

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Order reserved on 14.02.2020****Order delivered on 22.05.2020****Writ Petition (C) No.3062 of 2019**

M/s Piyush Chandrakar, through its Proprietor Piyush Chandrakar, S/o H.C. Chandrakar, aged about 37 years, R/o Gudiari, Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Health and Medical Education Department, Naya Raipur, District Raipur, Chhattisgarh
2. Director, Medical Education Department, Raipur, Chhattisgarh
3. Dean and Joint Director, Dr. B.R. Ambedkar Memorial Hospital, Raipur, Chhattisgarh
4. Asif Memon (Mokati), S/o Abdul Razzaq, aged about 47 years, R/o Near Raman Temple, Fafadih, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Petitioner : Shri Amit Sharma, Advocate

For Respondent/State : Shri Gagan Tiwari, Deputy Government Advocate

For Respondent No.4 : Shri Devershi Thakur, 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. This writ petition has been filed challenging the action of Respondent No.3 allegedly to be arbitrary, illegal and contrary to the clauses of tender notification (Annexure P/2) with the following prayers :

“10.1 That, this Hon'ble Court may kindly be pleased to issue a writ in nature of

certiorari and quash/set-aside the tender dated 13.07.2019 issued by respondent No.4 and initiate afresh tender proceedings or tender may be granted to the petitioner as per H-1, contractor.

10.2 Any other relief which this Hon'ble Court may deem fit and proper in favour of the petitioners may kindly be passed.”

2. Facts of the case in nutshell are that, Respondent No.3 floated a tender notification for operation of vehicle stand at Dr. B.R. Ambedkar Memorial Hospital Campus, Raipur, for a period of two years. The last date for submission of the tender document was 30.07.2019 and opening date for tender was fixed as 30.07.2019. As per clause of tender document, the successful candidate will be the highest bidder (H-1). In the said tender proceeding, Petitioner and Respondent No.4 submitted their tender forms along with their technical and financial bids and upon opening of the financial bid, the Petitioner was found to be H-1. As per the case of the Petitioner, he was waiting for the orders of Respondent No.3 of accepting his bid, but on 08.08.2019, Respondent No.3 has sent a letter vide Annexure P/1 intimating that his bid was rejected on account of non-depositing of twelve months advance rent towards security deposit. The issuance of letter dated 08.08.2019 cancelling the bid of the Petitioner made him to approach this Court by way of filing this writ petition, in which, it is pleaded that letter dated 02.08.2019 mentioned in Annexure P/1 has not been received by the Petitioner. Non-compliance with the direction of letter dated 02.08.2019 was the basis for cancellation of bid of the Petitioner.

3. Upon hearing the learned counsel for the Petitioner notices were issued to Respondent No.4 on 24.09.2019. During the proceedings of case before this Court, when Respondent No.4 did not appear, this Court directed Respondents No.1 to 3 to intimate the Respondent No.4 about the pendency of writ petition to him. It was brought to the notice of this Court that they did not able to contact him and the medical social worker along with the vehicle driver went to the residential address mentioned in the tender document, but there also, Respondent No.4 was not available and his family members refused to accept the documents even after bringing to their knowledge that the documents are of the High Court. Subsequently, on the mobile number of Respondent No.4, the documents have been sent to him via social media on WhatsApp, proof of the same was produced along with the affidavit of one Medical Officer and the copy of postal receipt was placed on record of sending the documents through speed post. When, nobody appeared on behalf of Respondent No.4 on 09.12.2019 also, then this Court has injuncted Respondent No.4 from pursuing the work as per the work order issued by the Government and since then, the Government is operating the vehicle stand.

4. Respondents No.1 to 3/State submitted their reply and pleaded that the Petitioner was aware that he was declared as H-1 and was required to deposit security amount of twelve months advance rent i.e. Rs.32,40,000/-. It was further pleaded that Respondent No.3 issued a letter dated 02.08.2019 to the Petitioner directing him to comply with Clause-6 of the tender document i.e.

deposit of one year advance rent as security deposit, but the Petitioner failed to comply with Clause-6 of the tender document and also the direction issued by Respondent No.3 in its letter dated 02.08.2019 (Annexure R/2). It was also pleaded that cancellation of bid of the Petitioner is on account of non-compliance of the condition mentioned in Clause-6 as well as non-compliance of the directions issued in letter dated 02.08.2019.

5. Respondent No.4 submitted his reply and pleaded that address of Respondent No.4 in the writ petition is wrongly mentioned. It was further pleaded that Respondent No.4 and his staff or any one of the family member are always present at the vehicle stand, which is subject matter at Dr. B.R. Ambedkar Memorial Hospital, Raipur. For the first time, he received the order of the High Court dated 09.12.2019 through the Deputy Director vide letter dated 19.12.2019. The rate quoted by the Petitioner as to become H-1 was practically not possible looking to the price for the vehicles and its categories fixed by Respondent No.3. As per rate quoted by the Petitioner, per day payment to Respondent No.3 comes to Rs.8,876.71 excluding the expenditure of staff and maintenance as well as the taxes. The collection of aforementioned amount per day is not possible looking to the place where vehicle stand is to be operated. The Petitioner failed to deposit one year advance as per Clause 6 and his bid was cancelled. Respondent No.4 being the second highest bidder was awarded the work of tender and being so, Respondent No.4 has deposited one year advance rent towards security deposit after receiving the letter on

09.08.2019 and further entered into contract on 14.08.2019. It was also pleaded that the Petitioner was proxy and having partnership with Sourabh Mishra against whom dues were outstanding with Respondent No.3 of earlier contract.

6. Shri Amit Sharma, learned counsel appearing for the Petitioner submits that merely opening of price bid in front of tenderers and finding bid of the Petitioner to be the highest bidder (H-1) would itself not be deemed that the price bid of the Petitioner was accepted. The Petitioner did not receive any letter dated 02.08.2019 of acceptance of his bid and directing him to deposit one year advance rent, but he received letter dated 08.08.2019 only whereby his H-1 bid was cancelled by Respondent No.3 on account of non-compliance of the direction issued in letter dated 02.08.2019 for complying with Clause-6 of the tender document. Respondent No.3 was predetermined to allot/award the contract in favour of Respondent No.4 since initiation of tender proceedings. Earlier the allegations have been levelled that he was partner of one Sourabh Mishra and when that ground was not succeeded, the letter of intimation of acceptance of the price bid of Petitioner has not been sent to him. He further submits that the tender may be awarded to the Petitioner being highest bidder or in alternate, prays for setting aside the tender notification dated 13.07.2019 and to initiate fresh tender proceedings.

7. Shri Gagan Tiwari, learned Deputy Government Advocate representing the State submits that the Petitioner was undisputedly H-1 bidder, he was aware that he has been declared as H-1 and

also knowing that he has to deposit amount of one year advance rent towards security deposit, as per clause 6 of the tender document, which he failed to comply. It is pointed out that Respondent No.3 sent a letter dated 02.08.2019 for depositing one year advance rent, which is evident from Annexure R/3, (extract of dispatch register), shows that the letter has been dispatched to the Petitioner. Due to non-compliance of Clause-6 as well as directions issued to the Petitioner vide letter dated 02.08.2019, bid of the Petitioner was cancelled. Bid of Respondent No.4 was accepted, he has been directed to comply with Clause-6 of tender document being H-2, to which, Respondent No.4 had complied with and deposited one year advance rent towards security deposit and the tender work was allotted/awarded to him. He further submits that the allegations levelled by the Petitioner against officials is baseless and the action of Respondent No.3 is in accordance with Clause-23 of the tender document. There is no illegality or arbitrariness in the action of Respondent No.3.

8. Shri Devershi Thakur, learned counsel appearing for Respondent No.4 submits that as per clauses of the tender document, he being H-2 has been directed to deposit one year advance rent, which was deposited by him and subsequently, the contract agreement was also signed between him and Respondent No.3. After entering into the contract, Respondent No.4 was operating vehicle stand, but due to interim order dated 09.12.2019 passed by this Court, now it is Respondent No.3 itself, who is managing the vehicle stand at Dr.B.R. Ambedkar Memorial Hospital,

Raipur.

9. We have heard learned counsel appearing for the respective parties and perused the relevant materials/documents submitted by respective parties along with their pleadings as also the original dispatch register placed before us by learned counsel for State.

10. To better understand the claim of respective parties, we find it appropriate to deal with the relevant clauses of the tender document. As per Clause-29, the tenderer has to submit one envelope with two separate envelopes. One is of 'Prequalification Envelope (A)' and second one is 'Price Bid Envelope (B)'. In the main envelope (A), it should be mentioned the "tender number" and "tender for vehicle stand". In the envelope of Prequalification, it is to be mentioned on top as "Prequalification" accompanying with (i) fixed deposit receipt of Rs.1 Lac in the name of Dr. B.R. Ambedkar Memorial Hospital, Raipur; (ii) complete present address of tenderer (electricity bill, PAN card, Voter ID); (iii) declaration letter as per Annexure 1; (iv) experience certificate of working with Government Institutions or Semi-Government Institutions or Private Institutions for a period of three years. In the second envelope (B) of Price Bid, it is to be written as "Price Bid".

11. The important clause as per submissions made by learned counsel for Petitioner appears to be Clause-31, which is extracted below for ready reference :

“31. निविदा के लिये प्राप्त लिफाफे अ और ब को क्रय समिति द्वारा खोला जावेगा तथा मदवार निम्नानुसार चयन क्रम को दर्शाया जावेगा :—

1. First Preference - H-1
2. Second Preference - H-2
3. Third Preference - H-3

इस विषय में अधीक्षक डॉ.भीमराव अम्बेडकर स्मृति चिकित्सालय रायपुर को H-1 को आदेश देने का तथा इस आधार पर H-1 निविदाकार से मूल्य पर मोलभाव वार्ता (Negotiation) करने का अधिकार सुरक्षित रहेगा।”

12. Clause-31 provides for order of selection of tenderers i.e. first preference will be given to H-1 (the highest bidder), second preference will be given to H-2 and third preference will be given to H-3. The important part of Clause-31 is that it reserves the right with the Superintendent of Dr. B.R. Ambedkar Memorial Hospital, Raipur for ordering H-1 and to negotiate with H-1.

13. From bare reading of Clause-31, it is apparent that though tenderer's bid has been found to be H-1 bid, but even then, there was right reserved with Superintendent for negotiation and to order H-1 accordingly; meaning thereby that, the tenderer finding his bid to be H-1 upon opening of the bids of all the tenderers by authorized persons itself will not make him liable to further comply with Clause-6 of the tender document. As per the clause of the tender document order of accepting the H-1 bid as submitted by any tenderer is further required.

14. Clause-6 of the tender document is extracted below for ready reference :

“06. निविदा निराकृत किये जाने पर सफल निविदाकार को अमानत राशि के रूप में 12 माह की

किराया राशि अग्रिम चिकित्सालय के कैश शाखा में नगद अथवा चेक के माध्यम से जमा करना होगा जो निविदा के सफल संचालन अवधि के समाप्ति उपरांत देय होगा।”

15. Clause-6 of the tender document requires the successful tenderer to deposit one year advance rent towards security deposit with Cash Department by cheque or cash and the same will be refundable after completion of contract period. The terminology used in Clause-6 if read with Clause-31, makes it clear that the amount of advance rent of twelve months is to be deposited after decision/conclusion of the tender proceedings. Clause-31 mentions about right to order and negotiation with H-1 is with the Superintendent of Hospital. The Superintendent is provided with the discretion to accept the H-1 bid as it is or to negotiate and to accept the bid on the basis of agreed terms in negotiation and to pass orders accordingly.

16. The submission made by learned counsel for the State that as on the date of opening of the bid, the Petitioner became aware of the fact that he was highest bidder (H-1), therefore, he has to deposit the security amount as per Clause-6 does not appear to be correct. As per Clause-31, there is requirement of issuing order of acceptance of the bid by quoting the amount, for which, the bid was accepted and it is only thereafter, security amount as per Clause-6 can be deposited by the successful bidder. The submission made by Shri Gagan Tiwari, Deputy Government Advocate that Petitioner is aware that he is H-1 bidder but even he failed to comply Clause-6 is

not acceptable and is hereby repelled.

17. The other ground which is emerging from the pleadings and submissions made by learned counsel appearing for the respective parties that the Petitioner was intimated about the acceptance of bid by the competent authority and also to deposit the amount as per Clause-6 towards security deposit is concerned, the pleadings and submissions of learned counsel for the State is that the said letter was handed over to one of the representatives of the Petitioner and in support of their plea, they have produced the extract of dispatch register vide Annexure R/3.

18. The aforementioned fact pleaded and argued by learned counsel for the State was vehemently denied by the learned counsel for the Petitioner by saying that at no point of time, letter dated 02.08.2019 said to be sent by Respondent No.3 was received by him. There was no representative of Petitioner and if letter dated 08.08.2019 has been sent to him on his address by post, then, why the letter dated 02.08.2019 has not been sent to him directly on his address.

19. The submission made by learned counsel for the Petitioner appears to have some force. The letter dated 02.08.2019 (Annexure R/2), which is an intimation of accepting bid and pursuance to it, direction to deposit the amount as per Clause-6 within a period of five days is a very important document, but Respondent No.3 has not sent the said letter by registered post or by courier on address of Petitioner or handed over to him directly through messenger of the

Department. Annexure R/3, which is extract of dispatch register only mentions the signature with date and name of one Neelam Soni. It has not been pleaded that in what manner and capacity said Neelam Soni was associated with Petitioner if that being so.

20. Normally, letters issued by any Department to any private person is to be sent on his address supplied/available with the Department through post or registered post and in any circumstance, if it is to be served by hand, then, the letter of the Department is to be handed over to the person concerned or at the most, any of the family member. One more important aspect of the letter Annexure R-2 is that the letter was signed on 31.07.2019 the other officer signed on 02.08.2019 showing that it is issued on that day but in dispatch register entered on 31.07.2019 before the date of issuance. In view of above two facts about letter dated 02.08.2019 the submission of learned counsel for State that Petitioner was aware of the fact being H1 his bid was accept but failed to comply Clause 6 is not appealing to this Court.

21. In the case at hand, Respondent No.3 has not sent such an important letter of acceptance of bid with a direction to deposit an amount of Rs.32,40,000/- towards security deposit within a period of five days from the date of issuance of the letter to the Petitioner by registered post or served upon him directly by hand. The Respondent could not able to demonstrate that the Petitioner was made aware of acceptance of his bid. The Respondent could not able to satisfy this Court that as to why the letter dated 02.08.2019 has not been sent on the address supplied by the Petitioner in his

tender form by registered post or not inquired as to in what capacity letter of intimation has been handed over or served to third person. Respondents No.1 to 3 on the direction issued by this Court has produced dispatch register, in which, letter dated 02.08.2019 has been shown in the dispatch register, but it is handed over to one Neelam Soni. In reply, Respondents No.1 to 3 have not mentioned the relationship of the representative. Letter was not sent through post or by messenger on the address supplied by the Petitioner along with his tender form/document. The second letter of termination of contract has been sent by Respondents to the Petitioner on his address through postal service as available with Respondent No.3, which is also mentioned in the dispatch register, which was received by him. Respondents No.1 and 3 produced dispatch register before this Court and perusal of the register would show that the letter dated 08.08.2019 has been dispatched through post vide dispatch No.13510.

22. Respondent No.3 cancelled the bid of the Petitioner for non-compliance of the direction without ascertaining whether the letter of acceptance of bid and direction for depositing one year advance rent was received by the Petitioner or not. This makes the procedure adopted by Respondent No.3 to be improper erroneous and arbitrary.

23. The Hon'ble Supreme Court in the matters of **Sterling Computers Limited v. M/s M & N Publications Limited and others** reported in **(1993) 1 SCC 445**, **Tata Cellular v. Union of India** reported in **(1994) 6 SCC 651**, **Jagdish Mandal v. State of**

Orissa and others reported in **(2007) 14 SCC 517** and recently in **Central Coalfields Limited and another v. SLL-SML (Joint Venture Consortium) and others** reported in **(2016) 8 SCC 622** had laid down the guidelines as to when and in what circumstances judicial review can be exercised by the Courts in contractual or tender matters. In the light of the above law enunciated by Hon'ble Supreme Court, if the facts of the present case are looked into, we find that the procedure adopted by the Respondent after opening of bids was erroneous. The action of the Respondents No.1 to 3 of handing over the letter of acceptance of bid to a person not known to Petitioner is arbitrary and contrary to the known procedure of law.

24. The Respondent in their reply has given much stress on the fact that at the time of opening of bid, representative of the Petitioner was present and thereby he was aware that he was H-1. The other point raised is that letter dated 02.08.2019 was issued and served on the representative of the Petitioner. So far as upon opening of bid, Petitioner was found to be H-1 itself may not be sufficient that his bid is accepted in view of Clause-31 as discussed above. The second point of serving letter/order upon representative also could not be proved as relationship of representative is not mentioned in register (dispatch) nor in reply and further the letter was not served upon Petitioner or delivered at his home address.

25. In the case at hand, the price bid quoted by the Petitioner was much more than that of Respondent No.4 and by arbitrary action of Respondent No.3, the State will suffer loss of public exchequer.

26. In view of above, we deem it fit and appropriate to mould the relief sought for by the Petitioner in this writ petition. The Annexure P/1 is hereby set aside. Consequently, the contract awarded to Respondent No.4 is also set aside. Respondent No.3 would be at liberty either to initiate a fresh tender proceedings or can negotiate with the Petitioner and Respondent No.4 who are H-1 and H-2 bidders and to call their rates/bids in sealed cover to be opened in front of both the parties. Respondent No.3 is further directed to complete the whole proceedings within a further period of six weeks from the date of receipt of copy of this order.

27. The writ petition is allowed to the above extent. No order as to costs.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge