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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3403 of 2017**

Sensa Core Medical Instrumentation Private Limited, Registered Address Plot No. 3, Export Promotion Industrial Park Pashamylaram, District Sangareddy (Andhra Pradesh) Pin Code – 502307. Through its Director, M . Nagaraju, S/o Late Shri M. Subbarayadu, Aged About 54 Years, R/o Flat No. 202, Ruby Block Udaya Polygon Reddy Colony Chandanagar, District Hyderabad (Telangana) Pin Code - 500050. Authorised Signatory Aakash Mishra.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Principal Secretary Department of Health and Family Welfare Government of Chhattisgarh Mantralaya, Mahanadi Bhawan, District Raipur Chhattisgarh, Pin Code - 492002.
2. Managing Director , Chhattisgarh Medical Services Corporation Limited (CGMS C) , 3rd Floor, Govind Sarang Vyavasayik Parisar New Rajendra Nagar, District Raipur Chhattisgarh Pin Code - 492001.
3. 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 .
4. S D Biosensor Healthcare Pvt. Ltd., Unit No. 202, A-D, 2nd Floor Tower-A Unitech Signature Towers South City - 1 , District Gurgaon (Haryana) Pin Code – 122001.

---- Respondents

For Petitioner	: Shri K. Rohan, Advocate
For Respondent/State	: Shri Vikram Sharma, Panel Lawyer
For Respondents No.2 & 3	: Shri C. J. K. Rao, Advocate
For Respondent No.4	: Shri Kishore Bhaduri, Advocate

Hon'ble Shri Prashant Kumar Mishra, Acting Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****02/04/2019****Per Prashant Kumar Mishra, Acting Chief Justice**

1. Pursuant to the tender notice issued by respondent No.2/Corporation inviting bids from licensed manufacture/distributor/promoter for supply of equipments, the petitioner along with other bidders submitted their bid. In the bid evaluation process, the sample of Glucometer supplied by the petitioner was not found to contain control solution, therefore, the bid submitted by the petitioner was

not found suitable for further evaluation.

2. Challenge to the information (Annexure P/1) sent to the petitioner about rejection of his bid has been assailed on the ground that the bid has been rejected in demonstration, whereas petitioner was never informed as to when the physical demonstration will take place, therefore, rejection is in violation of principles of natural justice as well as contrary to the terms and conditions of the tender as contained in clause 4 of the tender process.

3. In clause 4 of the terms of tender, it is mentioned that bidders meeting all criteria of Cover A will be qualified for evaluation of Cover B (Technical Bid). Price bid Cover C (of qualified bidder) will be opened only for those items of any bidder that deemed satisfactory and responsive during technical evaluation and physical demonstration at purchaser's site or bidder's site as deemed suitable. Price comparison will be done on the basis of ultimate cost to the purchaser that includes cost of equipment and CMC price for 5 years.

4. Clause 8 of terms of tender containing other important instructions would include sub-clause 9 providing that samples submitted/demonstrated by eligible bidders will be evaluated by a technical committee. Only selected samples/models will be considered for price comparison and further process. The successful bidder has to supply items exact to the samples submitted/demonstrated. In case of the demonstration of item is to be done at bidder's site, all travel and accommodation of technical team will be arranged and borne by the bidder.

5. A conjoint reading of clause 4 of terms of tender providing demonstration and clause 8.9 for evaluation of samples would reveal that demonstration of samples is to be done of only those samples which have been found suitable by the technical committee. If the samples submitted by the petitioner along with bid documents have not been found to be fit by the technical committee, there was no

occasion for inviting the petitioner to demonstrate the samples of the item, for which, the bid has been submitted. Thus, reliance on clause 4 relating to demonstration would not assist the petitioner in challenging the rejection of his bid. Even if, it is mentioned in Annexure P/1 that the bid has been rejected in demonstration, it is to be seen that in clause 8.9 of the terms of the tender, the word 'samples submitted' has been used conjointly as 'samples submitted/demonstrated' at the same place meaning thereby 'samples submitted' may be evaluated by a technical committee or the 'samples demonstrated' may also be evaluated by a technical committee. Therefore, the word 'samples submitted/demonstrated' having been used in one place. Mere use of the expression 'rejected in demonstration' would not mean that the samples have been rejected during demonstration, but it can also be held that the samples submitted has been rejected during technical evaluation.

6. In the tender of this nature which invites for supply of medical equipments, the owner of the bid cannot take a risk of processing the tender of a bidder whose sample has failed in technical evaluation. Any technical defect in a medical equipment would eventually affect the public at large who visit Government hospitals for their treatment, therefore, in such matters, strict adherence to the technical evaluation should always be welcomed.

7. Even otherwise, the rate contract for supply of medical equipments under the subject tender process was valid for a period of two years. At this stage, learned counsel for respondent No.2/Corporation would submit that the entire supply has already been made by the successful bidder i.e. respondent No.4. He would also submit that if the Corporation intends to purchase any fresh equipment, for which, subject tender was issued, the same shall be made after fresh bidding process.

8. For all the above-stated reasons, this Court does not find any substance in this petition. The petition is dismissed.

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh