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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.1059 of 2020**

Anmol Singh Bhatia, S/o Shri Harvinder Singh Bhatia, Aged About 25 Years, R/o Old Bazarpara, Jashpur Road, Pathalgaon, District Jashpur, 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, Chhattisgarh.
2. Mr. Ashok Agrawal, S/o Shri Balraj Agrawal, R/o Ward No. 3, Ambikapur Road Patthalgaon, District Jashpur (Chhattisgarh) 496118.
3. Mr. Sunil Agrawal, S/o Purushottam Agrawal, R/o 35 Society, Para Pratapgarh, District Surguja (Chhattisgarh) 497114.

---- Respondents

For Petitioner	: Shri Arpit Agrawal on behalf of Shri B. P. Sharma, Advocate.
For Respondent No.1	: Shri Atul Kumar Kesharwani, Advocate on behalf of Shri Vivek Ranjan Tiwari, Advocate.
For Respondent No.2	: Shri S. S. Baghel, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Narendra Kumar Vyas, Judge

Order on Board**Per P. R. Ramachandra Menon, Chief Justice****22.03.2021**

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

“10.1 A writ and/or an order in the nature of writ of mandamus do issue calling for the records

pertaining to the case of the petitioner from the respondent concerned for its kind perusal.

10.2 A writ and/or an order in the nature of writ of mandamus do issue commanding and directing the respondent to take decision in accordance with the qualification criteria fixed by them and if any illegality is found in the documents submitted by any tenderer with regard to eligibility qualification, then to declare such tenderer ineligible to take part in the tender process, in the facts and circumstances of the case.

Or

A writ and/or an order in the nature of writ of mandamus do issue commanding and directing the respondent to consider objection raised by the petitioner vide letters dated 12.3.2020 in accordance with terms and conditions of the NIT, particularly Clause No.4 and to take decision in accordance with further clause of the NIT i.e Clause 31.3 & 31.4, in the facts and circumstances of the case.

10.3 Cost of the proceedings.

10.4 Any other writs and directions that may be deemed fit and just in the facts & circumstances of case.”

2. Heard Shri Arpit Agrawal, the learned counsel appearing for the Petitioner as well as Shri Atul Kumar Kesharwani, the learned standing counsel representing the 1st Respondent-Corporation, besides Shri S. S. Baghel, the learned counsel appearing for the 2nd Respondent.
3. The sum and substance of the case projected by the Petitioner is that, pursuant to Annexure P/1 Notice Inviting Tender ('NIT') issued by the 1st Respondent-Corporation for transportation of materials, the Petitioner by

virtue of the credentials and qualifications, took part in the bid in the manner as specified in the notification. The last date for submission of tender was 28.02.2020, the technical bid was opened on 05.03.2020 and thereafter, the financial bid was opened on the next day, when the Petitioner turned to be placed at 'L-1'. It is the case of the Petitioner that, the inquiry made by the Petitioner revealed that some of the participants, particularly the 2nd Respondent herein were not having the vehicles in their name on the last date of the tender. The documents submitted by the 2nd Respondent were false and fabricated including the insurance policy issued for the vehicles concerned. The said objection was filed by way of Annexure P/2 on 12.03.2020, but the same was not considered or dealt with on merit by the 1st Respondent-Corporation. The objection raised by the Petitioner was virtually turned down stating that it was belated. However, the fact remains that the contract was awarded to the 2nd Respondent only much later, as per Annexure R/3 dated 13.04.2020, i.e., one month after filing the objection.

4. Shri Arpit Agrawal, the learned counsel for the Petitioner submits that by virtue of mandate of Clause 31.4 & 31.5 of the terms and conditions of the tender, it is obligatory for the Corporation to have considered the correctness of the objection raised by the Petitioner; as power and authority stand conferred upon the 1st Respondent-Corporation to the effect that, even after awarding the tender, if any of the documents filed by the tenderes were found to be false, fabricated or wrong in any manner, the tender could be cancelled, the EMD could be forfeited and the bidder could be blacklisted. This course was not pursued by the 1st Respondent-Corporation and the contract was awarded to an ineligible bidder and hence, the grievance in the writ petition. The learned counsel

submits (with regard to the merit of the objection raised by the Petitioner pertaining to the vehicle No.CG 14 A 4511) that the insurance was in the name of the previous owner - Nand Kishore Agrawal. The additional documents produced along with I.A. dated 10.06.2020 have also been referred to, whereby the competent authority as per Annexure - A, confirms the position to the effect that the transfer of the vehicle was issued only subsequently, i.e. on the last date of tender (under the Right to Information Act, 2005). Since the 2nd Respondent was not the owner of the above vehicle on the last date of tender, under no circumstances, could the Corporation have accepted the same and awarded the contract to the 2nd Respondent.

5. The learned counsel points out that in respect of vehicle No.CG 14 MH 1172, there was no valid policy for the vehicle as on the relevant date, which position has been confirmed by the Insurer as per the document produced along with I.A. dated 17.03.2020. It is stated that this factual position is admitted by the 2nd Respondent in their return, particularly as given in paragraph 2.8, where the said Respondent submits that the number of policy is different, though it is sought to be exclaimed as an inadvertent error. The learned counsel also submits that this position was not got clarified while awarding the tender. If this exercise had been done correctly on time by the 1st Respondent-Corporation, the tender could have not been granted in favour of the 2nd Respondent, who has made unlawful gains during the period, which contract is come to an end on 31.03.2021. It is further possible that the 1st Respondent-Corporation, by virtue of the terms incorporated in the NIT, may extend the tenure of the contract and if this is done, further unlawful gains will be extended to the 2nd Respondent who actually is not entitled to get the contract by virtue of

the above discrepancies pointed out in the light of the relevant documents.

6. Shri Atul Kumar Kesharwani, the learned counsel for the 1st Respondent-Corporation submits that the averments made by the Petitioner before this Court are far from the track of the truth; having absolutely no merit at all, apart from the fact that, no objection was submitted by the Petitioner on opening of the financial bid, which in fact came to be filed only much later, on 12.03.2020. It is pointed out that as per Clause 4.2 of Annexure P/1 NIT, all the bidders had to submit the relevant documents obtained from the Competent Authority or Department of the Motor Vehicles in support of the vehicles which were being offered by the bidders. The learned counsel submits that such certificates were obtained by the 2nd Respondent from the office of the District Transport Officer (DTO), Jashpur and they were produced along with the tender. This is discernible from the documents produced along with I.A. dated 10.06.2020. With reference to the documents issued from the office of the DTO, Jashpur, the learned counsel submits that the vehicle bearing No.CG 14 A 4511, which was in the previous ownership of Nand Kishore Agrawal, had been transferred to the name of 2nd Respondent way back on 22.02.2020 and as such, the 2nd Respondent was the owner of the vehicle on the date of submission of the bid.
7. It is pointed out that, this factual aspect has not been disputed by filing any additional affidavit or rejoinder from the part of the Petitioner. With regard to the alleged lapse on the part of the 1st Respondent-Corporation in not verifying the documents produced along with the tender, the learned counsel for 1st Respondent-Corporation submits that though the objection submitted by Petitioner was belated, having preferred the same

only on 12.03.2020, the 1st Respondent-Corporation issued Annexure R-2/1 notice dated 19.03.2020 seeking for particulars of the vehicles from the parties concerned. In response to the said notice, the relevant particulars/documents were submitted and thereafter, the 1st Respondent-Corporation issued Annexure R/4 letter dated 15.04.2020 to the Authorities of the Motor Vehicles Department to confirm the particulars of the vehicles concerned, to ascertain genuineness of the same. Letter dated 05.05.2020 issued by the DTO, Jashpur is forming part of Annexure R/4, which clearly confirms that the vehicle particulars sought to be clarified were correct and they were issued from the office of the DTO, Jashpur. It was on the basis of the said reply and after considering the facts and figures, that the objection filed by the Petitioner was turned down vide letter dated 06.06.2020.

8. Shri S.S. Baghel, the learned counsel representing the 2nd Respondent submits that the idea of the Petitioner as to the factual particulars and the policy issued is wrong and misconceived. As a matter of fact, the particulars of the insurance policy with respect to vehicle No.CG 14 MH 1172 were furnished from the office of the DTO, Jashpur in terms of the stipulations in the tender and they were produced along with the tender. Unfortunately, the Authorities of the DTO, Jashpur, while taking the print-out, omitted the first 6 digits in the policy, which actually carry a number having 20 digits. It is with reference to the available 14 digits, that the Petitioner obtained information from the insurer, that such a policy was not issued. The matter was confirmed on verification by the Authorities concerned and the 2nd Respondent has produced full text of the policy as Annexure R/2-4, which is the same policy, carrying the same number sequence along with the omitted digits, i.e. policy carrying 20 digits, of

which, the first 6 digits were stated as missing. The policy was valid from 04.06.2019 to 03.06.2020 and as such, vehicle No.CG 14 MH 1172 was properly covered under a valid policy issued by the insurer. The contention is contrary and not correct, submits the learned counsel.

9. With regard to the other vehicle, i.e., CG 14 A 4511, the learned counsel submits that the position was already made clear by the learned counsel for the 1st Respondent-Corporation, with reference to the documents produced. The confirmation given from the Authorities of the DTO, Jashpur clearly shows that the vehicle which was in earlier ownership of Nand Kishore Agrawal, came to be transferred to the name of the 2nd Respondent on 22.02.2020 and as such, on the date of submission of the bid, 2nd Respondent was the owner of the vehicle. It was also having valid permit and insurance. In fact, the permit came to be issued only on 06.05.2020, which was not because on the fault of the 2nd Respondent, but because of compelling circumstances, especially, the lock-down and such other adverse conditions in connection with the COVID-19 pandemic.
10. The learned counsel submits that the Central Government, as a matter of policy, has issued necessary notification to the effect that all the documents under the Motor Vehicles Act, 1988 were to be treated as valid and would stand extended till 30.09.2020. A copy of the said notification bearing No.RT-11036/35/2020-MVL dated 09.06.2020 is also produced for perusal of the Court. We have gone through the relevant paragraphs, particularly paragraph-4, which is extracted below:-

“4. Taking into consideration the grim situation still continuing due to conditions for prevention of spread of COVID-19 across the country, it is

advised that-

a. **Validity of Documents:** The validity of Fitness, Permit (all types), Lerner's License, Driving License, Registration or any other concerned document whose extension of validity could not or not likely be granted due to lock-down and which had **expired since 1st Feb 2020 or will expire till 30th September 2020**, the same **may be treated to be valid till 30th September, 2020**. Enforcement authorities may be advised to treat such documents valid till 30th September, 2020.

b. Attention of State / UT Government Authorities are brought to the following provisions of the Motor Vehicles Act, 1988 for consideration:

I. Subsections 3(f) and 3(n) of Section 66- Exemption from requirement of permit to transport vehicle by State Government.

II. Clause (viii) of sub-section 2 of section 96- provide for exemption of prescribed person or prescribed classes of persons from payment of all or any portion of the fees payable under Chapter V of the MV act, 1988.

III. Section 211- Provide for exempting any class of persons from the payment of fee in part or in full.

c. Exemption from Permit / Relaxation on Fees / Tax / Penalties : The State / UTs are requested to consider provisions available under the Motor Vehicles Act 1988 or other such provisions available under other Acts, for considering relaxation in requirement of

permit, or fees or taxes for renewal / penalty
for permits etc.”

11. The learned counsel for the Petitioner however submits that the notification sought to be relied on from the part of the Respondents, is not applicable to the case at hand, insofar as it speaks about the validity of the document under the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1994 with regard to the relaxation in the permits/fees/taxes etc. In the instant case, there was no permit in the name of the 2nd Respondent and hence, this aspect ought to have been considered by the 1st Respondent-Corporation.
12. The learned counsel appearing for the 1st Respondent-Corporation brought to our notice the document produced by the Petitioner himself along with I.A. dated 10.06.2020. Annexure - A dated 04.06.2020 clearly reveals that the vehicle No.CG 14 A 4511 was having a valid permit for the period from 03.03.2017 to 02.03.2022. It is a fact that the permit came to be transferred to the name of the 2nd Respondent only on 06.05.2020, the reason for which is stated as the adverse circumstances prevailing all over the State including in the Motor Vehicles Department and the restrictions imposed. Insofar as the ownership of the vehicle is transferred to the 2nd Respondent w.e.f 22.02.2020, as borne by the document referred to above, the Petitioner could operate the vehicle on the strength of the existing valid permit. The 2nd Respondent took necessary steps to get it transferred to his name and this has been effected as per the entries made by the Motor Vehicles Department on 06.05.2020.
13. In the said circumstance, the submissions made from the part of the Petitioner to have the proceedings intercepted, do not hold much water.

We are of the view that the writ petition is devoid of any merit, which stands dismissed accordingly.

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

Sd/-
(Narendra Kumar Vyas)
Judge

Anu