

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3954 of 2019****Judgment reserved on 06.12.2019****Judgment delivered on 19.12.2019**

- Saurabh Bindal S/o Moolchand Bindal Aged About 45 Years R/o Ward No. 4, Police Station Khamhariya, Tahsil Saja, District Bemetara, Chhattisgarh.

----Petitioner**VERSUS**

1. Chhattisgarh State Civil Supplies Corporation Limited Through Managing Director, Hitwad Bhavan Avanti Vihar, Raipur, District Raipur, Chhattisgarh
2. Chhattisgarh State Civil Supplies Corporation Limited through District Manager, District Kabirdham C.G.
3. Satpal Kaur Saluja W/o Trilochan Singh Saluja R/o House No. 42 Bahadur Gang Marg, Ward No. 20, Kawardha, District Kabirdham C.G.

-----Respondents

For Petitioner	:	Mr. Praveen Das and Mr. Vivek Verma, Advocate
For Respondent No. 1 & 2	:	Mr. S.M. Ali, Advocate.
For Respondent No. 3	:	Mr. Rakesh Pandey, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****CAV Order****Per Parth Prateem Sahu, J.**

1. Challenge in the writ petition is to the work order dated 17-09-2019, whereby the bid submitted by the 3rd respondent was accepted for transportation of food-grains at base depot Bodla district Kabirdham.
2. The petitioner moved this writ petition with following reliefs;

“10.1 This Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of the petitioners from the possession of the respondents for its kind perusal.

10.2 That, the Hon'ble court be pleased to cancel the work order dated 17.09.2019 issued to respondent No. 3 and direction to the respondent No. 1 & 2 to consider the technical bid submitted by petitioner.

10.3 Any other relief or relief(s) which this Hon'ble Court may think proper in view of the facts and circumstances of the case may also kindly be granted.”

3. The case of the petitioner is that the Chhattisgarh State Civil Supplies Corporation Limited issued an online tender notification for transportation of food-grains work for all over the State and looking to the topography and its work of block of districts, it has been categorized as A, B & C. The date of issuance of notification was 14-08-2019 and last date for submission of online bid was fixed as 29-08-2019. The petitioner and the 3rd respondent submitted their bids online along with their documents for the Base Depot, Bodla district Kabirdham which comes under category-A. The technical bid of the petitioner was rejected on the ground that, particulars of the vehicle given/ submitted by him, on verification, found that the registration and fitness of one vehicle bearing No. CG 04 JA 5910 amongst four vehicles of the petitioner was valid only up to 15-08-2019. The said rejection of technical bid of the petitioner was never intimated or informed. It is also the case of the petitioner that the rejection of the technical bid was arbitrary and illegal as he has already enclosed the required documents along with his tender document submitted online along with the orders and approvals of the Transport Department Authority that his vehicle found to be fit for issuance of the fitness certificate and the said document has been issued in his favour prior to filing of his bid on 26-08-2019. Copy of the said document was also enclosed by him along with bid submitted by him. Undue favour has been extended to 3rd respondent by accepting her bid, even when the documents submitted by her along with bid were not proper documents as per the requirement of tender notification. He submits that mandatory declaration/ undertaking in support of the technical bid as well as financial bid is defective, but respondent-authorities have accepted the technical bid/ financial bid overlooking the clauses as mentioned in the tender document.
4. The case projected by the learned counsel for the petitioner is that, firstly, he fulfills all the eligibility conditions and also submitted the required documents but his technical bid has been rejected and secondly that the 3rd respondent

had submitted notarized declaration in the prescribed formate executed on 18-06-2019 for tender which was floated online only on 14-08-2019, therefore, the authorities could not have accepted the technical bid of 3rd respondent also but ignoring the fact that the declaration/ undertaking in support of the technical and financial bid is not according to the requirement and also could not be taken as the declaration made with respect to the subject tender.

5. Learned counsel for the petitioner submits that along with his tender document, he has given particulars of vehicles as provided in clause 4 of the tender document along with the details of validity of registration, tax, fitness and insurance. He also submits that looking to the date of expiry of the registration as well as fitness certificate, an application was filed before the competent authority. In the process, inspecting authority recommended for issuance of fitness certificate mentioning that the vehicle bearing No. CG 04 JA 5910 satisfies the provisions of the Motor Vehicles Act, 1988 and is fit for issuance of fitness certificate. But even ignoring the documents enclosed along with his bid, his technical bid was rejected and even no intimation/ information of the same has been given to him. He also contended that 3rd respondent submitted her bid along with declaration/ undertaking in support of technical as well as financial bid executed on 18-06-2019 and the date of attestation by the notary is also mentioned as 18-06-2019, therefore, essential documents enclosed along with her bid are defective and the bid could not have been accepted. He submits that respondent No. 1 & 2 have extended undue favour to the 3rd respondent contrary to Clause 4.8 and 4.9 of the tender document. He submits that clause 4.8 and 4.9 mention for submission of declaration/ undertaking along with technical bid and financial bid to be mandatory and in view of the date given in the declaration/ undertaking enclosed along with her technical bid which is prior to the date of floating tender notification was not valid document. The only thing can be presumed that technical bid is not supported by the valid declaration/ undertaking and

the same was liable to be rejected. In view of the above submissions, he submits that acceptance of bid of the 3rd respondent and issuance of work order in her favour to be set aside. He submits that direction be issued to accept his technical bid and to award contract in his favour.

6. Per contra, Mr. Majid Ali, learned counsel appearing for respondent No. 1 & 2 submits that submissions made by the learned counsel for the petitioner that his technical bid has been wrongly rejected is not correct. He submits that clause 4.2 of the terms and conditions of the tender document specifically mentions that the detail/ particulars of the vehicles to be submitted in which validity of fitness, tax and insurance is to be mentioned, but in the particulars of the vehicle CG 04 JA 5910, the validity period has been shown to be 15-08-2019 for fitness and for insurance 12-12-2018 to 11-12-2019. He submits that from the date which is mentioned in the particulars of vehicle, it is clear that on the date of submission of bid i.e. 29-08-2019, the petitioner was not having valid registration and fitness certificate as per the documents which he enclosed along with his tender document. He further submits that the document relied upon by the petitioner i.e. page 63 & 64 of the writ petition is only a recommendation for issuing fitness certificate and not a fitness certificate, therefore, the said document does not fulfill the conditions which are required to be fulfilled by the tenderers as per clause 4.2 of the tender document. He submits that one of the four vehicles which are required to be mentioned in the tender documents does not fulfill the terms as provided under clause 4 of the tender document and only on that count, the technical bid of the petitioner had been rejected by the authority. Further contention of the learned counsel for respondent No. 1 and 2 is that respondent have floated tenders earlier also for the work on 14-01-2019, second tender was floated on 04-06-2019 which was cancelled on 03-08-2019 and thereafter this subject tender was floated on 14-08-2019. He submits that the purpose of enclosing declaration letter along with technical bid is only in support of the

authenticity of the documents enclosed along with her bid by the participants/ tenderers. The purpose of submission of declaration/ undertaking is served when the 3rd respondent has executed the declaration letter attested by the notary and further there is no specific date mentioned in the tender document that this declaration letter should be made or executed on the particular date and therefore considering this aspect as no specific date has been mentioned in the tender document for execution of declaration/ undertaking, the authorities have found the technical bid of the 3rd respondent to be responsive and thereafter her financial bid was opened and Annexure P-1 order was issued, there is no arbitrariness or illegality in the act of respondent-Authorities and even there is no allegation of malice or malafide against respondent-authorities.

7. Mr. Rakesh Pandey, learned counsel for the 3rd respondent submits that technical bid of the petitioner has rightly been rejected by the respondent authority as the petitioner had not enclosed the fitness certificate, which is one of the essential documents and is required to be enclosed. He submits that without fitness certificate, motor vehicle could not ply on road and therefore said requirement has been consciously made as one of the conditions in the tender document by the respondent-authorities. He also submits the document on which the petitioner places reliance that the recommendation in Form-38A for issuance of fitness certificate, but till the date of submission of the bid, petitioner has not enclosed the fitness certificate of the vehicle bearing No. CG 04 JA 5910. Repeating the arguments advanced by the learned counsel for respondent No. 1 & 2, the learned counsel submits that the requirement is to submit declaration/ undertaking in support of the technical bid and it does not prescribed for any date on which the declaration letter should be executed. He submits that the 3rd respondent along with her bid enclosed the declaration/ undertaking which was attested by the notary.

8. We have heard learned counsel for the respective parties and also perused

the record. The original record was also placed before this Court on the date of hearing.

9. So far as the ground raised by the learned counsel for the petitioner that he has submitted the particulars of the vehicle in question along with his bid as per the requirement of clause 4.2 having mentioned the validity of registration, fitness, tax and insurance, is concerned, the petitioner in the particulars of the vehicle has mentioned some dates showing validity of registration and fitness up to 15-08-2019, whereas the petitioner submitted his bid on 26-08-2019. There was no valid registration or fitness certificate of the vehicle bearing No. CG 04 JA 5910 on the date of submission of his bid, as is evident from page 62 of the writ petition produced by the petitioner to show that he has complied with the conditions of clause 4.2. The documents which have been filed at page 63 and 64 also are not the fitness certificate or the registration certificate. The recommendation made by the inspecting authority that the vehicle inspected by him i.e. vehicle No. CG 04 JA 5910 is fit for issuing fitness certificate does not take place of the fitness certificate to be issued by the competent authority. The petitioner neither filed the fitness certificate along with his bid nor produced it before this Court in the writ proceedings.
10. In view of the above, when there is a specific clause mentioned in the tender document to mention the validity period of the fitness certificate, registration, tax and insurance of the vehicle, in our considered view, the petitioner has failed to fulfill the said eligibility criteria because of his non-submission of fitness certificate/ registration certificate of vehicle No. CG 04 JA 5910, having its validity, from the date of commencement of the tender till its submission. For the foregoing reasons, we hold that the respondent-authorities have not committed any error/ illegality in rejecting the technical bid of the petitioner.
11. So far as, the other ground raised by the learned counsel for the petitioner that the 3rd respondent also had not fulfilled the conditions as mentioned in clauses

4.8 and 4.9, but even then her technical bid has been accepted, is concerned. It will be relevant to take note of relevant dates which are important for deciding this issue. The tender notification has been issued on 14-08-2019, last date of its submission was 29-08-2019. Respondent No. 3 submitted her bid on 29-08-2019 whereas the declaration letter executed by her in support of technical bid and financial bid was dated 18-06-2019 and on the same date, the declaration letter was attested by the notary i.e. on 18-06-2019. Submission of bid by the 3rd respondent can be taken note from page 81 to 83, wherein the date is mentioned as 29-08-2019 under the format of the details of the tenderer and the checklist showing details of the four vehicles. The requirement of submission of declaration letter as mentioned in clause 4.8 also mentions according to appendix 7 for technical bid and appendix 8 for financial bid. The formate of declaration/ undertaking to be notarized as per appendix 7 reads as follows. It will be convenient to extract para-1 of appendix 7 to understand its contents in an appropriate way;

“ मैं / हम छ. ग. स्टेट सिविल सप्लाईज कारपोरेशन लिमिटेड मुख्यालय रायपुर द्वारा प्रदेश के सार्वजनिक वितरण प्रणाली अंतर्गत खाद्यान के परिवहन कार्य हेतु खुली आमंत्रित ई-निविदा में स्वेच्छा से भाग ले रहे है। मैं/ हमने यह निविदा दस्तावेज वेबसाइट <http://eproc.cgstate.gov.in> पर प्रकाशित निविदा सूचना एवं दस्तावेजों को भली-भांति पढ़कर समझ लिया है और हम निर्धारित नियमों एवं शर्तों के अनुसार मैं/ हम जिला कार्यालय से सम्बंधित बेस डिपोसे द्वार प्रदाय परिवहन कार्य करने हेतु निविदा दस्तुत कर रहे है। आदेशानुसार मात्रा का निर्धारित समय में परिवहन करने के लिए पूर्णतः सहमत हूँ, जो समस्त व्ययों सहित है।”

12. Perusal of para 1 of appendix 7 will make it clear that, declaration/ undertaking is to be executed for the very tender notification in which the document is to be enclosed declaring that they have understood the terms and conditions of the tender document. Admittedly, the said tender notification was floated on 14-08-2019 bearing No. 54659. When tender has been issued only on 14-08-2019, there cannot be a declaration/ undertaking on 18-06-2019 that

they have understood the terms and conditions of tender document which is of prior to the date of floating of tender notification. The declaration/ undertaking submitted by the 3rd respondent along with her tender documents cannot be said in any manner to be a valid declaration.

13. Now the question arises for consideration is whether in the facts of the case when declaration letter has been executed prior to floating of the tender notification and declaring that she has understood the terms and conditions of the tender document which has been floated after execution of declaration/ undertaking; the respondent-authorities have justified in accepting the technical as well as the financial bid of respondent No. 3 and whether there was any error in the decision making process of respondent-authorities. Annexure P-5 is an objection dated 04-09-2019 submitted by the petitioner objecting that the technical bid and financial bid are defective on account of the declaration letter/ undertaking enclosed along with it which was prior to the date of tender notification and which is also a violation of the terms and conditions and requested for cancellation of the tender proceedings. To this, learned counsel for the respondent submits that as there was no specific date mentioned in the tender document for execution of the declaration letter and also the fact that the objection raised by the petitioner has been considered and decided by Annexure R1/4 annexed along with reply of respondent No. 1 & 2, wherein the objection of the petitioner has been rejected. Perusal of Annexure R-1/4 which is a copy of the note-sheet bearing some signature but does not mention the name of the Officer who decided the objection of the petitioner and there is some over-writing in the data mentioned below. We are unable to accept the submissions made by the learned counsel for respondent No. 1 & 2 that the objection raised by the petitioner has been decided for more than one reasons because, firstly, the note-sheet does not bear the name of the officer who decided the objection as mentioned in page 23 of Annexure R-1/4 nor any material has been placed on record by the learned counsel for

respondent No. 1 & 2 to show that the decision of rejection of his objection has been intimated or informed to the petitioner. Apart from the above, the reason assigned for rejecting the objection raised by the petitioner does not appear to be correct when it is tested under the canons of law. As we have stated earlier that the requirement of executing declaration/ undertaking in support of the technical and financial bid is with respect to the declaration made after reading and going through the terms and conditions as mentioned in the very same tender notification, in which the declaration/ undertaking has to be submitted. No justifiable reason has been assigned while rejecting the objection but for that, no specific date for execution of declaration/ undertaking is mentioned nor any convincing submissions have been made by the learned counsel for respondent No. 1 & 2 to support the act of accepting the declaration/ undertaking which was executed much prior to floating of tender notification. Even if the petitioner has not made allegation of malafide in very specific terms, but then it is to be seen that whether the decision making process of the respondent-authorities who has floated the tender is correct and in accordance with law when it is made to challenge before this Court. True it is that in the matters of tender, the court should be reluctant to be interfere with the tender proceedings initiated by the government or its agencies, but at the same time arbitrary action cannot be ignored on the part of respondent in not following the terms as mentioned in tender document to be complied with which are made as pre-conditions.

14. The Hon'ble Supreme Court in the case of **W.B. State Electricity Board v. Patel Engineering Company** reported in **(2001) 2 SCC 451** has held as under:

“24. ... In a work of this nature and magnitude where bidders who fulfil prequalification alone are invited to bid, adherence to the instructions cannot be given a go-by by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and our constitutional values. The very purpose of issuing

rules/instructions is to ensure their enforcement lest the rule of law should be a casualty... .”

15. In the instant case, the requirement of the terms of tender document is to submit the declaration/ undertaking in prescribed format and in support of the work which has been advertised by tender notification dated 14-08-2019 whereas the declaration letter was of 18-06-2019. Prima facie the said declaration/ undertaking could not be accepted as a valid declaration/ undertaking. Respondent No. 1 & 2 not only themselves failed to point out the declaration/ undertaking to be invalid but also rejected the objection made by the petitioner in an arbitrary manner. It is not a case where respondent No. 1 & 2 detected the flaw in declaration/ undertaking but for recording valid acceptable reasons in public interest, proceeded further in accepting bids of the 3rd respondent but rejected the objection not according to law but on their own whims. The aforementioned action of the respondent-authorities is arbitrary and discriminatory in the facts of the case. It is a settled law that if the tender notification provides for doing any particular act in a particular manner or if any compliance is to be made in a particular manner as provided in the tender document then it has to be complied with in that manner and form only. More so, the bidders cannot be promoted to choose their own mode for its compliance.

16. In view of the aforementioned facts and events emerging from the facts and circumstances of the case, as well as the records submitted by the learned counsel for the respective parties, the action on the part of respondent No. 1 & 2 in accepting the technical bid of respondent No. 3 is arbitrary and contrary to the terms as prescribed in the tender notification, consequently, the bid submitted by respondent No. 3 is held to be not responsive. Respondent No. 1 & 2 committed illegality in accepting the technical and financial bid and further awarding the contract to the 3rd respondent which cannot be sustainable in the eyes of law.

17. For the foregoing reasons, the writ petition is allowed in part and the work order dated 17-09-2019 issued to respondent No. 3 is hereby quashed. However, looking to the nature of work of contract, respondent No. 1 & 2 are permitted to make alternative arrangements to meet out the emergent need of transportation of food-grains. If respondent No. 1 & 2 in the course of making alternative arrangement engage respondent No. 3 and take her service then the similar treatment and benefit shall also be extended to the petitioner as well.

18. Respondent No. 1 and 2 are further directed to take necessary steps for advertising tender notification with respect to the subject work i.e. transportation of food-grains from base depot, Bodla district Kabirdham within a period of one month from today.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge