

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2833 of 2019

- M/s Bansal Life Sciences Ltd. Through Its Authorised Representative, Mr. Manish Agrawal Aged About 35 Years, S/o Mr. Jai Prakash Agrawal, R/o 1- B, Megna Block, Merlin, Jaishree Vihar, Mandi Gate, Pandri Raipur Chhattisgarh., District : Raipur, Chhattisgarh ---- **Petitioner**

Versus

1. State of Chhattisgarh (Though Seceretary Department, of Health And Family Welfare) Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh
2. Chhattisgarh Medical Services Corporation Limited (Through Its Commercial Complex, Sector 27, Atal Nagar Raipur Chhattisgarh
3. General Manager Equipment, Chhattisgarh Medical Services Corporation Limited,. North West Commercial Complex, Sector 27, Atal Nagar, Raipur Chhattisgarh
4. Principal Secretary Finance Department, State of Chhattisgarh, Director Chhattisgarh. Medical Services Corporation Limited North West Commercial Complex, Sector 27, Atal Nagar, Raipur Chhattisgarh
5. The Director Health Services, Chhattisgarh, Director Medical Services Corporation Limited. North West Commercial Complex, Sector- 27 Atal Nagar Raipur Chhattisgarh -----**Respondents**

For Petitioner : Shri Kishore Bhaduri and Shri Sabyasachi Bhaduri, Advocates

For Respondents/State : Shri Sidharth Dubey, Dy GA

For Respondents-2 and 3/Corporation : Shri CJK Rao, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per PR Ramachandra Menon,CJ

06.01.2020

1. Grievance is against the termination of the contract awarded to the petitioner as per Annexure P1 dated 19.07.2019 with regard to supply of medical equipment/accessories, which is stated as arbitrary.
2. Heard Shri Kishore Bhaduri, learned counsel for the petitioner, Shri CJK Rao, learned counsel appearing for the Chhattisgarh Medical

Services Corporation Limited and Shri Sidharth Dubey, learned Deputy Government Advocate for the State.

3. Normally, this Court will not interfere with matters in relation to contract, invoking the discretionary jurisdiction under Article 226 of the Constitution of India, in view of the settled position of law as declared by the Apex Court. The role of this Court is only to assess the “decision making process” and we find it appropriate to exercise the said jurisdiction to the above limited extent.

4. The gist of the factual matrix is that Annexure P2 tender was floated by the 2nd respondent for supply of medical equipments, particularly 'I.V. stands' and 'Stainless Steel Trolleys'. The petitioner being qualified in all respects, submitted the bid and after finalisation of the process and proceedings, having turned to be L1, the tender was accepted and work order was awarded to the petitioner. Accordingly, four purchase orders came to be issued, out of which two orders are PO No.1172 (for Stainless Steel Trolleys) and 1174 (for I.V.Stands) dated 19.06.2019 (1st set) and the other two orders are PO No.1417 (for I.V.Stands) and 1419 (for Stainless Steel Trolleys) dated 29.06.2019 (2nd set). As per the tender conditions, the supply had to be effected within 60 days, which was extendable up to 120 days. It is stated that the petitioner had successfully completed supply of items covered by the 1st set of purchase orders dated 19.06.2019 well within time and has raised Invoices for the same as borne by Annexure P4. The petitioner, however, submitted Annexure P6 application dated 18.07.2019 seeking for extension of time for effecting the delivery in respect of the items covered by purchase orders 1417 and 1419 dated 29.06.2019 (2nd set).

5. Later, the petitioner, after evaluating the *pros and cons* submitted a retraction letter dated 05.08.2019, vide Annexure P7, to the effect that the extension sought for as per Annexure P6 in respect of 2nd set of purchase orders would stand withdrawn and that the petitioner was ready to effect the supply within the time as stipulated in the tender. However, without any regard to the same, the 2nd respondent, quite arbitrarily, cancelled the entire transaction covered by all the four purchase orders, as per the proceedings dated 07.08.2019, a copy of which has been produced as Annexure P8. This, is put to challenge in this Writ Petition seeking for immediate interference of this Court, pointing out the patent arbitrariness and illegality sought to be perpetuated by the respondents.

6. When the matter came up for consideration before this Court, the facts and figures were sought to be ascertained with regard to the course and events. At the same time, since there was no disputed question of facts as to the events and also as to the supply already effected in respect of 1st set of purchase orders dated 19.06.2019 and also further since the application for extension of time was subsequently retracted within time, this Court sought to ascertain whether the matter could be attempted to be mediated and settled. It was accordingly, that an order was passed on 18.10.2019, requiring the parties to be present before this Court for referring the matter to the Nodal Officer for exploring the chance of amicable settlement.

7. Pursuant to the said order, the parties appeared before this Court on 22.10.2019 and they were relegated to be present before the Nodal Officer for taking necessary steps for mediation in terms of the order as aforesaid. Pursuant to the further steps taken in this regard, the issue was stated as

mediated and a partial settlement was reached in respect of the amount due to be paid to the petitioner in respect of the 1st set of purchase orders dated 19.06.2019. However, inability to reach a consensus in respect of the 2nd set of purchase orders dated 29.06.2019 was expressed therein. We find it appropriate to extract the mediation agreement as given below:

“The mater relates with the 4 purchase orders place by Respondent party No.2 to the Petitioner/Party No.1 and now it is agreed between the parties that Party No.2 will make the payment of purchase order 1172 (EQP/41/2019-20) and 1174 (EQP/39/2019-20) dated 19.06.2019 for already supplied of medical instruments as both the purchase orders are already complied by the Petitioner/Party No.1.

So far, purchase order no.1417 (EQP/65/2019-20) and 1419 (EQP 64/2019-20) dated 29.06.2019, at present, at this juncture parties are not in position to take any decision for settled the dispute.

In furtherance of the settlement, the Respondent/Party No.2 has already issued order No.4508/CGMSC Limited/Technical/2019, Raipur, dated 26.11.2019, which is appended with this agreement.

The parties agreed to abide by the terms as settled on their own will and the term of settlement has read over to the parties and further explained in Hindi also and only thereafter they have signed this agreement with their own free will and in presence of each other at Mediation Centre, High Court Bilaspur on 04.12.2019.

Vote of thanks is extended to both the counsels Shri C Jayant K Rao and Shri Sabyasachi Bhaduri, Advocates for their kind co-operation to settle the disputes amicably.

Sd/-
I Party

Sd/-
Counsel for the Petitioner/ I Party

Sd/-
II Party

Sd/-
Counsel for the Petitioner/ II Party

Sd/-
(Yogesh Chandra Sharma)
Mediator”

8. The learned counsel for the petitioner points out that, pursuant to the partial settlement as above, an order has already been passed by the 2nd respondent on 26.11.2019 for causing payment in respect of the 1st set of purchase orders and hence no further grievance stands in this regard. However, with regard to the 2nd set of purchase orders, absolutely nothing is stated and hence, the petitioner seeks for interference of this Court in respect of the arbitrary action pursued by the 2nd respondent in terminating the contract unilaterally.

9. Learned counsel for the petitioner makes a reference to the supply conditions at Clause 7 of Annexure P2, which are reproduced below:

“7. Supply Conditions

The entire ordered quantity shall be supplied within 60th day from the date of purchase order from the Tender Inviting Authority. Irrespective of any reason even beyond the control of supplier, it should complete the ordered quantity before 120th day (with proper approval of MD, CGMSC) of purchase order for which LD would be levied by CGMSC as specified in clauses of tender condition. On completion of 120 days from the date of purchase order, the purchase order will be deemed to be cancelled with penalty charge of 20% of PO value for unexecuted quantity & no supply for the balance ordered quantity would be accepted by CGMSC.”

10. The termination for default is separately dealt with under Clause 18 of Annexure P2, which is also reproduced below for proper appreciation:

“18. Termination for default

1.1 The Purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, terminate the Contract in whole or part; (i) if the supplier fails to deliver any or all the goods within time period(s) specified in the

Contract (ii) if the Supplier fails to perform any other obligations(s) under the Contract; or (iii) if the supplier, in the judgment of the Purchaser, has engaged in fraud and corruption, as defined in tender clause, in competing for or in executing the contract.”

11. The learned counsel for the petitioner submits that, if at all any breach of contract occurs, a written notice has to be issued to the supplier as to the default with regard to the termination of the contract in whole or in part and if only the supplier fails to deliver any or all the goods within the time/ period specified in the contract, could it lead to the termination of the contract. It is asserted that no such notice was ever issued to the petitioner by the 2nd respondent before issuing Annexure P7, cancellation. It is further pointed out that, much before the cancellation dated 07.08.2019, the application for extension of time submitted as per Annexure P6 had already been withdrawn, as per Annexure P7 dated 05.08.2019, which was accepted by the 2nd respondent on 06.08.2019, as borne by the endorsement/seal affixed on Annexure P7.

12. Shri CJK Rao, the learned counsel appearing for the 2nd respondent-Corporation submits, with reference to the return filed on behalf of respondents-2 and 3, that there is no dispute with regard to the sequence of events as narrated by the petitioner with regard to the tender floated, awarding of the contract and as to Annexure P6 application dated 18.07.2019, for extension of time. The learned counsel submits that the said application was acted upon and was found as not acceptable and hence it was rejected as the proceedings passed on the next day ie on 19.07.2019. This being the position, the relief sought for by the petitioner to revive the

contract covered by the 2nd set of purchase orders is not liable to be entertained, submits the learned counsel.

13. During the course of hearing, this Court raised a specific query to the learned counsel for the Corporation as to the submission of Annexure P7 dated 05.08.2019 withdrawing the request for extension of time as contained in Annexure P6 application. There is no dispute with regard to receipt of Annexure P7 dated 05.08.2019, which was served at the Office of the 2nd respondent on the next day ie on 06.08.2019, as borne by the seal affixed therein. The retraction letter as per Annexure P7 was, of course, within the prescribed time and on reckoning the remaining days available to the petitioner to effect the supply with reference to the 2nd set of purchase orders, there was a further time of 40 days. Still, the contract was cancelled immediately on receipt of Annexure P6 application by passing the order on the very next day. On raising query, as to any proof of having passed the order on 19.07.2019, the learned counsel for the Corporation fairly conceded that no such document is available. The order of cancellation as reflected from Annexure P8 is dated '07.08.2019' and the same was served to the petitioner only by E-mail on the said date. This being the position, it is clear that the order of cancellation was passed and communicated to the petitioner only after submission of Annexure P7, retraction letter dated 05.08.2019, withdrawing Annexure P6 application for extension of time. As it stands so, as on the date of passing Annexure P8, no application for extension of time was virtually pending and the willingness of the petitioner to supply the items well within the time as envisaged under the contract was quite evident. In the said circumstance, the steps taken by the 2nd respondent cancelling the entire contract (1st and 2nd sets of purchase

orders) as per Annexure P8, admittedly served to the petitioner only on 07.08.2019, is not liable to be sustained, as high handed in all respects. We find it appropriate to interdict the said order and accordingly, Annexure P8 stands set aside.

14. Since it is stated that, as on the date of cancellation of tender vide Annexure P8 dated 07.08.2019, the petitioner was still having time of 40 days to effect the supply, we find it appropriate to cause the items covered by the 2nd set of purchase orders dated 29.06.2019 to be supplied within a further period of 'one month' from today. This is also with a view to ensure that, if any fresh proceedings are to be pursued by the 2nd respondent-Corporation, which is a State Government undertaking, the same will only cause unnecessary financial burden to the State exchequer; more so, when the turn of events has been resulted only because of the improper exercise of power by the 2nd and 3rd respondents.

15. We reluctantly refrain from awarding any cost against the 2nd and 3rd respondents.

16. The Writ Petition stands allowed to the said extent.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge