

**(2015) 01 RAJ CK 0016**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 10845/2014 and Civil Misc. Stay Application No. 10117/2014

S.S. Medical Systems (India) Pvt. Ltd.

APPELLANT

Vs

State of Rajasthan

RESPONDENT

**Date of Decision :** 09-01-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 19(1)(g)

**Citation :** (2015) 01 RAJ CK 0016

**Hon'ble Judges :** Mohammad Rafiq, J.

**Bench :** Single Bench

**Advocate :** Rajesh Kala, for the Appellant

**Final Decision :** Dismissed

## Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the petitioner S.S. Medical Systems (India) Pvt. Ltd. inter alia with the prayer that condition of reserving the entire purchases of NIB dated 18.09.2014 (Annexure-5) for Small Scale Industries (for short "SSI") units of Rajasthan be declared as illegal, unconstitutional and ultra vires to Article 14, 16 and 19(1)(g) of the Constitution of India and the petitioner-company be declared eligible to participate in the bid proceedings in pursuance to NIB dated 18.09.2014.

2. As per the averments made in the writ petition, the petitioner-company is engaged in the manufacture and supply of Ultrasounds, Colour Dopplers, CT Scanner, DR Systems, Mammography, Patient Monitoring System, Pulse Oximeters, ECG Machine, Syringe and Infusion Pumps, Medical and Hospital Furniture, Anesthesia Workstation with ICU Ventilators, Oz concentrators and Pathology Equipments, Critical Care Units for Veterinary Use, Bio-medical Waste Consumables and Disposal Equipments. The petitioner company is having its head office and manufacturing unit at F-2, Bhimtal Industrial Estate, Bhimtal, District Nainital, Uttarakhand. Respondent No. 2, Rajasthan Medical Services Corporation earlier issued a Notice Inviting Bid (NIB) on 13.03.2014 for the rate

contract cum supply of Chemicals, Reagents and Consumables for Rate Contract Period 2013-14. The petitioner participated in the bid proceedings and on being found eligible was awarded Rate Contract for supply of different items.

3. It is further contended that Respondent No. 2 has now issued Notice Inviting Bid No. 57 dated 18.09.2014 for the Rate Contract for Hospital Supplies and items, i.e. (1) Plastic Bags 25 Litre (Red, Black, Yellow, Blue, Green); (2) Plastic Bags 15 Litre (Red, Black, Yellow, Blue, Green); (3) Plastic sharp bins for disinfectant capacity 25 Litre; (4) Plastic Bins 15 Litre (Red, Black, Yellow, Blue, Green); (5) Protective Hand Rubber Gloves; (6) Protective Rubber Boots; (7) Red and Black Bags for immunization ; and (8) Protective Rubber Apron. The last date for submission of the Bid was 29.10.2014 upto 1.00 P.M. However, the petitioner cannot participate in the Bid proceedings because the respondents have reserved the entire purchases of NIB dated 18.09.2014 for SSI (Small Scale Industries) Units of Rajasthan. Being aggrieved by the action of the respondents, the petitioner-company has approached this Court by way of instant writ petition with the aforementioned prayers.

4. Mr. Rajesh Kala, learned counsel for the petitioner has submitted that petitioner-company is one of leading manufacturer of Hospital Supplies and Items having its manufacturing unit in Uttrakhand which has been supplying such items in different States. In fact, the respondents themselves have award Rate Contract for supply of various items to the petitioner for the rate contract period 2013-14 which is valid upto 31.03.2015. The petitioner-company is operating on all India basis both in Government as well as private sector hospitals.

5. Learned counsel for the petitioner-company has further submitted that the competent authority in exercise of powers conferred by Constitution of India has framed the Purchase of Stores (Preference to Industries of Rajasthan) Rules, 1995 (hereinafter referred to as "the Rules of 1995"). Rule 2(b) of the Rules of 1995 defines "Small Scale Industry" which means an organized manufacturing industrial unit having investment in plant and machinery upto Rs. 1 Crore and registered with the Director of Industries, Rajasthan, Jaipur. List of Articles included in the Schedule-I appended to the Rules of 1995 has also been revised and it also includes chemical based items and apart from various other articles, it also includes Plastic/PVT./LDPE overhead water storage tanks, plastic Profile, Multi layer Plastic bags, plastic articles, Polythene bags, polythene film ad Polypropylene bags, P.V.C. Footwears, PVC doors and panels etc. Reference in particular is made to Entry 25 and 26 of the list of articles included in the Schedule-I appended to the Rules of 1995. Learned counsel for the petitioner has submitted that the respondents have issued a corrigendum dated 28.10.2014 to NIB dated 18.09.2014 whereby the terms and conditions of the bid document as well as technical specifications have been changed and the items for which bids have been invited by the respondents are different than those included in Entry 25 and 26 of the list of articles included in the Schedule-I appended to the Rules

of 1995. According to learned counsel for the petitioner in specification of Plastic Bags (Red) capacity 25 Liters, i.e., Plastic Bag (Biodegradable), what is required by the respondents is HDPE bags made from virgin non chlorinated polymer material whereas Entry 25 of the list of articles included in the Schedule-I appended to the Rules of 1995 has specified only plastic cane, plastic/PVC/LDPE overhead water storage tanks, plastic profile, Multi layer plastic bags and plastic articles and HDPE bags made from virgin non chlorinated polymer material has not been included in it. Learned counsel for the petitioner has also argued that scope for receiving competitive bids cannot be restricted mainly amongst SSI Units of State of Rajasthan. It should be open to all so as to secure competitive bids. Action of the respondents is violative of Articles 14, 16 and 19(1)(g) of the Constitution of India.

6. Learned counsel for the respondents has argued that "plastic bags" is a broad category, which has been separately described in Entry 25 of the list of articles included in the Schedule-I appended to the Rules of 1995 as "Multi layer plastic bags". "Plastic/PVC/LDPE" reference of which has been made by the petitioner-company pertains only to "Overhead water storage tanks" which is a separate item altogether. Learned counsel for the respondents has submitted that Rule 33 of Rajasthan Transparency in Public Procurement Rules, 2013 provides for price preference or purchase preference in procurement to the category of bidders as notified by the State Government from time to time. Mr. R.B. Mathur, learned counsel for the Respondents No. 2 and 3 has submitted that although in the past, supplies were being secured from parties/companies other than Small Scale Industries Units of Rajasthan, but now provisions of Rajasthan Transparency in Public Procurement Act, 2012 and Rajasthan Transparency in Public Procurement Rules, 2013 have made it mandatory for the respondents to secure supply of the items mentioned in the list of articles included in the Schedule-I appended to the Rules of 1995 only from Small Scale Industries Units of State of Rajasthan. It is submitted that on account of interim order passed by this Court, it has not been possible for the respondents to finalise the bid process and this is likely to affect and hamper the process of supply of the aforesaid plastic bags in hospitals throughout the State.

7. Respondents have relied upon the Rules of 1995 to restrict the bids only amongst SSI Units of Rajasthan wherein "Small Scale Industry" has been defined as an organized manufacturing industrial unit having investment in plant and machinery upto Rs. 1 Crore and registered with the Director of Industries, Rajasthan, Jaipur. Rule 2(f) of the Rules of 1995 defines "Purchase preference" which means preference to Industries of Rajasthan for purchase of stores in case of rates offered being equal. Rule 3 of the Rules of 1995 provides that stores have been divided in two groups. Group (a) includes items mentioned in Schedule I which shall be purchased entirely from Cottage and Small Scale Industries Units whereas Group (b) includes all other items which can be purchased from any source.

8. Entry 25 and 26 of the list of articles included in the Schedule-I appended to the Rules of 1995 reads as under:

"25. Plastic cane, Plastic/PVC/LDPE overhead water storage tanks, plastic profile, Multi layer plastic bags, plastic articles

26. Polythene bags, Polythene film and Poly Propylene bags"

9. Respondents issued Corrigendum dated 28.10.2014 to NIB No. 57 dated 18.09.2014 providing specifications for plastic material, i.e., Plastic Bag (Biodegradable) sought to be procured, which reads as under:

10. Similar specifications have been made in respect of plastic bags for Red, Black, Yellow, Blue and Green colours as per the Bio Medical Waste Management Rules, 1998. In all the categories of bags in all the colours, required capacity of the bag has been indicated to be 25 litres. It has been mentioned in the specification that plastic bags may be HDPE bags made from virgin non chlorinated polymer material and thickness of sheet shall be minimum 65 micron to be biodegradable in 12 months. That is the specification or micro classification of the kind of polymer material respondents require in the supply of plastic bags. Entry 25 on which specific reliance has been placed by the petitioner has included five entries namely (i) Plastic cane, (ii) Plastic/PVC/LDPE overhead water storage tanks, (iii) plastic profile, (iv) Multi layer plastic bags, and (v) plastic articles. Last of the five sub-entries namely "plastic articles" has to be taken broadly in language, so as to include any plastic article, but what has been specified with reference to overhead water storage tanks is that they should be of Plastic/PVC/LDPE. Thus, specifications required with reference to overhead water storage tank cannot be applied to other sub-entries. Fourth sub-entry namely "Multi layer plastic bags" is an independent item. Similarly first sub-entry namely "plastic cane" and third sub-entry namely "plastic profile" are also independent items. Therefore, the argument of learned counsel for the petitioner, that even the multi layer plastic bags and for that purpose, plastic cane and plastic profile, should be of PVC/LDPE specification and that since HDPE specification has not been separately included in Entry 25 of the list of Articles included in the Schedule-I appended to the Rules of 1995, therefore, bids of this item should be called from all parties rather than restricting it to Small Scale Industries Units of State of Rajasthan, cannot be accepted. Apart from above, restricting the scope of bids to Small Scale Industries Units of Rajasthan is just and reasonable. Petitioner has also not challenged the validity of the Rules of 1995 or the Schedule-I appended to the Rule of 1995. Award contract by the respondents to the petitioner in past for supply of such items to respondents cannot be a reason now to annul the aforesaid distinction made by the respondent, especially when it has sought to be stipulated by set of statutory rules.

11. There is no merit in this writ petition and the same is, accordingly, dismissed. Stay application also stands dismissed. Application No. 60005/2014 seeking

vacation of stay order is disposed of.