

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.486 OF 2019**

1. Kallows Engineering India Pvt. Ltd.,
S-7, Pai House,
Sadar, Ponda Goa 403 401
by its Managing Director -
Shri Gajanan Nagarsekar
(Petitioner No.2)
2. Shri Gajanan Nagarsekar,
son of Shri Satish G. Nagarsekar,
39 years of age, businessman,
resident of 10, 'Prajakta', Parag
Society, Phase – 2, Shantinagar,
Ponda Goa. 403 401. Petitioners

Versus

1. State of Goa,
through the Chief Secretary,
Secretariat,
Porvorim Goa.
2. The Director,
Directorate of Health Services,
Campal, Panaji Goa.
3. EDC Limited,
EDC House, 1st Floor,
Dr. Atmaram Borkar Road,
Panaji Goa.
4. Tricog Health Services Pvt. Ltd.,
3, PID No.5-24-3,
Second Main Road,

Vyalikaval Extension,
Bengaluru, State of Karnataka
560003

... Respondents

Mr. Rui Alberto Gomes Pereira, Advocate for the Petitioners.

Ms. Priyanka Kamat, Addl. Government Advocate for Respondent Nos.1 and 2.

Mr. P. S. Sawant, Advocate for Respondent No.3.

Mr. D. Lawande with Mr. P. Dangui, Mr. A. Prabhudessai and Mr. A. Jamadar, Advocates for Respondent No.4.

**Coram:- PRADEEP NANDRAJOG, CJ &
M. S. SONAK, J.**

Date:- 7th October, 2019

ORAL JUDGMENT (Per Pradeep Nandrajog, CJ.):

Reply filed by Respondent No.4 is taken on record.

2. Rule. Rule made returnable forthwith.
3. On 17th April, 2018, the Directorate of Health Services, Goa, issued a notice inviting offers to supply, install and commission 'Tele-ECG machine with optional NIBP and oximetry module. Four offers were received. No bidder was found to be technically qualified.
4. The requirement of ECG machine being urgent and in public interest, the second Respondent negotiated with the fourth Respondent who was not a bidder and placed an order with fourth

Respondent to supply ECG machine at the cost of Rs.18,00,000/-.The agreement to supply the machine was executed on 26th October, 2018. The machine was supplied immediately thereafter.

5. Learned counsel for the Petitioners states that the public money cannot be spent in this manner. Counsel submits that if the action of the second Respondent is condoned by the Court, it would be an incentive for the second Respondent to place an order in future too by private negotiation. The second contention is that the equipment has been purchased at an exorbitant price. The third contention is that the machine supplied by the fourth Respondent does not meet the tender specification.

6. As regards the first contention, suffice it to state that in cases of emergency the State can effect purchases, in public interest, through private negotiation. Thus condoning the act of the Respondents in the facts of the present case cannot be used in future as an exemplar by the second Respondent to procure the equipment without inviting tender. But, if the process of tendering fails a private purchase can always be resorted to.

7. On the second issue, we find no averments in the petition as to in what manner the Petitioners claim that the price of Rs.18,00,000/- is excessive or exorbitant.

8. On the third issue, we do not find any specific pleadings pointing out as to in what manner the machine supplied by the fourth Respondent does not match the specification in their pith and substance to what was stated in the notice inviting tender.

9. Keeping in view the fact that the machine has been supplied and payment has been made as also the fact that the value of the machine is Rs.18,00,000/-, highlighting that the machine records the heart beat as recorded in an ECG machine and thereafter transmit the same for analysis and report by the doctor i.e. the public interest served in purchasing the machine, we dismiss the Writ Petition.

M. S. SONAK, J.

CHIEF JUSTICE

at*