

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 29.06.2017****Judgment Delivered on 30.06.2017****Writ Petition (C) No. 2748 of 2016**

M/s. Hora Transport Company Pvt. Ltd., through its Director Sarab Jeet Singh Hora, Son of Dilip Singh Hora, Aged about 32 years, (H & T Contractor), Resident of A-1, Sai Nagar Raipur, District Raipur, Chhattisgarh

---- Petitioner**versus**

1. General Manager (Region), Food Corporation of India, Regional Office, Vidhan Sabha Road, Post-Pandari, Raipur, District-Raipur, Chhattisgarh
2. Managing Director, Chhattisgarh State Ware Housing Corporation, Head Office, N-3, Avanti Vihar, Raipur, District Raipur, Chhattisgarh

---- Respondents**Writ Petition (C) No. 2763 of 2016**

Speedo Cargo, through its Proprietor Gurmit Singh Hora, Son of Dilip Singh Hora, Aged about 36 years, Resident of A-1, Sai Nagar Raipur, District Raipur, Chhattisgarh

---- Petitioner**versus**

1. General Manager (Region), Food Corporation of India, Regional Office, Vidhan Sabha Road, Post-Pandari, Raipur, District-Raipur, Chhattisgarh
2. Managing Director, Chhattisgarh State Ware Housing Corporation, Head Office, N-3, Avanti Vihar, Raipur, District Raipur, Chhattisgarh

---- Respondents**Writ Petition (C) No. 2755 of 2016**

Dinesh Sharma, Aged about 47 years Late Ram Avatar Sharma, (H & T Contractor), Village & Post Baradwar, District Janjgir-Champa, Chhattisgarh

---- Petitioner**versus**

1. General Manager (Region), Food Corporation of India, Regional Office, Vidhan Sabha Road, Post-Pandari, Raipur, District-Raipur, Chhattisgarh
2. Managing Director, Chhattisgarh State Ware Housing Corporation, Head Office, N-3, Avanti Vihar, Raipur, District Raipur, Chhattisgarh

---- Respondents

Writ Petition (C) No. 2753 of 2016

Shakil Ahmed, Son of Late Tabid Ahmed, Aged about 48 years, Resident of-
Ward No. 8, Nawagaon, Sihawa Chowk, Dhamtari, District Dhamtari,
Chhattisgarh

---- **Petitioner**

versus

1. General Manager (Region), Food Corporation of India, Regional Office, Vidhan Sabha Road, Post-Pandari, Raipur, District-Raipur, Chhattisgarh
2. Managing Director, Chhattisgarh State Ware Housing Corporation, Head Office, N-3, Avanti Vihar, Raipur, District Raipur, Chhattisgarh

---- **Respondents**

Writ Petition (C) No. 2762 of 2016

Gurdev Traders, through its Proprietor Manoj Kumar Jain, Son of Late
Roopchand Jain, Aged about 48 years, High School Road, Balod, District Balod,
Chhattisgarh

---- **Petitioner**

versus

1. General Manager (Region), Food Corporation of India, Regional Office, Vidhan Sabha Road, Post-Pandari, Raipur, District-Raipur, Chhattisgarh
2. Managing Director, Chhattisgarh State Ware Housing Corporation, Head Office, N-3, Avanti Vihar, Raipur, District Raipur, Chhattisgarh

---- **Respondents**

Writ Petition (C) No. 2815 of 2016

Dinesh Mishra, S/o Late Shri Nandram Mishra, aged about 54 years, R/o Link
Road, in front of Gyan Bharti School, Tahsil and Police Station Janjgir, Janjgir,
District Janjgir Champa (C.G.)

---- **Petitioner**

versus

1. General Manager (R), Food Corporation of India, C.G. Regional Office, Vidhan Sabha Road, Pandari, Raipur, District-Raipur, Chhattisgarh
2. Chhattisgarh State Ware Housing Corporation, through the Managing Director, N-03, Avanti Vihar, Raipur, District Raipur (C.G.)

---- **Respondents**

Writ Petition (C) No. 2819 of 2016

Bajranglal Agrawal S/o Late Shri Maluram Agrawal, 53 yrs, Ravi Motors, Raigarh
Chowk, Kharsia, District Raigarh (C.G.)

---- **Petitioner**

versus

1. Food Corporation of India Through: The Regional Manager, District Office, Vidhan Sabha Road, Kapa, Raipur, District Raipur (C.G.)
2. C.G. State Ware Housing Corporation, Through : The Managing Director, N-3, Avanti Vihar, Raipur, District Raipur (C.G.)

---- **Respondents**

And
Writ Petition (C) No. 2829 of 2016

Bajranglal Agrawal S/o Late Shri Maluram Agrawal, 53 yrs, Ravi Motors, Raigarh Chowk, Kharsia, District Raigarh (C.G.)

---- Petitioner

versus

1. Food Corporation of India Through : The Regional Manager, District Office, Vidhan Sabha Road, Kapa, Raipur, District Raipur (C.G.)
2. C.G. State Ware Housing Corporation, Through: The Managing Director, N-3, Avanti Vihar, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner	:	Shri Sunil Otwani, Shri Prateek Sharma and Shri Rishi Sahu, Advocates.
For Respondent/FCI	:	Shri Sunil Pillai, Advocate.
For Respondent/CGSWSC	:	Shri B.D.Guru, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. Order

Per, Thottathil B. Radhakrishnan, Chief Justice

1. These eight (8) writ petitions are instituted by persons who were awarded contracts by Chhattisgarh State Warehousing Corporation; for short 'Warehousing Corporation'. They challenge issuance of Notice Inviting Tenders; 'NIT', for short, issued by the Food Corporation of India; 'FCI', for short.
2. We have heard the learned counsel for the Petitioners, the learned counsel for FCI and the learned counsel for Warehousing Corporation.
3. Warehousing Corporation handles the work of godowns handling, rake handling, food grains godowns handling and also transportation of food grains which are procured by the FCI. The Petitioners claimed that since they have been awarded contracts by the Warehousing Corporation, no fresh tenders could be invited by the FCI for the same purpose and period of time. The issuance of NIT by the FCI is thus under challenge.

4. When this bunch of matter came up for consideration earlier, this Court considered, apparently, all the relevant issues of facts which are germane for adjudication, in writ jurisdiction, and for disposal of the claims raised by the Petitioners. We say so because of the contents of the order minuted by this Court on 06.12.2016, which is fairly elaborate and is required to be quoted to avoid repetition of facts as well. The relevant portion of the order dated 06.12.2016, which was passed by this Court in this batch of cases while considering the prayer for grant of interim relief, reads as follows:

".....This order is being passed in the aforesaid eight petitions with regard to prayer for grant of interim relief.

The undisputed facts necessary for orders on interim relief are that the Chhattisgarh State Ware Housing Corporation (hereinafter called 'the Ware Housing Corporation') has its own godowns and the food grains which are procured by the Food Corporation of India (hereinafter called 'the FCI') are stored in the godowns of the Corporation.

We are, at this stage, not going into the scope and ambit of the powers of the Ware Housing Corporation but the facts remain that the Ware Housing Corporation handles work of godowns handling, rake handling, food grains godowns handling and also transportation. The Ware Housing Corporation floated a notice inviting tender on 27.4.2016 inviting tenders for rake handling, godowns handling and transportation of the goods of the FCI at various godowns of the Ware Housing Corporation.

It is not disputed that the Petitioners were the lowest bidders and successful tenderers. From the records, it appears that the FCI was not satisfied with the rates at which the tenders had been awarded by the Ware Housing Corporation. Thereafter there was some correspondence in this regard between the FCI and the Ware Housing Corporation. Finally the FCI floated its own tender on 26.10.2016 for the same godowns.

The two main differences pointed out are that the earlier tender floated by the Ware Housing Corporation was for a period of two years which could be extended for a further period of six months whereas, the second tender is only for a period of two years. The second difference pointed out is that most of the tenders floated by the Ware Housing Corporation were composite tenders whereas the FCI has floated tenders separately for godowns handling, rake handling and transportation.

The Petitioners claims that since they have been awarded the contract by the Ware Housing Corporation no fresh tenders could have been invited or contracts awarded by the FCI. They challenge the authority of the FCI in floating fresh tenders. The other grievance is that once their rates have been disclosed, it is very easy to for the other bidders to know their rates and obviously the bids would be less than what had been bid by the Petitioners.

It is also urged that in between another tender was floated which was for a short period of two months and in those rates quoted were much higher. On comparison of the rates, the FCI itself had cancelled these short term tenders.

We had directed the FCI to file a chart in each case showing what is the effective rate being charged by the Petitioners and what is the effective total rate which is now quoted in response to the fresh tenders. These charts have been prepared and we may point out the rates casewise.

In W.P.(C) No. 2748 of 2016 there were three centres-SWC Karanja Bhilai, SWC Bagbahara and SWC Mahasamund. The rates quoted by the Petitioner, M/s Hora Transport Company Pvt. Ltd., are 1031.68, 725.67 and 823.4 per metric tonne respectively. The composite total cost as per fresh tender for these three stations is 1261.37, 778.82 and 883.1 per metric tonne.

In W.P.(C) No. 2763 of 2016 there are five centre-SWC Abhanpur, SWC Saraipalli, SWC Kurud, SWC Rajim and SWC Basna. The successful tenderer was Speedo Cargo and the rates quoted by it per metric tonne works out to 195.97, 196.63, 195.3, 197.96 and 195.3 respectively and the rates as fresh floated tender by FCI for these five centres are 98.98, 114.92, 122.89, 98.98 and 116.25 per metric tonne. Therefore in Rajim and Abhanpur the rates quoted by the Petitioner is virtually double of the rate now quoted and even in other three centres the difference in rate is very high.

In W.P.(C) No. 2755 of 2016 there are two centres involved namely SWC Baradwar and SWC Akaltara-I. The successful tenderer was Dinesh Sharma and the rates quoted in the two centres are 600.21 and 721.60 per metric tonne respectively. Now the rates quoted are 279.94 and 317.36 per metric tonne. The rates now quoted are less than half of the rates quoted by the Petitioner which effectively means that if contract is awarded to the Petitioner, the FCI will have to pay the double of what it would pay to the new tender.

In W.P.(C) No. 2753 of 2016 only contract of godown handling was given for SWC Dhamtari and SWC Chittod. The rates quoted by the Petitioner in two centres are 191.98 and 191.32 per metric tonne respectively whereas the rates quoted by the fresh tenderers are 121.57 and 122.89 per metric tonne. The difference is therefore more than one-third

and if we calculate it with reference to the fresh tender, the difference is more than 50%.

In W.P.(C) No. 2762 of 2016 the tender floated was only for SWC Balod. The successful tenderer Gurdev Traders had quoted 853.9 per metric tonne and the fresh rate quoted is 798.6 per metric tonne. The difference is only 6% and we shall deal with this matter later.

In W.P.(C) No. 2815 of 2016 only one centre is involved i.e. SWC Akaltara-II. The successful tenderer Dinesh Mishra has quoted composite rate per metric tonne which is 779.13 and now the composite rate is 353.23 per metric tonne which is less than half that quoted by the Petitioner.

In W.P.(C) No. 2819 of 2016, there is also one centre SWC Kharsia. The rate quoted by the Petitioner, Bajranglal Agrawal is 732.58 per metric tonne and the rate now quoted is 426.65 and the difference is about 42% and rate now quoted is 42% less than the rate quoted by the Petitioner.

In W.P.(C) No. 2829 of 2016, there is also only one centre Janjgir-Banari. The Petitioner, Bajranglal Agrawal has quoted the rate of 229.18 per metric tonne. Now the rate quoted is 100.31 per metric tonne which is about 44% of the rate quoted and less than half of the rate quoted by the Petitioner.

At this stage, we are not going into the other technical aspects. We are dealing with the writ petitions where the Petitioners have invoked extra ordinary writ jurisdiction of this Court. This is a discretionary jurisdiction. Even assuming for the sake of argument that there is some technical defect in floating fresh tenders by the FCI, we are clearly of the view that in most of the cases barring two cases, the difference of rates is so high so as to shock the judicial conscience of the Court. Keeping in view the very high rates now quoted, we are clearly of the view that it would not be in the larger interest of public or even in the interest of the State to continue with the stay order and the FCI is free to award contract to the fresh tenderers. Therefore, the stay order in W.P.(C) No. 2763 of 2016, W.P.(C) No. 2755 of 2016, W.P.(C) No. 2753 of 2016, W.P.(C) No. 2815 of 2016, W.P.(C) No. 2819 of 2016 and W.P.(C) No. 2829 of 2016 is vacated.

As far as two other cases are concerned, in first case i.e. W.P.(C) No. 2748 of 2016, the rates now quoted are higher than the rates quoted by the Petitioner and therefore, the FCI is restrained from taking any further action and granting any contract to anyone and the FCI shall get the work done from the Petitioner at the rates quoted by it till further orders.

With regard to the second case i.e. W.P. (C) No. 2762 of 2016, the difference is only 6%. Once the rates are disclosed, then such a minor difference can come into play.

Therefore, in this case also, we direct that the FCI shall not award contract to fresh tenderer and shall continue to get the work done from the Petitioner at the rates quoted by him.

The difference in rates in most of the cases is very high. The rates now quoted are less than half than those quoted by the Petitioners. We therefore direct the Managing Director of the Chhattisgarh State Ware Housing Corporation to file his personal affidavit within four weeks from today who shall place on record the material to show whether any cost analysis was done before accepting any tender and whether any comparison was done with rates quoted in the previous years and why the Corporation agreed to accept the tenders at such exorbitant rates.

Needful be done within four weeks...."

5. The net effect of the order dated 06.12.2016, is that interim relief was refused in six out of the eight writ petitions while the petitioners in WP(C) No. 2748 of 2016 and WP(C) No. 2762 of 2016 were entitled to continue to operate as per their rates agreed to earlier to the Warehousing Corporation. Though, the aforequoted order is fairly conclusive on very many issues which are relevant for grant or refusal of relief in writ jurisdiction which is discretionary, and inspite of the fact that this principle of law has also been stated in that order, none of the Petitioners, particularly those who lost the application for interim relief, challenged the aforesaid order before the superior Court. However, it is seen that the FCI moved a Special Leave Petition as SLP (Civil) Nos. 10909 and 11434 of 2017, may be to the extent that interim relief was granted in two writ petitions. However, when the SLP came up for consideration, liberty was prayed for to withdraw that SLP and confined the relief to early disposal of the writ petitions. Such liberty was granted and the High Court was to dispose of the writ petitions at its earliest convenience. We notice and record this to state that efficacy of the findings, though tentative and conclusions arrived at while granting the aforequoted interlocutory order was never diluted in later point of time until now, that is to say nearly seven months after the issuance of that order by this Court as regards the contracts relating to transfer of food articles and other commodities to be handled either by the FCI

or the Warehousing Corporation.

6. Thereafter, making reference to the aforequoted order, subsequent orders were issued essentially in relation to the attempt of this Court to reach at the materials to see whether any cost analysis was done while accepting the tenders of the Petitioners. In our considered opinion, that exercise was primarily intended for this Court to satisfy itself of the transparency and preservation of public funds. That, by itself, would never be decisive in favour of the petitioners' plea, but may only expose and demonstrate the shortcomings in the actions of the Warehousing Corporation in accepting the offers of the Petitioners, which is now among the dice loaded by them against issuance of the impugned NIT by the FCI. Therefore, the statements and affidavits made by or on behalf of the Warehousing Corporation or other entities in that regard are not required to be adverted to and considered to decide the *lis* as between the Petitioners on one hand and the FCI on the other.

7. Keeping in view the recitals in the interlocutory order quoted above, we have heard the learned counsel for the parties pointedly on the issue as to whether any further point requires to be considered. We see that the facts stated in the aforequoted interlocutory order are not in dispute. The appreciation of the relevant materials and the reasoning process through which these writ petitions can be concluded is the selfsame as reflected in the aforequoted order. We are in complete agreement with the views expressed by the learned Division Bench in the aforequoted order that these matters being in writ jurisdiction, it is essentially a matter of discretion for consideration as to whether this Court would issue any particular order. We also are of the view that high rates quoted were contrary to larger interest of public and interest of the State. Therefore, we adopt the contents of the aforequoted order dated 06.12.2016 as those that could finally result in the disposal of these writ petitions whereunder the facts situation obtained through the said interlocutory

order could be sustained. This is all the more so because we do not find any ground in law or on facts contrary to those stated in the aforequoted order and, thereby grant relief in any among the writ petitions varying or in excess of the reliefs granted or refused through the common interlocutory order dated 06.12.2016 quoted above.

8. Resultantly, we hold that no relief as sought in W.P.(C) No. 2763 of 2016, W.P.(C) No. 2755 of 2016, W.P.(C) No. 2753 of 2016, W.P.(C) No. 2815 of 2016, W.P.(C) No. 2819 of 2016 and W.P.(C) No. 2829 of 2016 can be granted. As regards W.P.(C) No. 2748 of 2016 and 2762 of 2016, having considered the materials on record, we hold that the interlocutory order issued in favour of the Petitioners therein on 06.12.2016 is to be made absolute.

9. In the result,

(i) W.P.(C) No. 2763 of 2016, W.P.(C) No. 2755 of 2016, W.P.(C) No. 2753 of 2016, W.P.(C) No. 2815 of 2016, W.P.(C) No. 2819 of 2016 and W.P.(C) No. 2829 of 2016 are dismissed.

(ii) W.P.(C) No. 2748 of 2016 and 2762 of 2016 are ordered making absolute the interlocutory order dated 06.12.2016 referred to in paragraph 4 above and the FCI shall get the work done from the Petitioners in those cases at the rates quoted by them during the term of the contracts confirmed in their favour by the FCI.

(iii) No costs.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge