

HIGH COURT of CHHATTISGARH, BILASPUR

Judgment reserved on 14.10.2019

Judgment pronounced on 24.10.2019

WPC No. 2795 of 2019

- Garia Medical Agency Pharmaceutical Distributors DL No. 8096SW & 7936SBW, 400 C/D 1 N.S.C. Bose Road, Kolkata-700 047, Through Proprietor, Shri Amit Kumar, S/o Shri Late Shri A. Kumar, Aged 40 Years, R/o Mangla Shail Vihar Near Government School Bilaspur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary Health And Family Welfare Department, Raipur (CG)
2. Collector Surajpur District Surajpur (CG)
3. Deputy Collector, Surajpur, District Surajpur (CG)
4. Chief Medical And Health Officer, Surajpur, District Surajpur (CG)
5. District Family Welfare Officer Surajpur, District Surajpur (CG)

-----Respondents

For Petitioner : Ms Aparajita Gaikwad, Advocate
For Respondents/State : Shri Gagan Tiwari, Deputy
Government Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Order

Per Parth Prateem Sahu, J.

1. The petitioner has challenged order dated 02.08.2019 passed by the Chief Medical and Health Officer, District Surajpur, cancelling the Expression of Interest (for short, 'EOI') on the ground of procedural irregularities.

2. Case of the petitioner is that on 12.09.2018, respondent- 4 had published a news item under the heading EOI, inviting proposals from interested Companies/Agencies within 7 days. In pursuance of the said

publication, the petitioner along with other Companies/Agencies have submitted proposals. After submission of proposals, the respondent authorities have conducted a meeting along with the representatives of Companies/Agencies and the proceedings for further action pursuant to the news item, Annexure P5 has been formulated and thereafter, the representatives of interested Companies/Agencies were asked to provide information for technical and commercial bids. The further proceedings took place as per the procedure formulated by the authorities vide letter dated 11.01.2019 and intimated to the interested Companies/Agencies vide letter dated 14.01.2019. Surprisingly, on 02.08.2019, the impugned order of cancellation of EOI has been passed on the ground of procedural irregularities.

3. Submission of Ms Aparajita Gaikwad, learned counsel for the petitioner is that the action on the part of respondent-3 is arbitrary because the cancellation order has been passed after opening of technical as well as commercial bids of interested Companies/Agencies. Respondent authorities have acted against their own norms as formulated in their letter dated 14.01.2019. Learned counsel further submits that after continuous process for about more than six months, cancellation of said process ie EOI is made with *mala fide* intention. Therefore, she prays that order Annexure P/1 to be quashed/set aside.

4. Per contra, Shri Gagan Tiwari, learned counsel for the State submits that contention of the petitioner is that the tender has been floated is misconceived. He further submits that it is not tender process but it is a proceeding of EOI, which is the first step before floating a tender.

Administrative approval for installation of Centralised Oxygen Plant at New District Hospital, Surajpur has been granted and for that account, an amount of Rs.83.2340 lakhs has been sanctioned. He further submits that the said approval provides that the Rules of Chhattisgarh Store Purchase to be followed, but the procedure which has been adopted the said rules were given go by. It is further submitted that for execution of work and establishment of Oxygen plant, a Committee consisting of five members has been constituted on 28.09.2018 headed by the Collector, District Surajpur & the Chief Medical and Health Officer, Surajpur, Civil Surgeon-cum-Chief Hospital Superintendent, Surajpur, District Family Welfare and Health Officer, Surajpur and District Account Manager, NHM, Surajpur being its members. In a meeting of above Committee held on 11.01.2019, instructions were given that, for proper and efficient execution of work of installation of Oxygen plant, there is requirement of Technical Expert, who can analyse the details submitted by the Companies/Agencies under EOI. Subsequently, without there being any technical expert, on 23.01.2019 technical bids were opened and in the said meeting, representative of the Collector was also not present. The Financial bids were also opened without any assessment of technical bids by the technical expert having technical knowledge and expertise with regard to the work which is to be allotted ie the installation of Oxygen plant. He further submits that as soon as the irregularities are brought to the notice of the Collector, who is head of the Committee, an enquiry was directed to be conducted for which Additional District Magistrate and the District Treasury Officers were appointed as members of Enquiry Committee and on the basis of report submitted by its members, order Annexure P1 has been passed. He

submits that the Store Purchase Rules have not been followed; the proposal has not been evaluated by the technical expert though it has been proposed to be appointed by the Committee and therefore, respondent- 4 has correctly passed the order Annexure P1 which is not an arbitrary action. He also submits that there will be an opportunity for the petitioner also to participate in the fresh proceedings, if initiated for installation of the Oxygen plant.

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

6. Perusal of Annexure R1 order dated 27.04.2018 issued by the Chief Executive Officer, Surajpur and submitted along with reply of the State reveals that under the heading of “administrative sanction order”, administrative sanction has been granted on 20.04.2018 of Rs.83.2340 lakhs for construction of Centralised Oxygen Plant at New District Hospital, Surajpur. Enquiry report is also filed as Annexure R2 in which it has been specifically mentioned that on 11.01.2019 a meeting convened in presence of the representative of the Collector, ie Shri Ravi Singh, Deputy Collector, Surajpur, however, in the said meeting, due to lack of technical aspects, the technical details of the work could not be finalised. Therefore, on that day it was decided to include one Technical Expert in the Committee. The interested vendors present in the said meeting were permitted to survey the Oxygen points to be fixed at District Hospital Surajpur for actual assessment of work. It was further resolved in the said meeting that fresh proposals be invited and last date for submission of proposals was fixed on 22.01.2019 and the next meeting was fixed for

23.01.2019. On that day, Shri Ravi Singh, representative of the District Collector could not attend the meeting and one Naib Tahsildar, namely Smt Amrita Singh appeared in the meeting as representative of the District Collector. On the said date, the technical bid was to be opened in the presence of an expert and the first three eligible vendors were to be selected. The Technical Expert was not included in the Committee and not only technical bids but financial bids were also opened in absence of Technical Expert. It was also reported that considering the fact that the tender was to be floated mentioning all technical specifications, estimated cost and that the assistance of Technical Expert has not been there since inception, therefore, it was opined that it would be proper to cancel the EOI published in the newspaper dated 12.09.2018.

7. The respondent/State in their reply very elaborately pleaded the dates and events that are relevant for disposal of this Writ Petition and therefore, they are extracted herein below :

- That, vide order dated 27/04/2018 and administrative approval /sanction was granted by the Collector, District Surajpur (CG) for establishment of a Centralized Oxygen Plant in new District Hospital, Surajpur as the same is the dependable centre to resolve the health issues of the local residents of that area. The amount of Rs. 83.2340 lacs was sanctioned for the same under the District Mineral Fund. A formal order after the approval of the District Collector has been issued in this regard by the Chief Executive Officer, Zila Panchayat, Surajpur on 27.04.2018. Copy of the order dated 27.04.2018 is filed herewith as **Annexure R/1**. It is mentioned in the order itself that, the provisions contained in the Chhattisgarh Store Purchase Rules, 2002 would be followed strictly and further the Chief Medical & Health Officer, District Surajpur has been made Executing Agency for the aforesaid work.

- That, on 12/09/2018 the Expression of Interest (Annexure P/2) was published in the newspaper inviting necessary specifications and informations from the interested firms/companies/agencies for establishment of oxygen plant in the District Hospital, Surajpur so that the scope of work could be specifically identified and further procedure of tender could be initiated.
- That, on 28/09/2019 a 5 members committee consisting of the Collector, District Surajpur being Chairman, Chief Medical and Health Officer, Surajpur, Civil Surgeon cum Chief Hospital Superintendent, Surajpur, District Family Welfare and Health Officer, Surajpur and District Account Manager, NHM, Surajpur being its members was formed for the purpose of scrutiny of the received application and for preparation of the comparative chart so that the authority may proceed further in the matter.
- That, on 11.01.2019 the meeting of the aforesaid committee was held. In the said meeting, the members of the aforesaid committee, after going through the records and applications received, has discussed the matter in details. During the course of meeting, the requirement of a technical expert over the matter was felt and therefore, appointment of a technical expert in the committee was ordered. The meeting of the committee was further posted for 23/01/2019 so that the interested firms who submitted their details against the Expression of Interest dated 12.09.2018, may actually survey and verify the spot condition for setting up the said oxygen plant.
- That, further meeting of the aforesaid committee was held on 23.01.2019 in which no technical expert member was available to give his opinion over the matter. Further, in the said meeting, no representative from the office of the Collector was present and even though instead of postponing the meeting for further date, the technical bids were opened. No technical expert on that day was presented to assess the technical aspect of the matter and to appreciate the specifications submitted by the participants though the matter is one which required the extreme technical knowledge & expertise in order to fetch the suitable person for the next

step/process. The financial bids were also opened without any assessment on the technical bids received.

- That, the procedural irregularities were brought to the notice of the office of the Collector, District Surajpur (CG) and taking cognizance on the same, an inquiry was initiated by a committee of two members consisting of the Additional District Magistrate and District Treasury Officer who in turn conducted a detailed inquiry and submitted its report to the Collector, District Surajpur (CG). In the said inquiry, it was found that the Chhattisgarh Store Purchase Rules have not been followed despite the same rules are mandatorily followed in all public procurements. Further it was found that on the basis of the Expression of interest, the proceedings were initiated and tried to conclude it like a tender process which is not permissible under law. It was also found that no technical member was appointed/engaged in the committee to look after the matter. On the aforesaid backdrops, the two member inquiry committee recommended for cancellation of the Expression of Interest dated 12/09/2018.
- That the Collector, District Surajpur, after going through the aforesaid report, agreed with the aforesaid recommendation of the two member inquiry committee and ordered to cancel the Expression of Interest dated 12.09.2018 and finally the impugned order dated 02.08.2019(Annexure P/1) was issued by the Chief Medical & Health Officer, District Surajpur/respondent no.4. Copy of the inquiry report is being filed herewith as **Annexure R/2.**

8. From perusal of Annexure R/1, which is the administrative sanction order, and also the enquiry report submitted by the Enquiry Committee and contents of para-7 of the return filed by the State, we are satisfied that action of cancellation of EOI is not tainted in any manner, with arbitrary and *mala fides*. Even after submission of detailed reply, the petitioner has not filed any rejoinder either to controvert the contents of para-7, that contains the reasons for cancellation of EOI, or to support contention of the petitioner that impugned action is tainted with *mala fides*. There is no

specific averment and material placed on record to prove the pleading of '*mala fide*'.

9. Scope of interference by the Court in the matter of calling proposals by the Companies/ Agencies or the Government for construction or supply on the basis of submission of their proposals by the interested Companies/Agencies, is very limited.

10. The tenderers do not have any fundamental right to get the award of contract in their favour. Inviting tender is only an offer and the State or its agencies are under no obligation to accept. The tenderer can claim their right only when the government or its agencies do not act reasonably or fairly. The Hon'ble Supreme Court in the matter of **Maa Binda Express Carriers Vs North-East Frontier Railway and others** reported in 2014 (3) SCC 760 has held thus:

"8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognize that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well-settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This

implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor- made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.”

11. The establishment of Oxygen plant in the Hospital is a work requiring some technical expert to evaluate the technical bids submitted by the petitioner and others, more so, when it is having direct relation with human lives, therefore, any proceedings which have been taken place in pursuance of the EOI dated 12.09.2018 without there being any technical expert on the subject, we do not find any arbitrariness in the action on the part of respondent-4 in cancelling the entire proceedings.

12. Accordingly, the petition being *sans* merit which is liable to be and it is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge