

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (C) No. 2456 of 2020**

- M/s Vishwa Decors, Through Its Partner Shri Rakesh Bafna, G-1, Mahavir Plaza, Near Devi Laxmi Hospital, Tagore Nagar, Raipur, Tehsil & District Raipur, Police Station City Kotwali, Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through its Secretary, Department of Health and Family Welfare, Mahanadi Bhawan, Atal Nagar, District Raipur, Chhattisgarh.
2. State of Chhattisgarh Through its Secretary, Department of Commerce and Industry, Mahanadi Bhawan, Atal Nagar, District Raipur, Chhattisgarh.
3. Chhattisgarh Medical Services Corporation Ltd., Having its Registered Office at, Sector-27, North West Corner Commercial Complex, Atal Nagar, District Raipur, Chhattisgarh.
4. Emergency Procurement Committee, Through Its Chairman, Having Office at Room No. 32, 2nd Floor New Circuit House, (Covid Command Centre), Civil Line, Raipur, District Raipur, Chhattisgarh.
5. M/s B.M.A. Prints Private Limited, Having Registered Office At B-155, Shivalik, Malviya Nagar, New Delhi.
6. M/s Deepali Designs & Exhibits Pvt. Limited, First Floor, P.No. 17, Central Market, West Punjabi Bagh, Delhi-26.
7. M/s B.K.S. Marketing & Innovations Pvt. Ltd. D-10/1, Okhla Industrial Area, Phase-1, New Delhi-20.
8. M/s Sogo Fashions Pvt. Limited 64, Ashok Vihar Phase-1, Delhi 52.
9. M/s Unity Health Care C-24, Preet Vihar, Delhi-92.

---- Respondents

For Petitioner	:	Shri Ankit Singhal, Advocate.
For Respondents No. 1&2/State	:	Shri Chandresh Shrivastava, Deputy Advocate General.
For Respondent No. 3	:	Shri Animesh Tiwari, Advocate.

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

Order on Board

Per P. R. Ramachandra Menon, Chief Justice

19.10.2020

1. The Petitioner has moved this Court with the following prayers:

“10.1 That, this Hon'ble Court may kindly be pleased to issue a writ/writs, order/orders, direction/directions to quash and set aside the decision of the Respondent No. 3 and 4 to reject the technical bid of the Petitioner firm and further direct the Respondent No. 4 to consider and decide the representation of the Petitioner in light of provision mentioned in the tender document;

10.2 That, this Hon'ble Court may kindly be pleased to issue a writ/writs, order/orders, direction/directions, to quash and set aside the decision of the Respondent No. 4 in opening the price bid of other bidders without deciding the representation of the Petitioner firm and further quash and set aside the award of work order (if any) to Respondent No. 5 to 9 in the interest of justice.

10.3 That, this Hon'ble Court may kindly be pleased to issue a writ/writs, order/orders, direction/directions, directing the Respondent No. 3 and 4 to strictly follow the process mentioned in tender document in the interest of justice;

10.4 That, this Hon'ble Court may kindly be pleased to grant any other relief which it deem fit and proper in view of the facts and circumstances of the case.”

2. The sum and substance of the case projected by the Petitioner is that the technical bid submitted by the Petitioner for supply of PPE coverall (breathable fabric) for Covid-19 to the 3rd Respondent/Chhattisgarh Medical Services Corporation Limited has been wrongly rejected for the

alleged reason that the sample does not confirm to 'GSM 90 Grade' as mentioned in the tender notification.

3. The sequence of events reveals that Annexure P/1 notification inviting tender (NIT) was issued by the 3rd Respondent/Corporation for supply of the materials as mentioned above; pursuant to which the Petitioner also took part in the bid process. As notified, the tender process was of 'three cover system'; consisting of 'Cover A' (EMD tender fee and pre-qualification), 'Cover B' (technical bid) and 'Cover C' (price bid). The Petitioner submitted all the relevant materials under the three covers and on opening the 'Cover A' on 21.09.2020, the Petitioner was shown as qualified. But on 24.09.2020, the technical bid submitted under 'Cover B' was opened, which came to be rejected by the 4th Respondent for the reason that the Petitioner did not submit any certification of 90 GSM SSMMS fabric for Blood Penetration test of Seam and fabric. Immediately, after disqualifying the Petitioner on 24.09.2020, the financial bids were opened and the private Respondents herein (Respondents No. 5 to 8) have been declared as 'L-1 to L-4' and work orders have been issued to them, which is stated as arbitrary and malafide in all respects and hence the challenge.
4. Shri Ankit Singhal, the learned counsel appearing for the Petitioner submits that the sample submitted by the Petitioner is of '90 GSM fabric' as insisted by the 3rd Respondent/Corporation. Immediately, on coming to know of the rejection of the technical bid in 'Cover B', the Petitioner caused to send a representation by the manufacturer of the product namely; Sure Safety India Ltd. on the next day *i.e.* 25.09.2020 to the Respondent/Corporation, to the effect that the sample submitted was of '90 GSM fabric'. It is stated that the Petitioner had also submitted 'test

report' given by the 'Wool Research Association', stating that the sample submitted by the Petitioner was of 90 GSM fabric. The learned counsel made a reference to the process of evaluation of the tender given under 'Clause 4' of the instructions to the bidders; to the effect that if at all any bidder is disqualified, a window period of 'two working days' will be given for submission of any representations on grievances in case of rejections. The learned counsel further points out that the private Respondents herein were also situated on a similar pedestal as in the case of the Petitioner, as the certificates produced by them also did not specify that the sample produced was of '90 GSM fabric'. Still, the said Respondents have been declared as technically qualified and their financial bids were opened leading to awarding of work contract in favour of them; which is a colorable exercise of power deploying double standards; which is highly arbitrary and malafide. In conformity with Clause 4, though the Petitioner has filed a representation pointing out the grievance, it is still to be acted upon and hence the grievance.

5. Shri Animesh Tiwari, the learned counsel appearing for the 3rd Respondent/Corporation submits that the bid involved was an 'online tender' and all the documents had to be submitted online. No bidder was at liberty to file any additional documents and if at all any clarification was called for, it was to be submitted before the Terminal Evaluation Committee by the participating the bidder during the evaluation process. The window period of '2 days' given under 'Clause 4' is only in respect of 'Cover A' and is not applicable for 'Cover B', submits the learned counsel. It is also pointed out that the tender notification clearly stipulated that the product to be supplied was of the quality of 'GSM 90' or higher level, whereas the Petitioner had admitted in the affidavit filed (forming part of the writ petition) that the sample submitted by him was only of '60 GSM

level'. It was in the said circumstance, that the technical bid was rejected, whereas it is not the position in respect of the private Respondents herein as alleged by the Petitioner. The learned counsel further points out with reference to the materials on record that the validity of the certificate produced by the Petitioner had already expired on 21.09.2020 and as such, on the date of scrutiny of the technical bid on 24.09.2020, the relevant certificate in support of the credentials of the Petitioner was not valid.

6. The learned counsel for the Petitioner submits that the contention raised as to the validity of the certificate is a fresh reason, which is not the reason uploaded by the 3rd Respondent/Corporation while disqualifying the Petitioner. It is further pointed out that the tender has been finalized, awarding the work to the private Respondents herein, only on the basis of some forged affidavit submitted by them, as the certificate produced by them also did not disclose that the sample produced by them was of '90 GSM level'.
7. It is to be noted that the scrutiny to be made by this Court in exercise the power and jurisdiction under Article 226 of the Constitution of India in contract matters is very limited and it shall only be to see whether the 'decision making process' is correct or not. Viewed in the said context, the first question to be considered is whether the tender notification specifically insisted to supply the product of '90 GSM level' and whether the Petitioner had filed any proceeding to the effect that the sample submitted was of '90 GSM level' ?
8. Coming to Annexure P/1 notification issued by the 3rd Respondent/Corporation, it is stipulated under Annexure-II "SPECIFICATION" as to the PPE coverall (breathable fabric) under

Clause 6 that the GSM should be 90 or higher. In the “affidavit” filed by the Petitioner alongwith the tender (in relation to the affidavit form for testing, in conformity with the Affidavit Form for Testing & Certification of Proto-Type Sample of PPE Body Coveralls for COVID-19), it has been stipulated under 'Clause 6' as follows:

“6. Description of the type of Fabric:

(a) source of fabric material : Non-woven Breathable

(b) **GSM : 60 GSM**

(c) Thickness :

(d) non-woven/woven/knitted : non-woven

(e) Base material, type of laminate : SS/TPU

(f) coated/non-coated : coated

From the above, it is clear that under sub-clause (b) of Clause 6, the Petitioner has conceded that the type of fabric intended to be supplied by the Petitioner-Firm is of “60 GSM”. The learned counsel for the Petitioner concedes that the entry given in the 'affidavit' concerned is correct, to the effect that it was only '60 GSM', whereas the tender notification insisted that it was to be of '90 GSM'.

9. In view of the above categorical admission in the 'affidavit' filed by the Petitioner along with the tender as to the description of the type of fabric to be supplied by of Petitioner-firm was only of '60 GSM level', as against the clear mandate in the notification to supply the fabric of '90 GSM' or higher level, we are of the view that the decision taken by the 4th Respondent/Tender Valuation Committee disqualifying the Petitioner is quite in order and not liable to be assailed. The 'decision making process' pursued by the 3rd Respondent/Corporation is not liable to be stated as tainted in any manner resulting in disqualification of the Petitioner, in view of the admitted/undisputed facts brought on record.

10. In the above circumstance, we are of the view that this is not a fit case to call for interference, invoking the limited jurisdiction of this Court under Article 226 of the Constitution of India. Hence interference is declined. The writ petition is dismissed. However, it is open for the 3rd Respondent/Corporation to pass appropriate orders on the representation stated as preferred by the writ Petitioner in accordance with law.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge