
(2020) 12 CHH CK 0007

Chhattisgarh High Court

Case No: Writ Petition (C) No. 3012 Of 2020

Sumit Bagadia

APPELLANT

Vs

State Of Chhattisgarh
And Ors

RESPONDENT

Date of Decision: Dec. 10, 2020

Acts Referred:

Notaries Act, 1952 " Section 7, 8, 8(1), 8(2)#Notaries Rules, 1956 " Rule 12

Citation: (2020) 12 CHH CK 0007

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: Sushobhit Singh, Ashish Tiwari, Prafull N Bharat

Final Decision: Dismissed

Judgement

P. R. Ramachandra Menon, CJ

1. Rejection of the 'Technical bid' of the Petitioner for the reason that it is not in conformity with the tender conditions insofar as some of the

documents were not duly notarised and hence, not acceptable, is put to challenge in this writ petition. The more pertinent legal question involved is

whether the disputed documents, admittedly, not bearing the signature of the Notary, but bearing the seal, could be treated as a duly notarised

document with reference to the functions of the Notary under Section 8(1) of the Notaries Act, 1952 (for short, 'the Act') which is more qualified by

sub-section (2) of Section 8 of the said Act. In other words, when the law is clear, whether the version of the Petitioner that the mistake is only a

human error / technical / minor defect {which is sought to be ignored in view of the law declared by the Apex Court in Poddar Steel Corporation v.

Ganesh Engineering Works reported in (1991) 3 SCC 273} could be accepted to entertain the relief prayed for causing the price bid to be considered.

2. The Petitioner is a transporting contractor. In connection with the tender notified by the 2nd Respondent for transportation of paddy in District

Janjgir-Champa, the Petitioner participated in the process by submitting (which was a two way system) the technical bid and price bid separately. The

particulars of all the relevant documents including the vehicle particulars and the turnover certificate in terms of the stipulations under tender (Clause

1.3) were to be duly notarised and uploaded. According to the Petitioner, he has satisfied all the requirements and was qualified in all respects, who

however came to be disqualified when the price bid was opened on 04.11.2020. Since the reasons were not let known to him, Annexure-P/4

representation was submitted on 13.11.2020, seeking to furnish the reasons for rejecting the technical bid. Contending that the rejection of the

technical bid of the Petitioner is on minor technical ground and is highly arbitrary, intending to provide unfair and undue advantage to other bidders, the

Petitioner has moved this Court by filing the writ petition, also pointing out that the impugned letter rejecting the technical bid of the Petitioner was

served upon him only on 24.11.2020. Petitioner seeks to quash Annexure-P/1 and also seeks to permit him to participate in the bid process and to

cause opening of his financial bid or else to direct the Respondents to initiate the tender process afresh, inviting application from the prospective

bidders.

3. A return has been filed from the part of the Respondents No. 2 & 3, mainly contending that the writ petition itself is not maintainable and that the

precedent sought to be cited by the Petitioner {Poddar Steel (supra)} is not applicable to the case in hand. It is pointed out that the factual

circumstance involved in Poddar Steel (supra) clearly shows that the stipulation therein as to satisfaction of EMD either by way of cash or Demand

Draft drawn on the State Bank of India was 'incidental' one insofar as the Appellant therein had deposited the Banker's Cheque issued by the Union

Bank of India, which by itself was held as cash in view of the relevant provisions of law. It is also pointed out that the very same judgment sought to

be relied on by the Petitioner refers to the distinction between the essential conditions and the incidental conditions. Specific reference is also made to

relevant provisions under the Act, particularly, Section 8 (1) and (2). The learned counsel also seeks to place reliance on the verdict passed by the

Apex Court in *Shobikaa Impex Private Limited and Another v. Central Medical Services Society and Others* (2016) 16 SCC 23 3 (paragraphs 19

onwards last paragraph 24) and *Bakshi Security and Personnel Services Private Limited v. Devkishan Computed Private Limited and Others* (2016

(8) SCC 443 (paragraphs 14 to 18).

4. It is also brought to the notice of this Court by Mr. Prafull N. Bharat, the learned counsel for the Respondents No.2 and 3 that the Technical bid

was opened on 04.11.2020 and since it was online, whatever happened on that day was intimated to all participants by 'mobile' and 'e-mail' as per the

software installed and hence the Petitioner was aware of the rejection of the technical bid on that day itself. It was much thereafter, that the Price bid

was opened on 12.11.2020 and the Petitioner came with Annexure-P/4 representation only on the next day i.e. 13.11.2020, seeking for the reason for

rejection, which of course was furnished to him. The Petitioner approached this Court only much later on 25.11.2020 and was virtually acting as a

'fence sitter' after rejection of the Technical bid on 04.11.2020; by virtue of which the discretionary power vested with this Court might not be invoked

to extend any relief to the Petitioner which he even otherwise is not entitled by virtue of specific provisions under the statute and the specific terms of

the tender.

5. There is no dispute with regard to the factual aspects, particularly, as to the necessity to submit the documents duly notarised. Clause 1.3 of

Annexure-P/2 tender conditions reads as follows :

6. The Petitioner admits, on coming across the reason for rejection of the tender, that two of the documents submitted by him (Vehicle particulars of a

vehicle and the Turn-over Certificate) do not bear the signature or initial of the Notary, but for bearing his seal. The version of the Petitioner is that it

is only a technical defect and hence cannot be a ground for rejection of the Technical bid, in view of the law declared by the Apex Court in Poddar

Steel (supra). Admittedly, the disputed documents do not bear the signature of the Notary, but for a seal showing RAJMANEE JAISAWAL

Notary, Akaltara. Section 7 of the Act stipulates that every Notary shall have and use as occasion may arise, a seal of such form and design as

may be prescribed. Rule 12 of the Notaries Rules, 1956 prescribes it as follows :

“12. Seal of notary. - Every notary shall use a plain circular seal of a diameter of 5 cm. As indicated by a drawing given below, bearing his name,

the name of the area within which he has been appointed to exercise his functions, the registration number and the circumscription NOTARY,

and the name of the Government which appointed him.

Obviously, the seal contained in the disputed documents is not in the form as prescribed. Be that as it may, the question to be considered is whether it

is a proper notarial act dealing with the attestation certification of a document by virtue of the power conferred upon the Notary under Section 8 (1)

(a).

7. It will be worthwhile to extract both the sub-sections (1) and (2) of Section 8 to understand the scope of power and functions :

“8. Functions of notaries. (1) A notary may do all or any of the following acts by virtue of his office; namely:

1. verify, authenticate, certify or attest the execution of any instrument;

2. present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;

3. note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or

prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;

4. note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;

5. administer oath to, or take affidavit from, any person;

6. prepare bottomry and respondentia bonds, charter parties and other mercantile documents;

7. prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may

conform to the law of the place where such deed is entitled to operate;

8. translate, and verify the translation of, any document from, one language into another;
1[(ha) act as a Commissioner to record evidence in any civil

or criminal trial if so directed by any court or authority;

(hb) act as an arbitrator, mediator or conciliator, if so required;]

(i) any other act which may be prescribed.

No act specified in sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal.

(viii) From the above, it is clear that when the Notary is conferred with the power and function to verify / attest / certify the document, discharging the

function as envisaged under sub-section (1) of Section 8 of the Act, sub-section (2) of Section 8 categorically mentions that it will not be treated as a

valid act under Section 8(1) unless it is certified under the signature and official seal of the Notary. This means both the requirements have to be

satisfied; that the documents have to be verified and satisfaction has to be recorded by subscribing the signature and thereafter by affixing the seal as

well. Unless both these limbs are satisfied, it cannot be said that, it is a 'notarial act' in view of the mandate under Section 8(2) of the Act. Since there

is no ambiguity with regard to the statutory requirement, we cannot but hold that, the disputed documents, having not been signed by the Notary, are

not duly attested by Notary. The requirement to have the documents duly attested by Notary is having its own purpose and it is to avoid any possible

manipulation. This being the position, the condition stipulated under Clause 1.3 is an essential requirement and not an incidental one.

(ix) With regard to the law declared by the Apex Court in Poddar Steel (supra), it was a case where the participants were required to satisfy the

EMD either by way of Cash or by way of Demand Draft drawn in the State Bank of India. The appellant in fact had satisfied the EMD of

Rs.50,000/- by way of Banker's Cheque issued by the Union Bank of India from their own branch. The Tender Committee caused it to be verified

and it was accepted and the price bid of the appellant being the highest was acted upon. This was the subject matter of challenge before the High

Court, where interference was made holding that satisfaction of the EMD was not in terms of the tender.

This was sought to be challenged by the appellant by approaching the Apex Court. After referring to the relevant judicial pronouncements including

the one in Sita Ram Jhunjhunwala v. Bombay Bullion Association Ltd. reported in AIR 1965 SC 162, the Apex Court held that the 'certified cheque'

of Union Bank of India drawn on its own branch must be treated as sufficient for the purpose of achieving the object of the condition and that the

Tender Committee had taken abundant caution by a further verification from the bank. It was accordingly that the verdict passed by the High Court,

was set aside, and the appeal was allowed, with costs throughout. We find it appropriate to extract paragraphs 6, 7 and 8 to

have easy reference and appreciation :

“6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank the clause no. 6 of the

tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the

authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term

mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a

tender notice can be classified into two categories-those which lay down the essential conditions of eligibility and the others which are merely ancillary

or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them

rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in

appropriate cases. This aspect was examined by this Court in *GJ Fernandez v. State of Karnataka* 7 Ors., [1990] 2 SCC 48 8a case dealing with

tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. The High Court has, in the

impugned decision, relied upon *Ramana Dayaram Shetty v. International Airport Authority of India & Ors.*, [1979] 3 SCC 48 9but has failed to

appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in

that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favour on one of the

bidders, which amounted to illegal discrimination. The judgment indicates that the Court closely examined the nature of the condition which had been

relaxed and its impact before answering the question whether it could have validly condoned the shortcoming in the tender in question. This part of the

judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of

the two clauses, the present case belongs.

7 The nature of payment by a certified cheque was considered by this Court in *Sita Ram Jhunjunwala v. Bombay Bullion Association Ltd. & Anr.*,

[1965] 35 Company Cases 526. Several objections were taken there in support of the plea that the necessary condition in regard to payment was not

satisfied and in that context this Court quoted the observations from the judgment in an English decision (vide Spargo's case: 1873 L.R. & Ch. App.

407) that it is a general rule of law that in every case where a transaction resolves itself into paying money by A to B and then handing it back again

by B to A, if the parties meet together and agree to set one demand against the other, they need not go through the form and ceremony of handing the

money backwards and forwards. This Court applied that the observations to a transaction requiring payment by one to another. The High Court's

decisions in B.D. Yadav's case and T.V. Subhadra Amma's case are also illustrations where literal compliance of every term of the tender notice was

not insisted upon.

viii In the instant case the certified cheque of the Union Bank of India drawn on its own branch must be treated as sufficient for the purpose of

achieving the object of the condition and the Tender Committee took the abundant caution by a further verification from the bank. In this situation it is

not correct to hold that the Diesel Locomotive Works had no authority to waive the technical literal compliance of clause 6, specially when it was in its

interest of not to reject the said bid which was the highest. We, therefore, set aside the impugned judgment and dismiss the writ petition of the

respondent no.1 filed before the High Court. The appeal is accordingly allowed with costs through out.Ã¢â¬â¸

10. From the discussion made by the Apex Court in paragraph 6, it is evident that the requirements in a tender notice can be classified into two

categories i.e., which are "essential conditions of eligibility" and those which are "ancillary or subsidiary" with the main object to be achieved

by the condition. The disputed documents in the instant case are the vehicle particulars in respect of the vehicle bearing No.CG11AE4723 and the

'Turn Over Certificate' issued by the Chartered Accountant. Authenticity of these documents had to be verified and attested by the Notary by

subscribing his 'signature' and also by putting the 'seal' and since the said documents, admittedly, do not bear the signature of the Notary, no notarial

function has been validly discharged in terms of Section 8 of the Act. Production of these documents duly attested by Notary forms an 'essential

condition' and it cannot be regarded as an ancillary or subsidiary condition with the main object to be achieved by the condition. This being the position,

there is no doubt in our mind to hold that Poddar Steel (supra) sought to be relied on by the Petitioner does not come to his rescue in any manner and it

stands on a different footing.

11. The learned counsel for the Petitioner submits that absence of initial of the Notary just on two pages is only an inadvertent human error; more so

when the volume of the documents runs into about 200 pages. We are not impressed with the said submission. In connection with the tender, various

documents have to be produced as required under the tender notification. The disputed documents i.e. vehicle particulars of the vehicle bearing No.

CG11AE4723 and the 'Turn Over Certificate' are two independent documents; which only consist of 'one page each'. It is not part of any single

document which runs into 100s of pages as sought to be projected by the Petitioner. Since the above documents are independent documents, they had

to be verified and duly attested by the Notary in terms of Section 8, which admittedly has not been done. It can only be after verification of the

document by the Notary, that his signature can be subscribed to it and certified by the Notary, putting the 'seal'. Absence of signature of the Notary

clearly reveals that the authenticity of the 'documents' has not been certified by him. This is more so, since 'signature' to be put on the document is by

the Notary himself, whereas his 'seal' may be affixed either himself or by anybody else on the basis of his instructions.

12. In *Shobikaa Impex Private Limited and Another v. Central Medical Services Society and Others* (2016) 16 SCC 23, the Apex Court considered

the binding effect of the tender conditions and explained how to determine the essentiality of the conditions with reference to the use of mandatory

words. It has also been observed that interference in contractual matters is to be very limited and accordingly the appeal was dismissed holding that

the High Court was justified in declining interference for the failure on the part of the appellant to produce the registration certificate issued by the

Central Insecticide Board (CIB).

13. Coming to, Bakshi Security and Personnel Services Private Limited v. Devkishan Computed Private Limited and Others (2016 (8) SCC 443,

the principles for interference in contractual matters have been summarized and categorically held that the 'essential conditions' of the tender have to

be interpreted strictly and that the same cannot be relaxed / deviated from; thus, holding that the rejection of the bid for non-compliance of the

essential condition was not liable to be interdicted. It is also relevant to note that the above verdict was rendered by the Apex Court after taking note

of the law declared by the Apex Court in Poddar Steel (supra), particularly, after extracting the relevant portion of paragraph 6 of the said judgment in

paragraph 14, besides referring to other precedents in this regard. In the instant case also, since 'Clause 1.3' of the tender condition clearly stipulated

the basic necessity of getting the documents duly attested by Notary and uploaded, the appellant, admittedly having not obtained the signature of the

Notary on the disputed documents, there is a failure on the part of the Petitioner in satisfying the said requirement, which is an 'essential condition'.

The rigour of the provision under Clause 1.3 is not liable to be diluted, to have it branded as something incidental to the main object and we hold that it

is fundamental / essential to have been satisfied by all the participants.

14. In the above facts and circumstances, we are of the view that the rejection of the Technical bid of the Petitioner for the reason that the disputed

documents were not duly attested by the Notary is quite proper and is not liable to be interdicted. There is absolutely no merit in the writ petition.

15. Interference is declined. The writ petition stands dismissed.