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HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 06.03.2020****Order Delivered on 19/03/2020****WPC No. 833 of 2020**

- M/s Vijay Trading Company, a Proprietor Firm having its sole proprietor Vijay Chadha, Son of Surendra Mohan Chadha, age 36 years, resident of House No.604, H.R. Tower, Raimura Apartment, D.D. Nagar, Raipur Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Department of Excise, Mahanadi Bhawan, Mantralaya, Nawa Raipur, Atal Nagar, Raipur (CG)
2. Chhattisgarh State Marketing Corporation Limited, A Government of Chhattisgarh Enterprise, Through the Managing Director, having its registered office at Danganiya, Commercial Complex, Mahadev Ghat Road, Raipur and Corporate Office at 4th Floor, Abkari Bhawan, Labhandh, Raipur, Chhattisgarh.
3. The General Manager, Chhattisgarh State Marketing Corporation Limited, 4th Floor, Abkari Bhawan, Labhandh, Raipur, Chhattisgarh.
4. The Deputy General Manager, Chhattisgarh State Marketing Corporation Limited, 4th Floor, Abkari Bhawan, Labhandh, Raipur, Chhattisgarh.
5. Shri Sai Ram Enterprises (Partnership Firm), Through Partner Durga Prasad Agrawal, Son of Late Shri Vishwa Kumar Agrawal, aged Petitioner Respondent No. 1 about 43 years, Registered Office at Village Bangoli, Tahsil Tilda, District Raipur Chhattisgarh.

---- Respondents

For Petitioner : Miss Sharmila Singhai, Advocate
 For Respondent No.1 : Mr. Chandresh Shrivastava, Deputy
 Advocate General.
 For Respondent No.2 to 4 : Mr. Rajeev Shrivastava, Advocate.

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

CAV ORDER**Parth Prateem Sahu, J**

1. Challenge in this petition is to the letter/order dated 26.2.2020 issued by respondent No.4 withdrawing the work of transportation of country liquor & foreign liquor to retail vending shops of Raipur, Durg & Bilaspur divisions w.e.f. 29.2.2020.

2. Brief facts for deciding this petition are that on 31.1.2019 respondent No.2-Corporation issued a Notice Inviting Tender (NIT) for transportation of country liquor and foreign liquor (spirit & malt) to various retail units of Raipur, Durg & Bilaspur division of respondent No.2-Corporation. Last date and time for submission of tender was 21.02.2019 at 3.00 p.m. and opening of technical bid was 21.2.2019 at 4.00 p.m. In the said tender proceeding, the petitioner was declared successful tenderer as 'L1' and pursuant to which, a Letter of Intent was issued in his favour on 5.3.2019. Since respondent No.5 was the second lowest bidder (L2), as per Clause 8.3 of the NIT, respondent No.4 called upon respondent No.5 to give his consent for executing 30% of the tender work on the rate

quoted by the lowest bidder (petitioner herein). Respondent No.5 submitted his consent accepting the offer of respondent No.4, however, the same was not acted upon by respondent Corporation authorities on the ground that it has not been submitted within prescribed time and consequently, the entire volume of work of transportation was awarded to the petitioner. Feeling aggrieved by aforesaid action of respondent authority, respondent No.5 approached this Court by filing writ petition bearing WPC No.1412/2019 in which an interim order was passed in favour of respondent No.5 (petitioner therein) directing the respondent Corporation authorities to allot/award only 70% of the total contract work to the petitioner. Said petition, however, came to be withdrawn by respondent No.5 (petitioner therein) on 26.6.2019 and thereafter respondent No.4 had issued a detailed order allotting / awarding 30% transportation work of foreign liquor only. Being dissatisfied with the aforesaid decision of respondent No.4, respondent No.5 again approached this Court by way of a petition under Article 226 of the Constitution of India, which was registered as WPC No.3040/2019. This Court, after hearing both the sides, allowed the writ petition vide order dated 21.10.2019 in following terms:-

“15. Accordingly, the writ petition is allowed and impugned orders dated 19.7.2019 (Annexure P-6) & 30.7.2019 (Annexure P-9) are set aside. Respondent Nos.1, 2 & 4 is directed to allot/ award

work of transportation of foreign liquor & country liquor both to the petitioner as per Clause 8.3 of the NIT. No order as to costs.

3. Petitioner herein filed a Special Leave Petition before the Supreme Court challenging the order dated 21.10.2019 in which an interim order was passed in favour of petitioner. The Special Leave Petition came to be dismissed by the Supreme Court on 18.2.2020 and thereafter, respondent No.4 issued the impugned letter/order dated 26.2.2020 (Annexure P-1) withdrawing transportation work from the petitioner with effect from 29.2.2020. Hence this petition.
4. Submission of learned counsel representing petitioner is that as per Clause 10 of the NIT, period of contract is 'one year' from the date of signing of the contract and therefore respondent No.4 is not justified in cancelling the contract awarded to the petitioner prior to completion of period of one year. Reason for withdrawal of work, as is mentioned by respondent No.4 in the impugned letter/order, is the orders passed by the Hon'ble Supreme Court and the High Court, but in both the orders there is no whisper about cancellation of contract awarded to petitioner. Learned counsel pointed out that this Court vide order dated 21.10.2019 (Annexure P-17) has directed the respondent Corporation authorities in a specific term to allot / award transportation work to respondent No.5 as per Clause 8.3 of the NIT and therefore respondent No.4 could have awarded 30% transportation work of

remaining work only and not 100%. Thus, the action on the part of respondent No.4 in awarding 100% remaining work to respondent No.5 is contrary to the intent of order dated 21.10.2019 and also the clauses contained in the NIT. Respondent No.2 failed to understand the true spirit of order dated 21.10.2019 passed in WPC No.3040/2019 and hence, action on the part of respondent Corporation suffers from the vice of malafides and arbitrariness.

5. Learned counsel for respondent Nos.2 to 4 submits that the order Annexure P-1 has been issued strictly in accordance with Clause 8.3 of the NIT and in compliance of direction issued by this Court in WPC No.3040/2019 as well. The impugned order cannot be termed as cancellation of contract awarded to petitioner for transportation work of country & foreign liquor. It is also pointed that though in the NIT the period of contract is mentioned as 'one year' but in Appendix-4 to the NIT, the estimated boxes to be transported during currency of contract is mentioned as '1,97,86,837'. The petitioner has already transported 1,69,23,414 boxes. Looking to the estimated boxes of country liquor & foreign liquor to be transported and number of boxes, which are to be transported in the month of March, 2020, which is the last month of the 'one year' contract period, are estimated around 15,38,467. As per Clause 8.3 of NIT, the petitioner is entitled to execute only 70% of the total contract work and respondent No.5 being the second lowest bidder is entitled for 30% work. The figures show that the petitioner has already completed

91.33% of the work of transportation of country and foreign liquor to retail units of Durg, Raipur & Bilaspur division as against his entitlement of 70% only. It is further submitted that though respondent No.5 is entitled to execute work of transportation to the extent of 30%, but in the present scenario, he will be able to carry out only about 8.3% of transport work (as estimated looking to supply of total boxes to made in this financial year). In support of aforesaid contention, he referred to the chart (Annexure R-1) prepared by the respondent Corporation showing the quantity of boxes transported to all the three divisions and according to this chart, for the present respondent No.5 will be able to carry out 8.3% transport work i.e. only 55,38,483 boxes of country and foreign liquor, as against total 30% of work.

6. We have heard learned counsel for both the sides and perused the materials available on record.
7. In the earlier round of litigation, respondent No.5 had filed a petition bearing WPC No.1412/2019 challenging inaction on the part of respondent Corporation authorities in not awarding work of transportation as per Clause 8.3 of the NIT i.e. 30% work of transportation of country liquor and foreign liquor both. In the said writ petition an interim order was passed by the High Court directing the respondent Corporation authorities to allot / award 70% work only. The said writ petition came to be dismissed as withdrawn and thereafter respondent No.4 had issued an order mentioning therein the facts and events already taken place and awarding 30% work of transportation

of foreign liquor only to respondent No.5. Aggrieved therewith, respondent No.5 again approached this Court and the said action was interdicted by this Court by directing respondent No.4 to award/allot 30% work of transportation of foreign and country liquor both to respondent No.5 as per Clause 8.3 of the NIT. The order passed by this Court has been affirmed by the Supreme Court in a Special Leave Petition preferred by the petitioner herein. In these circumstances, respondent No.5, who fought for his right under the NIT and succeeded upto the Supreme Court, cannot be deprived of fruits flowing from the order passed in his favour, which has become final. Thus, in the opinion of this Court, the steps taken by respondent no.4 in accordance with Clause 8.3 of the NIT for giving effect to the order passed by this Court i.e. awarding work of transportation of country liquor & foreign liquor both, cannot be said to be illegal, arbitrary and contrary to the clauses contained in the NIT.

8. It is settled position in law that the burden to establish 'malafides' is always on the party who alleges it. Allegations of 'malafides' are often easily made than proved and the very seriousness of such allegations demands proof of high order of credibility. In the case at hand also, the petitioner had though raised a ground of malafide on the part of respondent No.2, but failed to bring any material on record which may give rise to inference of 'malafides' on the part of respondent No.2 or any other officer of respondent Corporation. Thus, the allegation of petitioner that withdrawal of transportation work

awarded to him suffers from malafides is totally unfounded.

9. As regards the withdrawal of work prior to completion of period of contract i.e. one year, in an earlier round of litigation this Court has already held respondent No.5 to be entitled for 30% transportation work of country liquor and foreign liquor in accordance with clause 8.3 of NIT, which has been affirmed by the Supreme Court. As per data supplied by respondent No.4, petitioner has already transported 1,69,23,141 boxes of country liquor and foreign liquor, which comes to about 91.33% of total work (as per estimated work of Appendix-4 of the tender document), and this fact has not been disputed by learned counsel for the petitioner as well. Only submission of learned counsel for petitioner is that even for the balance work, the respondent No.4 could have awarded only 30% of the balance work to respondent No.5 and not the entire remaining work. We are not impressed by such submission made by learned counsel for petitioner for the reason that Clause 8.3 of the NIT clearly prescribes for distribution of total work on percentage basis in between first and second lowest bidder i.e. in the ratio of 70:30. As per chart (Annexure R-1) filed by respondent Corporation along with its return, remaining work of transportation to be done is only 8.3%. If at the initial stage itself i.e. on 22.7.2019, the work of transportation was awarded to respondent No.5 in accordance with Clause 8.3 of the NIT and respondent No.5 was not compelled to challenge the said decision by filing WPC No.3040/2019 before this Court, respondent No.5 would have

executed more than the work now allotted to him. In such a situation, the decision of respondent No.4 appears to be a prudent and balanced decision taken with a view to do justice with both the parties i.e. petitioner & respondent No.5, as per clause 8.3 of the NIT.

10. In view of the above, this Court is of the considered view that the orders Annexure P-1 & P-2 issued by respondent No.4, pursuant to the order passed by this Court on 21.10.2019 in WPC No.3040/19, have been issued by adopting a pragmatic approach, which cannot be said to be an arbitrary exercise. Respondent No.4 has given justifiable reasons for issuing orders impugned which do not call for any interference.
11. For the foregoing reasons, we do not find any tenable grounds to interfere with the orders impugned. Writ petition being devoid of substance is liable to be dismissed and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-