH),
PWD, Raipur,
Chhattisgarh

Sub: - Acceptance of H1 bid for toll collection at Kumhari Toll Plaza at km.28572 of Raipur-Durg four lane section from km. 281.00 to 307.600 of NH 006 (New NH53) in the State of Chhattisgarh.

Sir,
Kindly refer to letter no. 31/CE/NH/TC/44-05/2018/II dated 30.01.2019 requesting acceptance of H1 bid amounting to Rs 19,57,77,777.00. The proposal has been examined and with the approval of competent authority it is directed that guidelines/ standard operating procedure stated in Ministry's circular no. NH-15017/5/2019-P&M dated 07.03.2019 (copy enclosed) may kindly be followed. Accordingly, following actions as stated in Ministry's circular no. NH-15017/5/2019-P&M dated 07.03.2019 may kindly be taken immediately:-

- (i) A draft user fee notification may kindly be prepared clearly specifying NHAI as a Toll collection agency, the same shall be submitted within one week period to Ministry through Regional Officers for approval of competent authority.
- (ii) Upon successful processing of user fee notification, the user fee plaza under consideration would be handed over to NHAI for management for tolling.

NHAI shall be informed well in advance regarding the above action being taken up by State PWD.

(iii) The above bid was valid upto 06.05.2019 only as per bid validity submitted by bidder. Since, recommendation of CE(NH) for acceptance of bid has not been approved by competent authority, the ongoing bidding process may be annulled.

Yours Faithfully

SD/-

P. K. Mourya

Superintendent Engineer (Zone-IV)

For Director General (Road Development) & SS

Copy To:

(i) Regional Officer MoRTH, Raipur, Chhattisgarh with a request to ensure the compliance of para (i) above & submit draft toll notification latest by 15.05.19 positively.

(ii) Chairman, NHAI {Kind Attn. CGM, Toll, NHAI} – with a request to take all necessary actions for toll collection management of above toll plaza, at the earliest.

Yours Faithfully

SD/-

P. K. Mourya

Superintendent Engineer (Zone-IV)

For Director General (Road Development) & SS

This letter will form a part of the record.