

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Order Reserved on 23.06.2020****Order Delivered on 30.06.2020****Writ Petition (C) No.1148 of 2020**

Chhattisgarh Road Carrier, a proprietorship firm, through its proprietor namely Cheman Khan, S/o Subrat Khan, aged about 48 years, R/o Lal Bagicha Ward, Dhamtari, District Dhamtari, Chhattisgarh.

---- Petitioner**Versus**

1. Chhattisgarh State Civil Supplies Corporation Limited, through its Managing Director, Block No.7A, 2nd Floor, Office Complex Sector-24, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
2. District Manager, Chhattisgarh State Civil Supplies Corporation Limited, District Office Kabirdham, District Kawardha, Chhattisgarh.
3. Bhikham Chand Sharma, A proprietorship firm, through its proprietor namely Bhikham Chand Sharma, S/o Johar Mal Sharma, aged about 48 years, R/o House No.53, Ward No.8, Pandariya, Kawardha, District Kawardha, Chhattisgarh, having its registered office at Gandhi Chowk, Bazar Para, Pandariya, District Kabirdham, Kawardha, Chhattisgarh.

---- Respondents

For Petitioner : Shri Manoj Paranjpe, Advocate

For Respondents No.1 and 2 : Shri Kashif Shakeel, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V Order**Per Parth Prateem Sahu, Judge**

1. Rejection of the technical bid of the petitioner in the tender proceedings bearing Tender No.63010 by Respondents No.1 and 2 is put to challenge in this petition.

2. Respondents No.1 and 2 have floated e-tender for transportation of food articles from its base depot situated at different districts to the fare price shops situated in village panchayats. The base depot has been categorized under category A, B and C. The subject matter of the writ petition pertains to the base depot of 'Category A' and the challenge in this writ petition with regard to the base depot Pandariya, District Kawardha, which has been categorized as 'Grade-A depot'. The tender was floated on 27.04.2020 and last date for submission of tender documents was 26.05.2020. The petitioner also submitted his bid. Two separate bids are required to be submitted by the tenderer, i.e. the technical bid and financial bid. Two tenderers participated for the base depot, Pandariya and upon opening of the technical bid, the documents of the motor vehicle (heavy goods vehicle) submitted by the petitioner for the one vehicle out of five, have not been found according to the norms prescribed and his technical bid was rejected.

3. Shri Manoj Paranjpe, learned counsel for the petitioner submits that the respondents have rejected the technical bid of the petitioner in a very arbitrary manner, he fulfills all the criteria prescribed under the tender document. He submitted the relevant documents as required to be submitted as per Clause 4.2. The vehicle particulars of five vehicles showing to be 'heavy goods vehicle' was filed, but respondents No.1 and 2 in a very arbitrary manner held that out of the five vehicles, one of the vehicle is not the heavy goods vehicle. He submits that as per the documents annexed along with the writ petition, which is the details of the

vehicle particulars clearly mentions that the vehicle No.CG-05/D/2022 is having the Laden Weight of 12990 kilograms, which fulfills the requirement of the terms of the tender document. Shri Paranjpe further submits that the objection raised with regard to the vehicle bearing No.CG-04/DA/3096 to be 'Tow Truck' is also not correct. He submits that initially the said vehicle is registered as 'Tow Truck' and subsequently, its body type has been changed and it is being used as heavy goods vehicle. This vehicle has been earlier involved in other work as goods vehicle. Learned counsel for the petitioner further contended that he has filed an application for taking documents on record and along with it, he has filed the photographs of truck bearing No.CG-04/DA/3096, from which, it is apparent that the aforementioned truck is having the open body and it is a goods carriage vehicle. He further contended that upon the information sought by the District Manager, Kabirdham, the officer of District Transport Office, Dhamtari vide its letter dated 09.06.2020 had further clarified that the vehicle is registered as 'HGV' and due to fault in official website "Vahan", the details of the truck has been shown as Body Type- 'Tow Truck' and upon physical verification, it was found that it has open body and suitable for carrying goods. From the aforementioned both the documents, it is crystal clear that respondents No.1 and 2 have acted in arbitrary manner to extend undue favour to respondent No.3.

4. Per contra, Shri Kashif Shakeel, learned counsel for respondents No.1 and 2 submits that the terms and conditions mentioned in the tender document is very clear. Clause 4.2 in very

specific term mentions that the tenderer who are participating for the 'Grade A' base depot should have registration of five heavy goods vehicle and having valid National/State permit of all those vehicles. As per clause 4.2, there is a further requirement of submission of the certified vehicle particulars of the Regional Transport Office mentioning about the fitness, tax and insurance. It is contended that when the technical bids were opened, out of the five, two vehicles of the petitioner bearing No.CG-05/D/2022 and CG-04/DA/3096 were not found to be fit for the subject tender work. However, prudently it was consulted to the Regional Transport Officer, Kabirdham to give his opinion and after receiving the opinion from the Regional Transport Officer, Kabirdham, the vehicle No.CG-05/D/2022 has been accepted as satisfying the norms, but looking to the information supplied by the Regional Transport Officer, Kabirdham with regard to vehicle No.CG-04/DA/3096, having its registration as Body Type- 'Tow Truck', which does not come within the category of 'Goods vehicle', the technical bid submitted by the petitioner was rejected. The rejection of the technical bid is strictly in accordance with the terms of the tender document as the petitioner could not able to meet out the requirements and terms as mentioned in Clause 4.2. The petitioner has not submitted the documents of the five heavy goods vehicle suitable for carrying food grains, but have submitted the particulars of only four heavy goods vehicle suitable for transportation of food grains. He submits that the proceedings of opening of technical bid has been filed as Annexure R-1/4 including the rejection of technical bid of the petitioner. He also pointed out

that the financial bid of the technically qualified tenderer was opened.

5. We have heard learned counsel appearing for the respective parties and perused the documents available in the writ petition.

6. Perusal of the online tender documents would show that Clause 4.2 specifically mentions that the tenderer who are interested for 'A Category Base Depot' should have registration of five heavy goods vehicle, which are suitable for transportation of food grains and having valid National/State permit. Clause 4.2 further mentions that the documents of the vehicle submitted for eligibility should be certified by the Regional Transport Office showing validity of the fitness, tax and insurance. The word 'heavy goods vehicle' is also defined in Clause 6.8 of the tender document, which reads as under :

“6.8 शब्द “भारी माल वाहन” से अभिप्रेत है, मशीन चलित वाहन (ट्रक) जो मोटर व्हीकल एक्ट के अंतर्गत भारी माल वाहन के रूप में पंजीकृत हो तथा खाद्य पदार्थ के परिवहन हेतु उपयुक्त हो। निविदा दस्तावेज में भारी माल वाहन के लिए (ट्रक) शब्द भी उपयोग किया गया है।”

7. The petitioner has submitted the vehicle particulars of the vehicle Nos.CG-04/DJ/9877, CG-04/JA/9523, CG-04/J/7947, CG-04/DA/3096 and CG-05/D/2022 (obtained online) to show that he fulfills the requirement of Clause 4.2. Perusal of Annexure P/3, which are the vehicle particulars would show that the Unladen Weight of all the vehicles have been shown as “8000 kilograms”

except vehicle bearing No.CG-05/D/2022 whose Unladen Weight has been shown as “4975 kilograms”. It also shows that the Body Type of vehicle No.CG-04/DA/3096 has been shown as “TOWTRK Tow Truck”. Perusal of the information given by the District Transport Office, Kabirdham (Annexure R-1/2), for the particulars of vehicle No.CG-04/DA/3096, prima facie, it is apparent that the Body Type of the vehicle is registered as 'Tow Truck', which do not come within the category of 'Goods Vehicle'.

8. Learned counsel for the petitioner during the course of argument submits that at the time of initial registration the Body Type of vehicle No.CG-04/DA/3096 was 'Tow Truck', but subsequently, its use has been changed and the District Transport Officer, Dhamtari has also given the inspection report of the said vehicle.

9. Perusal of the inspection report filed by the petitioner along with application for taking documents on record, we cannot accept the report of the District Transport Officer, Dhamtari giving the details of vehicle No.CG-04/DA/3096 where he himself mentions that the owner of the vehicle is required to submit application along with requisite fee for amending the “Type” of vehicle.

10. Be that as it may, what is relevant for the purpose of the subject tender is the requirement of submission of the vehicle particulars certified by the Regional Transport Office and in the documents submitted by the petitioner, it has been clearly mentioned with regard to vehicle No.CG-04/DA/3096 to be a 'Tow Truck'.

11. In exercise of the powers conferred by sub-section (4) of Section 41 of the Motor Vehicles Act, 1988, the Central Government specified the 'Types of Motor Vehicles' as mentioned in Column 1 and 2 of the Table prepared for the purpose of said sub (4) vide Gazette notification dated 05.11.2004. In the table, Column 1 has been shown as 'Transport Vehicles' and column 2 has been shown to be 'Non-Transport Vehicles'. 'Tow trucks' has been shown at Sl.No.(xii) of Column No.2 i.e. 'Non-Transport Vehicles', whereas the 'Goods carrier trucks or tankers or mail carriers (N₁-N₃ category)' have been shown at Sl.No.(vi) of Column No.1 i.e. 'Transport Vehicles'.

12. From the above, table prepared under the provisions of Motor Vehicles Act, 1988 showing the 'Types of Motor Vehicles' i.e. 'Transport Vehicles and Non-Transport Vehicles'. The type of vehicle as mentioned in vehicle particulars of CG-04/DA/3096 is a 'Non-Transport Vehicle', meaning thereby that vehicle No.CG-04/DA/3096 does not fulfill the requirement of Clause 4.2 of the tender document.

13. The submission of learned counsel for the petitioner that the definition of 'heavy goods vehicle' has not been mentioned in the tender document appears to be not correct because in Clause 6.8, 'heavy goods vehicle' has been defined. It mentions that 'heavy goods vehicle' means such vehicle which is registered under the Motor Vehicles Act, 1988 as 'heavy goods vehicle' and suitable for transportation of food articles. The definition of 'heavy goods vehicle' is prescribed under Section 2(16) of the Motor Vehicles Act, 1988.

14. Learned counsel for the petitioner during the course of argument very fairly submitted that he has not filed any document to show that the application has been filed for changing the 'Body Type' of vehicle No.CG-04/DA/3096 from 'Tow Truck' to 'Other Type' as mentioned in the particulars of other vehicle as 'Open Body'. The document which is filed by the petitioner as Annexure P/9 showing it to be issued by the Office of District Transport Office, Dhamtari on 09.06.2020, in which, the transport authority itself has clearly mentioned that the owner of the vehicle bearing No.CG-04/DA/3096 is required to make an application for amendment in the vehicle particulars available of the Truck bearing No.CG-04/DA/3096 with registering authority. For the purpose of considering the 'Type of Vehicle' for any authority or for purpose of this case, it is only the vehicle particulars issued by the competent authority is to be taken into consideration. Learned counsel for the petitioner does not dispute that the vehicle No.CG-04/DA/3096 is registered with the registering authority showing the body type as 'Tow Truck'.

15. For the aforementioned discussions, particularly, looking to the specific Clause 4.2 of the tender document, the information supplied by the Regional Transport Office, Kabirdham mentioning that vehicle having the Body Type of 'Tow Truck' does not come within the category of 'goods vehicle' and also the 'Types of Motor Vehicles' as prescribed in the table prepared in exercise of powers conferred under sub-section (4) of Section 41 of the Motor Vehicles Act, 1988, wherein the vehicle Tow Truck (subject vehicle) has been shown to be 'Non-Transport Vehicle', we do not find any error in decision

making process rejecting technical bid of petitioner.

16. We do not find any tenable ground in writ petition calling interference of this Court in the tender No. 63010 for the Base Depot, Pandariya. Accordingly, the writ petition liable to be and is hereby dismissed.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh