

IN THE HIGH COURT OF HIMACHAL PRADESH  
SHIMLA

CWP No. 3947 of 2020  
Reserved on : 27.10.2020  
Decided on : 30.10.2020

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Shri Mohar Singh Khatri	Petitioner.
Versus	
The Managing Director, HRTC & others	Respondents.

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Coram:

Hon'ble Mr. Justice Sureshwar Thakur, Judge.  
Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

*Whether approved for reporting?*<sup>1</sup> Yes.

For the petitioner:	Mr. B.N Sharma, Advocate.
For the respondents:	Ms. Reeta Thakur, Advocate. (Through video conferencing).

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Sureshwar Thakur, Judge

In pursuance, to an advertisement notice, borne in Annexure P-1, and, wherethrough(s) tenders became invited, for, collection of Adda entry fee, on lease basis, extending for a period of 11 months, vis-a-vis the new bus stand Rampur Bushehar, (i) the writ petitioner participated therein, and, also became declared L-1 (ii) and also as unfolded in Annexure P-2, he deposited, a sum of Rs.1,39,320/-, before the Regional Manager, HRTC Rampur Bushehar. Moreover, an agreement borne in Annexure P-4 became drawn inter-se the writ petitioner, and, the authorized officer, of, the

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

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respondents. The date of drawing of the agreement, embodied in Annexure P-4, is, 1<sup>st</sup> August, 2019. However, on 5.9.2020, the Divisional Manager, HP BSM & DA, Tutikandi Shimla-4, made an intimation to the Regional Manager, HRTC Rampur, with echoings therein, vis-a-vis, the competent authority rather rejecting the recommendation(s), of, the selection committee, hence declaring the writ petitioner as L-1, vis-a-vis, the auction notice, borne in Annexure P-1. The writ petitioner, becomes aggrieved therefrom, and, has motioned this Court, for, annulling Annexure P-3.

2. The reasons as become meted by the respondents, in their reply, on affidavit, furnished to the writ petition, is embodied, in the factum, of, existence, of, clause 10 in the tender form, hence investing in the selection committee, an authorization, to accept or reject any tender, and, that too without assigning any reason. Moreover, it has also been contended, in the reply, on affidavit, furnished to the writ petition, that, the amount comprised in Annexure P-2, becoming returned, to, the writ petitioner.

3. Even though, the apposite committee is invested, through, a mandate borne in clause 10, of, the tender document, to

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at any time, and, without assigning any reasons, rescind the bid, and, also the official or the committee concerned, is invested with a further leverage to make recourse to the apposite rebidding process. Moreover though trite expostulations of law, vindicate the empowerment(s) borne, in, the afore clause, of, the tender document, and, also pronounce qua theirs being unamenable, for, any judicial review, qua therewith being made, by the writ Court, (a) unless dependence(s) thereon, by the committee concerned, is, demonstrated, by cogent evidence, to become prodded, by constitutionally prohibited vices, of, arbitrariness or capriciousness, arising from, despite many bidders participating in the bidding process, and, therethrough there occurring competition, yet the bidding process being rescinded. However, in absence of, proof, of the afore vices becoming borne, in, the exercisings, of, the contractual rescinding power, hence by the committee concerned, and with the petitioner being not projected to be the single bidder, and, yet for ensuring a higher quantum of bid, than the bid accepted by the committee concerned, thereupon the rescinding of his bid,

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for, thereafter the rebidding process, being resorted hence become an invalidly made recourse.

4. Dehors the above, this Court would proceed, to, make judicial review, of, Annexure P-3, as, (i) the afore rescinding power for annulling, the bid is invested, in the selection committee, and, obviously it is not invested in the competent authority rather higher thereto (ii) conspicuously since the selection committee, did not exercise, the contractual power, to, without assigning reasons, hence rescind the successful bid rather it become exercised, by the competent authority, whereupon whom the afore contractual power is not vested, (iii) thereupon no valid dependence can be made thereon, by the competent authority, for vindicating, its, hence without assigning any reason rather reject the recommendations, as, made by the selection committee. Even if assumingly the competent authority, for weighty non-contractual reasons, especially upon extraneous factors rather weighing with the selection committee, becomes constrained, to, reject the recommendations, of, the selection committee, it hence became enjoined, to make an order of rejection, through, a speaking and

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well reasoned order than, to, untenably in limine, and, without assigning reasons, reject the recommendation(s) of the selection committee. Significantly since no speaking order, is made, by the committee concerned, in rejecting the recommendations, of, the selection committee, (i) thereupon the impugned Annexure, warrants interference by this Court, inasmuch, as, it perse thereupon becomes ingrained with stains, of, the constitutionally prohibited vice, of, capriciousness.

5. Further more, despite the drawing, of, an agreement inter-se the petitioner and the authorized officer of the respondents, in, pursuance to his, becoming declared a successful bidder, and, with no clause becoming borne, therein hence investing the afore power, in the competent authority, (i) thereupon, too for want of any visible contractually agreed rescinding power hence inhering in the competent authority, to without assigning, any, reasons rather make the rescinding act (ii) and when obviously through the afore, the realm of the uncontested contract, as, drawn inter-se the writ petitioner, and, the authorized Officer of the respondents, hence

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becomes untenably scuttled, whereupon too, the apposite rescinding act becomes invindicable.

6. Conspicuously also any power, of, rescindings, was exercise-able only prior to the execution of the Annexure P-4. In addition the making of the impugned Annexure, is subsequent, to the drawing of Annexure P-4 inter-se the petitioner, and, the responsible officer of the respondents, and, therethrough the respondents, make short shrift of clause 11, clause whereof stands extracted hereinafter, thereupon also the impugned Annexure, is, made in a post haste, and, short shrift manner, and, hence becomes ingrained, with, the vice of capriciousness.

“11. All dispute between the HP City Transport and Bus Stand Management and Development Authority and OSD (Regional Manager) HRTC ..... and the contractor arising out of this agreement deed entered into or in relation thereto regarding the interpretation of any clause of or condition thereof shall be referred to the decision of the Chief Executive Officer, HP City Transport and Bus Stand Management and Development Authority and the same shall be treated as a reference under the provisions of Arbitration Act 1940.”

7. A reading whereof conveys qua its' operating, as an arbitration clause, upon, any dispute arising amongst the signatories, thereto, (i) hence, even if any dispute, during currency of contract arose inter-se signatories thereof, it became amenable

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for its becoming referred, to the Arbitrator as mentioned therein, rather than Annexure P-4 becoming rescinded or annulled, through, an unwarranted non-speaking order, embodied in Annexure P-3.

8. It is also important to emphasize qua the afore extracted clause rather not also contemplating the apt recourses remedy, to the aggrieved, upon, deviation(s) being made by the errant contractee, vis-a-vis, any of the clause(s) hence embodied therein, inasmuch as (a) the statute in consonant wherewith, the dispute resolution mechanism, is therein contemplated inasmuch, as, the aegis, of, an Arbitrator, is the nowat, rather repealed Arbitration Act of 1940, and, reiteratedly hence clause 11 supra, borne in Annexure P-4, becomes completely redundant nor is a workable remedy, vis-a-vis, any of the aggrieved, from any deviations made, by the errant contractee vis-a-vis any of the conditions, embodied therein (b) nor hence any arguments, can be raised thereon, by the respondents, that the extant remedy, is not an efficacious remedy, given the afore remedy being available, for, recourses to the writ petitioner.

9. Moreover the refunding of the bid money by the respondents to the petitioner, is also unworthy of acceptance as the

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respondents, upon, the petitioner making the afore deposit hence accepted it, and, thereafter contractually permitted the writ petitioner to operate the bid, without any obstacles or hindrances.

10. In view of the above, the present petition is allowed, and, the impugned Annexure is quashed and set aside. However the petitioner is directed to make the deposit of bid money within a week hereafter before the respondents. All pending applications stand disposed of accordingly.

( Sureshwar Thakur),  
Judge.

30<sup>th</sup> October, 2020  
(priti)

( Chander Bhusan Barowalia ),  
Judge.