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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2325 of 2021

- Ambey Industries Through Its Proprietor Dilip Agrawal, Office At Satpara Abhanpur, Tehsil - Abhanpur, District Raipur Chhattisgarh. **---- Petitioner**

Versus

1. C.G.State Civil Supplies Corporation Ltd. Through Its Managing Director Block 7 A II nd Floor, Sector-24, Office Complex, Atal Nagar, District Raipur Chhattisgarh.

2. G.P. Agrotech Pvt. Ltd., Through Its Partner Sanjay Agrawal, Registered Office At Aadishwar Complex, Ramsagar Para, District Raipur Chhattisgarh.

3. Pratham Traders, Through Its Proprietor Harshad Surana, Office At Old Bus Stand, Berla, District Bemetara Chhattisgarh.

4. Vinod Kumar Jain Agro Exim Pvt. Ltd. Registered Office College Road Jashpur Nagar District Jashpur (C G) And Office At Raipur - A/3 Jeevan Vihar Beside Hotel Zone, Telibandha District Raipur Chhattisgarh. 492006. (L/1)

---- Respondents

For Petitioner	:-	Mr. U.N.S. Deo Advocate
For Respondent No.1	:-	Mr. Vivek Ranjan Tiwari, Sr. Adv with Mr. Atul Kesharwani, Adv
For Respondent No.4	:-	Mr. Apruv Goyal, Adv

Proceedings through Video Conferencing

Hon'ble Shri Prashant Kumar Mishra, Ag.CJ
Hon'ble Shri Parth Prateem Sahu, J
Order On Board

By

Prashant Kumar Mishra, Ag.CJ

29/06/2021

1. Challenge in this petition is to the order dated 10.4.2021 (Annexure P1), although the relief clause in the writ petition seeks quashment of the entire process of the Notice Inviting Tender (NIT).

2. The respondent No.1 Chhattisgarh State Civil Supplies Corporation Limited (henceforth 'the Corporation') floated e-tender No. 76098 for supply of jaggery for Bastar Division for the year 2021-22 in which the petitioner and the respondents No.2 to 4 participated.

3. Clause 4.1 of the NIT required the bidder to supply jaggery produced in the State of Chhattisgarh and to have a valid lease agreement with any jaggery manufacturing unit or if he has obtained lease of the manufacturing unit, the same should be duly registered in accordance with law or the bidder should have live third party agreement with any jaggery factory. The jaggery manufacturer is required to have valid license from the concerned department. Clause 4.6 of the NIT provided that the bidder shall deposit security amount of Rs.2.00 crores through RTGS transfer in the account of the Corporation.

4. Petitioner's bid has been rejected vide Annexure P1 during the evaluation of his Techno-commercial bid, as his turn over certificate (Annexure P6) did not contain that the turn over

was in the business of jaggery and further that he does not have the live license issued by the Food Safety and Standards Authority of India (FSSAI).

5. Learned counsel for the petitioner would argue that the petitioner has the live certificate issued by the FSSAI in favour of the manufacturing unit with whom the petitioner has entered into an agreement. Thus, the said reason for disqualifying the petitioner is arbitrary. In respect of rejection of his bid for not having the turn over for jaggery, he would argue that the turn over certificate Annexure P6 is in English, which is the translation of the proforma certificate contained in the tender document Annexure P5. Thus it is submitted that this ground for rejection is also illegal and arbitrary. Learned counsel would next argue that, in any case, the said defect is trivial and curable for which the respondent ought to have provided an opportunity for curing the defect. He would also argue that the tender documents of respondents No.2 to 4 have wrongly been accepted as their bids were also not accompanied with the required certificates / documents. In respect of non-deposit of security amount through transfer by RTGS mode by the successful bidder i.e., the respondent No.4, learned counsel would argue that the certificate Annexure R4 with regard to payment through RTGS is not in the same format as mentioned in the NIT.

6. Per contra, learned counsel for the Corporation and the

learned counsel for the successful bidder i.e., respondent No.4 would submit that the turn over certificate of the petitioner nowhere stated that the turn over of food products business includes jaggery. They would further submit that the respondent No.4 paid the security amount through RTGS.

7. We have heard learned counsel for the parties at length and perused the record.

8. The main ground for rejection of the Techno-commercial bid of the petitioner is non mentioning of turn over for jaggery in the certificate for turn over of food product as provided in the tender document. Annexure P5 is the Hindi format of the turn over certificate. This format clearly provides that the supplier firm should have the required turn over of food product (which includes jaggery) for the last three financial years. Thus, the turn over certificate should clearly mention that business in jaggery is also included in the turn over of food products for the last three years. If we peruse the turn over certificate issued by the Chartered Accountant of the petitioner available at Annexure P6, it is crystal clear that the document nowhere states that the turn over of food product for the last three financial years includes jaggery business. This mentioning of inclusion of jaggery business in the turn over certificate is important and germane because the tender itself is for supply of jaggery. If the turn over certificate does not mention that the turn over includes

business in jaggery, it is of no value for the simple reason that the tender evaluation authority cannot presume that the turn over was for business of jaggery. This defect in the document Annexure P6, the turn over certificate, is of substantial nature, which could not have been ignored by the Corporation while evaluating the bid.

9. In so far as allegation concerning non payment of security amount by the respondent No.4 through RTGS, it is to be seen that the banker of the Respondent No.4 has issued the statement filed as Annexure R4/10 in the return filed by the respondent No.4 mentioning in the description column that Rs.2.00 crores have been paid in four equal installments of Rs. 50 Lakhs to the Corporation through RTGS. Thus, there being proof of payment of security amount through RTGS, it cannot be said that the respondent No.4 has not complied with clause 4.6 of the tender document.

10. In view of the above discussion, we are not convinced with the argument raised by the learned counsel for the petitioner that his bid has been rejected arbitrarily by the Corporation.

11. As a sequel, the writ petition being bereft of merit is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

SD/-	SD/-
(**Prashant Kumar Mishra**)	(**Parth Prateem Sahu**)
Acting Chief Justice	Judge

Gowri