

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3312 of 2021**

Yagya Kumar Rathore, Tour and Travels through Proprietor Yagva Kumar Rahtore, aged about 34 years, R/o Ward No.5, Sindhiya Para, Village Seoni (Naila), District Janjgir-Champa, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Department of Health and Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, District Raipur, Chhattisgarh
2. Secretary Mision, National Health Mission, Atal Nagar, District Raipur, Chhattisgarh
3. Chief Medical & Health Officer, Office of Chief Medical & Health Officer, National Health Mission, District Janjgir-Champa, Chhattisgarh, 495668
4. Collector, Office of District Collector, Champa Road, Janjgir, District Janjgir-Champa, Chhattisgarh, 495668
5. Block Medical Officer, entire Block, through Chief Medical and Health Officer, District Janjgir-Champa, Chhattisgarh, 495668
6. Sharma Supplier and Service through Proprietor Nitin Sharma, R/o Raigarh, District Raigarh, Chhattisgarh

---- Respondents

(Cause-title taken from Case Information System)

For Petitioner	: Mr. Aman Tamboli, Advocate
For Respondent/State	: Mr. Vikram Sharma, Dy. Govt. Advocate
For Respondent No.6	: Mr. Hari Agrawal, Advocate
Date of hearing	: 11.11.2021
Date of Judgment	: 10.12.2021

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Arvind Singh Chandel, Judge

CAV Order

Per Arup Kumar Goswami, Chief Justice

Heard Mr. Aman Tamboli, learned counsel for the petitioner. Also heard Mr. Vikram Sharma, learned Deputy Government Advocate for the State/respondents No.1 to 5 and Mr. Hari Agrawal, learned counsel for respondent No.6.

2. Respondent No.3/Chief Medical and Health Officer, Office of Chief Medical and Health Officer, National Health Mission, District Janjgir-Champa issued a Notice Inviting Tender in a newspaper dated 05.06.2021, inviting applications from interested bidders for hiring of vehicles for the year 2021-22. The last date and time of purchase of tender form was fixed on 11.06.2021 at 5.00 PM. The last date and time of submission of tender was fixed on 05.07.2021 at 3.00 PM and the last date and time of opening of tender was fixed on 05.07.2021 at 4.00 PM.

3. The case of the petitioner is that tender was opened not on 05.07.2021, but on 06.07.2021 in presence of parties and it transpired that four bidders had participated in the tender process. On examination of the technical bid, two bidders were only found to be qualified including the petitioner and respondent No.6. As per Rule 2.1 of the Chhattisgarh Store Purchase Rules, 2002 (for short, 'Rules of 2002'), Rules of 2002 is applicable to all the government tender processes within the State of

Chhattisgarh. It is pleaded that second proviso to Rule 4.3.3 of Rules of 2002 stipulates that minimum three eligible bidders have to participate in the tender process and there being only two bidders, overlooking the said provision and despite objection filed by the petitioner on 07.07.2021, the respondents No.1 to 5 had proceeded with the tender process, by rejecting the objection raised by the petitioner without assigning any reason. It is stated that, on 28.07.2021, financial evaluation bid was opened and respondent No.6 was found to be the lower bidder (L-1) in monthly rate and daily rate category and the petitioner was found to be the lower bidder in heavy vehicle and other vehicle daily rate category. It is stated that in the active GST certificate submitted by the respondent No.6, it is reflected that respondent No.6 deals with goods related to air conditioning machines, machines and mechanical appliances and goods related to the said nomenclature, etc. and it is nowhere mentioned that the respondent No.6 deals with the services relating to cab/taxi hiring, which is the subject matter of the tender in question and therefore, respondent No.6 was also not an eligible bidder.

4. On the aforesaid assertions, by filing this petition under Article 226 of the Constitution of India, the petitioner has, essentially, prayed for setting aside the order dated 20.07.2021 passed by the respondent No.3 as also the order dated 28.07.2021, by which, respondent No.3 has identified the L-1 bidders.

5. Respondents No.1 to 5 have filed a reply stating that the tender in

question was issued by respondent No.3 for the third time for the same subject. Initially, tender was floated on 05.07.2020 for hiring of the vehicles for the Financial Year 2020-21, but due to some technical issue, the tender issued on 05.07.2020 could not be proceeded with, as a result of which, on 18.08.2020, second tender was issued, in which only one bidder was found eligible and therefore, the second tender was cancelled. In continuation thereof, third tender (present tender) notice dated 05.06.2021 was issued. It is pleaded that when the tender was issued in the year 2020, in terms of Clause 4.13 of the Rules of 2002, the Purchase Committee had the authority to take appropriate decision and to accept or reject any tender on the basis of the rules and having regard to the urgency in the matter, the Purchase Committee accepted the tenders of both the petitioner and respondent No.6. It is further pleaded that the petitioner has been supplying vehicles to answering respondents for the last six years.

6. Respondent No.6 had filed a reply-affidavit adopting the stand taken by the respondents No.1 to 5. With regard to the allegations against the respondent No.6 regarding non-mention of subject in GST certificate, it is stated that in the order dated 20.07.2021, it was clearly mentioned that there was no requirement for submission of any such document. Reference was made to Rule 16 of the Rules of 2002 and two decisions of this Court, namely, (i) *M/s Nidhi Kumar Bagh v. State of Chhattisgarh & Others*, reported in *2015 SCC Online Chh 1343*, and (ii) *Tuleshwar Singh v. State of Chhattisgarh & Others*, reported in *2016 SCC Online Chh 1819*, in support of the contentions.

7. Mr. Aman Tamboli, learned counsel for the petitioner submits that the present tender pertains to the year 2021-22 and therefore, the stand taken by the respondents that it is a third tender in the year 2021-22 is not correct, as admittedly, two tenders were issued in the year 2020-21. It is submitted by him that second proviso to Clause 4.3.3 of the Rules of 2002 is applicable to the instant tender and mandate of Clause 4.3.3 has to be complied with, but giving a complete go by to Clause 4.3.3, the tender process was arbitrarily proceeded with and therefore, this is a fit case where this Court ought to interfere with the order dated 28.07.2021 and if in the meantime, any work orders have been issued to the parties, the same are also liable to be interfered with. He submits that even before the financial evaluation bid had been opened, the petitioner pointed out that the tender process cannot be carried forward as there are only two valid bidders. The ineligibility of the respondent No.6 was also brought to the notice of the respondents No.1 to 5, but without assigning any reason, the plea of the petitioner was rejected.

8. Mr. Vikram Sharma, learned Deputy Government Advocate appearing for respondents No.1 to 5 submits that for all intents and purposes, it has to be understood that the tender for the same work was issued for the third time and in that circumstance, decision was taken by the Purchase Committee to recommend award of work in favour of L-1 bidders and in the attending facts and circumstances, having regard to necessity of vehicles, the course adopted by the respondent authorities cannot be questioned, more so, in absence of any act of malafides attributed to the respondents.

9. Mr. Hari Agrawal, learned counsel appearing for respondent No.6, adopts the arguments advanced by Mr. Sharma, learned State counsel and further submits that the plea taken that the respondent No.6 does not deal with the services related to cab/taxi hiring is wholly misconceived. He draws the attention of the Court to Form ST-2 and Form 11, annexed to the reply filed by the respondent No.6, to demonstrate that respondent No.6 is dealing with, amongst others, tour and travel services.

10. We have considered the submissions made by learned counsel for the parties and have perused the materials on record.

11. The second proviso to Clause 4.3.3, on which reliance is placed by the learned counsel for the petitioner, reads as follows :

“4.3.3 In order to ensure adequate competition and comparison of rates in the tenders invited in the open tender system, it will be necessary that there should be at least 3 original manufacturers/bidders or their representatives participating in the open tender and it has to be ensured to have minimum of 3 eligible bidders to ensure adequate competition and comparison of rates in the open tenders.”

12. Perusal of the minutes of meeting dated 06.07.2021 and 20.07.2021 goes to show that on 06.07.2021, in the tender process, four bidders participated and after evaluation of technical bid of all the four

bidders, it was found that two bidders, i.e. the petitioner and respondent No.6, were technically qualified. Reference was made to Central Vigilance Commission Guidelines on single bid as also to Clause 4.13 of the Rules of 2002 and decision was taken to open the financial bid. Though, the petitioner had stated that financial bid was opened on 28.07.2021, it appears that financial bid was opened on 20.07.2021. On 20.07.2021, the representatives of both the petitioner and respondent No.6 were present in the office of the Collector for negotiation, in which, while respondent No.6 reduced Rs.5/- from the rate quoted by L-1 (rate quoted by him), in respect of monthly and daily rate, the petitioner did not express any oral or written consent for negotiation.

13. What is noticed is that from July 2020, attempts were made by he respondent authorities to hire vehicles. Technically, it will be correct to say that two tender notices issued earlier were for the year 2020 and the first tender for the year 2021 was issued on 05.06.2021. However, fact remains that the present tender is the third tender notice issued for the very same purpose for which tenders were issued earlier in the year 2020 i.e. on 05.07.2020 and 18.08.2020.

14. That the Rules of 2002 apply to the present tender is not disputed by the respondents.

15. Though contention is advanced by the learned counsel for respondents No.1 to 5 that since the present tender is in continuation of the notices issued earlier and as second proviso to Clause 4.3.3 was not in existence when the first tender notice was issued, there was no

necessity in the instant tender process to follow Clause 4.3.3, such a contention cannot be accepted. When the present tender was issued, the said clause was very much in force, the same having been inserted on 29.12.2020. It is seen from the records that proviso to Clause 4.3.3 was not even deliberated upon at the time of opening of the technical bid and financial bid despite the petitioner asserting that three valid tenderers are required to proceed with the tender.

16. This Court in *M/s Nidhi Kumar Bagh* (supra) upheld a notice issued providing less than 30 days for submission of offers as required by Rule 4.5 of the Rules of 2002 on the ground that as the tender was issued for the purpose of supply of food to pregnant women in the Delivery Ward, there was urgency of completion of supply and that Rule 16 of the Rules of 2002 provides that in special circumstances, the Rules of 2002 can be relaxed.

17. In *Tuleshwar Singh* (supra), tender for purchase of wooden beds for students of tribal hostel was issued twice and on both the occasions, the number of bidders being less than three, in view of Rules of 2002, no further action could be taken. Subsequently, when purchase orders were placed, such action was put to challenge. The tender value was only Rs.4,36,125/- and since there was an element of urgency, this Court did not find it fit to invoke its extra-ordinary jurisdiction and consequently, the writ petition was dismissed.

18. The factual position in the present case is not akin to the factual position that was present in *M/s Nidhi Kumar Bagh* (supra) and

Tuleshwar Singh (supra). No pressing need and urgency, which was noticed in *M/s Nidhi Kumar Bagh* (supra) and *Tuleshwar Singh* (supra) is discernible in the instant case. It was noted in *M/s Nidhi Kumar Bagh* (supra) that Rule 16 of the Rules of 2002 provides for relaxation of the rules in special circumstances. It is not the case presented by the State that power of relaxation had been exercised in the instant case.

19. In view of the above discussion, we are of the considered opinion that decision making process is vitiated on account of non-consideration of Clause 4.3.3 of the Rules of 2002 and therefore, order dated 28.07.2021 is set aside and quashed. The respondent authorities are, however, at liberty to initiate a fresh tender process in accordance with law.

20. In the result, the writ petition is allowed. No cost.

21. Register and copy of note-sheet be returned to Mr. Vikram Sharma, learned Deputy Government Advocate.

Sd/-

(Arup Kumar Goswami)
Chief Justice

Sd/-

(Arvind Singh Chandel)
Judge