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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2489 of 2019

- M/s Sameer Singh And Associates (A Partnership Firm Registered Under Indian Partnership Act) Through Its Partner Amit Kumar Shukla S/o Late R.K. Shukla, Aged Abput 32 Years R/o Golbazar, Masjid Gali, PS City Kotwali, Tehsil and District Raipur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of Excise, Mantralaya Mahanadi Bhawan, Atal Nagar, Raipur (CG)
2. Managing Director Chhattisgarh State Marketing Corporation Limited, (CSMCL) Excise Building, Fourth Floor, Chokra Nala, Labhandi District Raipur (CG).
3. M/s Nitesh Agrawal & Associates, Shop No.C-10, Netaji Complex, Jharhabhata Mandir Chowk, District Bilaspur (CG)
4. M/s ADB & Company, Shop No.221/222, Shivnath Complex, Chouhan Estate, Near Maurya Talkies, G.E. Road, District Raipur (CG)
5. M/s Rahul Mishra & Associates, Neha Bhavan, ST 9 Model Town, Post Nehru Nagar, District Durg (CG).

---- Respondents

For Petitioner	:	Shri Rohit Sharma, Advocate
For Respondent No.1	:	Shri Gagan Tiwari, Dy. Govt. Advocate
For Respondent No.2	:	Shri Rajeev Shrivastava, Advocate

Hon'ble Shri P. R. Ramchandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Parth Prateem Sahu, J

07/08/2019

1. Challenge in this writ petition is to the action of respondent authorities in cancelling Tender No.CSMC/Tender/2019-20/2(B)

dated 7.1.2019 floated for 'appointment of Chartered Accountant Firms for assignment of internal audit of retail vending shops'.

2. Facts of the case, in nutshell, are that on 7.1.2019 respondent No.2 issued tender notice inviting tenders from the Chartered Accountants registered with the Institute of Chartered Accountants of India (ICAI) for appointment of 'Chartered Accountant Firms for assignment of internal audit of retail vending shops'. Last date & time for submission of tender document was 28.2.2019 at 3.00 p.m. Date & time for opening of technical bid was 28.2.2019 at 4.00 p.m. As per schedule given in tender notice, the technical bid was opened on 1.3.2019, however, in the meantime, the election code of conduct came into force for Parliament elections and therefore the financial bid could not be opened. Financial Bid was opened on 13.6.2019 in which the petitioner herein has been declared as lowest bidder. When the letter of intent has not been issued for quite long time, the petitioner wrote letter dated 3.7.2019 to the respondent authority concerned requesting to issue letter of intent. Vide communication dated 8.7.2019 the petitioner has been informed about the cancellation of tender dated 7.1.2019. Feeling aggrieved by such cancellation, the petitioner filed this petition seeking for following reliefs;

> “10.1. This Hon'ble Court may kindly be pleased to hold that the exercise of cancellation of tender (Annexure P/1) by the respondent CSMCL is arbitrary, illegal and malafide.

10.2.This Hon'ble Court may kindly be pleased to direct the respondent CSMCL authority to issue letter of intent to execute the work of internal audit against the original tender (Annexure-P/1) in favour of present petitioner herein.

10.3. This Hon'ble Court may kindly be pleased to quash/set aside the new tender (Annexure P-5)

10.4. This Hon'ble Court may kindly be pleased to call for the records of the case.

10.5. This Hon'ble Court may kindly be pleased to direct that respondent CSMCL to produce paper and proceedings with regard to arriving at decision of "Administrative" reason for cancellation of tender.

10.6. This Hon'ble Court may kindly be pleased to grant other relief (s) / writ(s)/order (s) in favour of the petitioner, which deemed fit & just in the facts and circumstances of the case, including awarding of the costs to the petitioner.

10.7. Cost for the petition.

10.8. This Hon'ble Court may kindly be pleased to quash/set aside the impugned corrigendum (Annexure-P/6)"

3. Fresh tender has been issued by respondent No.2 on 15.7.2019 and subsequently, on 19.7.2019 a corrigendum was issued whereby qualification was added in Clause 2.1 to the effect that *the firm of Chartered Accountant having experience of audit for at least 2 years in last 3 financial years of Government Organization/Govt. PSU in liquor business are only eligible to submit their bid*.

4. Learned counsel representing respondent No.2 informed that subsequent tender has also been cancelled due to non-receipt

of any responsive bid and even negotiation failed.

5. Learned counsel for the petitioner submits that action on the part of respondent authorities is arbitrary as they have cancelled tender dated 7.1.2019 without any justifiable reason. He further submits that tender dated 7.1.2019 has been cancelled by the respondent authorities in order to extend undue benefit to the persons already working with them. The corrigendum adding qualification in Clause 2.1 'Minimum Eligibility Criteria' of tender document supports the contention of petitioner that the respondent authorities want to engage and allot audit work to the persons who are already engaged in the auditing work of vending shops since 2017.
6. Per contra, learned counsel appearing on behalf of respondent No.2 submits that after issuance of tender dated 7.1.2019, the Financial Advisor advised that monthly audit of foreign liquor shops is only necessary and not of country-liquor shops. As the work of audit of country-liquor shops was not required to be done on regular basis, the same will drastically reduce the cost of tender work if there will be tender/NIT accordingly and therefore to avoid financial loss and unnecessary expenditure, the respondent authorities decided to cancel tender dated 7.1.2019. He further submits that the corrigendum adding qualification in Clause 2 of tender document has been added in the subsequent tender dated 15.7.2019 because in the past years it has been noted that on account of inexperience on the part of the firms engaged in the audit work, financial loss has

been occasioned to the respondent Corporation.

7. We have heard learned counsel for the parties and perused the records.

8. We do not find any force in the submission of learned counsel for the petitioner that action on the part of respondent authorities is arbitrary, for the reason that the petitioner has neither brought on record any material nor has pleaded specific facts in the writ petition substantiating the said allegation. This assertion is made only on the ground that earlier tender in which the petitioner was declared as 'lowest bidder' has been cancelled without assigning any reason. However, this submission of learned counsel is not correct in view of the submissions and pleadings made by respondent No.2 in the return wherein it has been specifically pleaded that as per advise of Financial Advisor, audit of country-liquor shops is not required on regular basis, whereas cost of tender dated 7.1.2019 was evaluated keeping in the mind audit work of foreign and country-liquor shops both, therefore, in order to save respondent Corporation from huge financial loss and unnecessary financial expenditure, the decision was taken to cancel tender dated 7.1.2019.

9. Next ground raised by learned counsel for the petitioner is that in order to extend undue benefit to some particular firms, qualification has been added in Clause-2 of tender document by way of corrigendum. However, the requirement of experience of internal audit in general cannot be said to be arbitrary or unreasonable, subject to the nature or class of experience made part of eligibility criteria. For the present, as the subsequent

tender i.e. NIT dated 15.7.2019, and subsequent corrigendum stands cancelled as on date, we are refraining ourselves from making any observation or comment on the experience clause sought to be added in NIT dated 15.7.2019 by way of corrigendum dated 19.7.2019 at this stage.

10. As on date, there is no pending process of tender for 'appointment of Chartered Accountant 'Firms' for assignment of Internal Audit of Retail Vending Shops', therefore, no relief can be granted to the petitioner and the petition in its present form has become infructuous.

11. However, so far as the grievance and apprehension of the petitioner that respondent No.2 did not want any new firm to participate in the tender process as by their action it appears that they wanted to continue with the firm contracted for audit work for the financial year 2017-18, is concerned, we make it clear that present engagement of the firms for audit work is temporary in nature and time-gap arrangement and respondent No.2 shall issue fresh tender notice inviting tenders from the eligible firms and finalize the entire tender process expeditiously, preferably within a period of three months from the date of receipt of certified copy of this order.

12. With the above observations and direction, the petition stands disposed off.

Sd/-	Sd/-
(P.R. Ramchandra Menon)	(Parth Prateem Sahu)
Chief Justice	Judge

roshan/-