



2024:CGHC:45651-DB

**AFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No. 5508 of 2024**

M/s Mokshit Corporation, having its office at Chopda Group, G.E Road, Ganj Para, Durg, Chhattisgarh, Through Its Partner, Shantilal Chopda, S/o Late Champa Lal Chopda, Aged About 60 Years, R/o House No. 2, Chopda Compound Aazad Ward - 37, Ganjpara, Durg, District Durg (C.G.) Chhattisgarh -491001

**---- Petitioner****versus**

- 1** - State Of Chhattisgarh Through Chief Secretary, Government Of Chhattisgarh, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.
- 2** - Additional Chief Secretary, Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.
- 3** - Special Secretary, Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.
- 4** - Secretary Department Of Commerce And Industries, Government Of Chhattisgarh Mahanadi Bhawan, Mantralaya, capital Complex, Atal Nagar, Nawa Raipur, Distt. Raipur, Chhattisgarh.
- 5** - Director, Health Services, Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Dist- Raipur (C.G.)
- 6** - Chhattisgarh Medical Services Corporation Limited ( A Government Of Chhattisgarh Undertaking) Through Managing Director, SMSCLE, Chhattisgarh Housing Board Commercial Complex (North West Corner), Sector -27 Atal Nagar, Nava Raipur, District Raipur, C.G.
- 7** - General Manager (Equipment In Charge ), Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking),

Chhattisgarh Housing Board Commercial Complex (North West Corner),  
Sector -27 Atal Nagar, Nava Raipur, District Raipur, C.G.

---- **Respondents**

**WPC No. 4553 of 2024**

M/s Mokshit Corporation, Through Its Partner, Shashank Chopda, S/o Shantilal Chopda, Aged About 32 Years, R/o Chopda Compound, Ganjpara, Durg, District Durg, Chhattisgarh.

----**Petitioner**

**Versus**

**1** - State of Chhattisgarh Through Chief Secretary, Government Of Chhattisgarh, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur, Chhattisgarh.

**2** - Additional Chief Secretary Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur, Chhattisgarh.

**3** - Special Secretary Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur, Chhattisgarh.

**4** - Secretary, Department Of Commerce And Industries, Government Of Chhattisgarh Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nava Raipur, District Raipur, Chhattisgarh.

**5** - Director, Health Services Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur, Chhattisgarh.

**6** - Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking), Through Managing Director, C.S.M.S.C.L., Chhattisgarh Housing Board Commercial Complex (North West Corner), Sector-27, Atal Nagar, Nava Raipur, Raipur, District Raipur, Chhattisgarh.

**7** - General Manager (Equipment In-Charge) Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking), Chhattisgarh Housing Board Commercial Complex (North West Corner), Sector-27, Atal Nagar, Nava Raipur, Raipur, District Raipur, Chhattisgarh.

---- **Respondent**

**WPC No. 5479 of 2024**

M/s Mokshit Corporation Having Its Office At Chopda Group G.E. Road Ganj Para Durg Chhattisgarh Through Its Partner Shantilal Chopda S/o Late

Champa Lal Chopda Age About 60 Years R/o House No.2 Chopda Compound  
Aazad Ward - 37, Ganjpara Durg District - Durg (C.G.) Chhattisgarh - 491001

----**Petitioner**

**Versus**

**1** - State Of Chhattisgarh Through Chief Secretary Government Of Chhattisgarh New Mantralaya Mahanadi Bhawan Atal Nagar Raipur District - Raipur Chhattisgarh

**2** - Additional Chief Secretary Department Of Health And Family Welfare New Mantralaya Mahanadi Bhawan Atal Nagar Raipur District - Raipur Chhattisgarh

**3** - Special Secretary Department Of Health And Family Welfare New Mantralaya Mahanadi Bhawan Atal Nagar Raipur District - Raipur Chhattisgarh

**4** - Secretary Department Of Commerce And Industries Government Of Chhattisgarh Mahanadi Bhawan Mantralaya Capital Complex Atal Nagar Nawa Raipur District - Raipur Chhattisgarh

**5** - Director Health Services Department Of Health And Family Welfare New Mantralaya Mahanadi Bhawan Atal Nagar Raipur District - Raipur Chhattisgarh

**6** - Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking ) Through Managing Director Smscl Chhattisgarh Housing Board Commercial Complex (North West Corner) Sector -27 Atal Nagar Nawa Raipur District - Raipur Chhattisgarh

**7** - General Manager (Equipment In Charge) Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking) Chhattisgarh Housing Board Commercial Complex (North West Corner) Sector - 27 Atal Nagar Nawa Raipur District - Raipur Chhattisgarh

---- **Respondent**

**WPC No. 5511 of 2024**

M/s Mokshit Corporation, having its office at Chopda Group, G.E Road , Ganj Para, Durg, Chhattisgarh, Through Its Partner, Shantilal Chopda, S/o Late Champa Lal Chopda, Aged About 60 Years, R/o House No. 2 , Chopda Compound Aazad Ward - 37, Ganjpara, Durg, District Durg (C.G.) Chhattisgarh -491001

----**Petitioner**

**Versus**

**1** - State Of Chhattisgarh Through Chief Secretary, Government Of Chhattisgarh, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**2** - Additional Chief Secretary, Department Of Health And Family Welfare, New

Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**3** - Special Secretary, Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**4** - Secretary Department Of Commerce And Industries, Government Of Chhattisgarh Mahanadi Bhawan, Mantralay,capital Complex, Atal Nagar, Nawa Raipur, Distt. Raipur, Chhattisgarh.

**5** - Director, Health Services, Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Riapur, Dist- Raipur (C.G.)

**6** - Chhattigarh Medical Services Corporation Limited ( A Government Of Chhattisgarh Undertaking) Through Managing Director, SMSCL, Chhattisgarh Housing Board Commercial Complex (North West Corner), Sector -27 Atal Nagar, Nava Raipur, District Raipur, C.G.

**7** - General Manager (Equipment In Charge ), Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking), Chhattisgarh Housing Board Commercial Complex (North West Corner), Sector -27 Atal Nagar, Nava Raipur, District Raipur, C.G.

---- **Respondent**

**WPC No. 5512 of 2024**

M/s Mokshit Corporation Having Its Office At, Chopda Group, G. E. Road, Ganj Para, Durg, Chhattisgarh, Through Its Partner, Shantilal Chopda, S/o Late Champa Lal Chopda, Aged About 60 Years, R/o House No. 2, Chopda Compound, Aazad Ward - 37, Ganjpara, Durg, District Durg, C.G., Chhattisgarh- 491001.

----**Petitioner**

**Versus**

**1** - State Of Chhattisgarh Through Chief Secretary, Government Of Chhattisgarh, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**2** - Additional Chief Secretary Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**3** - Special Secretary Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**4** - Secretary Department Of Commerce And Industries, Government Of

Chhattisgarh, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh.

**5** - Director Health Services, Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**6** - Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking) Through Managing Director, S M S C L, Chhattisgarh Housing Board Commercial Complex (North West Corner), Sector- 27, Atal Nagar, Nava Raipur, District- Raipur, Chhattisgarh.

**7** - General Manager (Equipment In- Charge) Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking), Chhattisgarh Housing Board Commercial Complex (North West Corner), Sector- 27, Atal Nagar, Nava Raipur, District- Raipur, Chhattisgarh.

---- **Respondent**

**WPC No. 5514 of 2024**

M/s Mokshit Corporation Having Its Office At, Chopda Group, G. E. Road, Ganj Para, Durg, Chhattisgarh, Through Its Partner, Shantilal Chopda, S/o Late Champa Lal Chopda, Aged About 60 Years, R/o House No. 2, Chopda Compound, Aazad Ward - 37, Ganjpara, Durg, District Durg, C.G., Chhattisgarh- 491001.

----**Petitioner**

**Versus**

**1** - State Of Chhattisgarh Through Chief Secretary, Government Of Chhattisgarh, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**2** - Additional Chief Secretary Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**3** - Special Secretary Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**4** - Secretary Department Of Commerce And Industries, Government Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh.

**5** - Director Health Services, Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**6** - Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking) Through Managing Director, S M S C L, Chhattisgarh Housing Board Commercial Complex (North West Corner), Sector- 27, Atal Nagar, Nava Raipur, District- Raipur, Chhattisgarh.

**7** - General Manager (Equipment In- Charge) Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking), Chhattisgarh Housing Board Commercial Complex (North West Corner), Sector- 27, Atal Nagar, Nava Raipur, District- Raipur, Chhattisgarh.

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**WPC No. 5516 of 2024**

M/s Mokshit Corporation, having its office at Chopda Group, G.E Road , Ganj Para, Durg, Chhattisgarh, Through Its Partner, Shantilal Chopda, S/o Late Champa Lal Chopda, Aged About 60 Years, R/o House No. 2 , Chopda Compound Aazad Ward - 37, Ganjpara, Durg, District Durg (C.G.) Chhattisgarh -491001

----**Petitioner**

**Versus**

**1** - State Of Chhattisgarh Through Chief Secretary, Government Of Chhattisgarh, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**2** - Additional Chief Secretary, Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**3** - Special Secretary, Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.

**4** - Secretary Department Of Commerce And Industries, Government Of Chhattisgarh Mahanadi Bhawan, Mantralay, capital Complex, Atal Nagar, Nava Raipur, Distt. Raipur, Chhattisgarh.

**5** - Director, Health Services, Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Dist- Raipur (C.G.)

**6** - Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking) Through Managing Director, Smscl, Chhattisgarh Housing Board Commercial Complex (North West Corner), Sector -27 Atal Nagar, Nava Raipur, District Raipur, C.G.

**7** - General Manager (Equipment In Charge ), Chhattisgarh Medical Services Corporation Limited (A Government Of Chhattisgarh Undertaking),

Chhattisgarh Housing Board Commercial Complex (North West Corner),  
Sector -27 Atal Nagar, Nava Raipur, District Raipur, C.G.

---- Respondent

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For Petitioner	: Mr. Ankit Singhal, Mr. Rohit Sharma and Mr. Ashish Mittal, Advocates.
For Respondent/State	: Mr. Prafull N Bharat, Advocate General assisted by Mr. Shashank Thakur, Deputy Advocate General.
For Respondents No. 6 & 7/ CGMSCL	: Mr. Prafull N Bharat, Senior Advocate assisted by Mr. Raghavendra Pradhan and Mr. Trivikram Nayak, Advocates.

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**Hon'ble Mr. Ramesh Sinha, Chief Justice**

**Hon'ble Mr. Amitendra Kishore Prasad, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**21/11/2024**

1. Since common facts and issues are involved in these petitions, with the consent of learned counsel appearing for the parties, they are being heard and considered together by this common judgment.
2. The petitioner, in WPC No. 5508/2024, has prayed for the following relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to pass any appropriate writ, order or direction for setting aside the impugned tender notice bearing Ref. No. 238/CGMSCL/Reagent, Control, Calibrator, Consumable/2024-25 dated 10.10.2024 (Annexure P-1) floated by Respondent No. 6;*

*10.2 Any other relief or relief(s) which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case, may also kindly be granted.”*

3. The petitioner, in WPC No. 4553/2024, has prayed for the following relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to issue a suitable writ/direction for setting aside impugned orders dated 23.08.2024 (ANNEXURE-P-1) and notification dated 11.07.2024 (ANNEXURE-P-2).*

*10.2 That, the suitable writ/direction may kindly be issued declaring the action of respondents in terminating the rate contract of the petitioner as arbitrary and illegal and further allow the petitioner to continue the supply equipment/consumables/reagents as per rate contract till the period agreed upon.*

*10.3 That, the suitable writ/direction may kindly be issued restraining the respondents not to take any steps in future against the petitioner till subsistence of rate contract/term of contract.*

*10.4 That this Hon'ble court may kindly be pleased to hold that the impugned notification cannot be applied retrospectively to eclipse the executed contract and the contract of the petitioner be excluded from implication thereof.*

*10.5 That, any other further order(s) as deemed fit and necessary by this Hon'ble Court in the interest of justice.”*

4. The petitioner, in WPC No. 5479/2024, has prayed for the following relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to pass any appropriate writ, order or direction for setting aside the impugned tender notice bearing Ref. No.235/CGMSCL/Reagent, Control, Calibrator, Consumable/2024-25 dated 15.10.2024 (Annexure P-1) floated by Respondent No. 6;*

*10.2 Any other relief or relief(s) which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case, may also kindly be granted.”*

5. The petitioner, in WPC No. 5511/2024, has prayed for the following relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to pass any appropriate writ, order or direction for setting aside the impugned tender notice bearing Ref. No. 233/CGMSCL/Reagent, Control, Calibrator, Consumable/2024-25 dated 10.10.2024 (Annexure P-1) floated by Respondent No. 6;*



*10.2 Any other relief or relief(s) which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case, may also kindly be granted.”*

6. The petitioner, in WPC No. 5512/2024, has prayed for the following relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to pass any appropriate writ, order or direction for setting aside the impugned tender notice bearing Ref. No. 241/CGMSCL/Reagent, Control, Calibrator, Consumable/2024-25 dated 14.10.2024 (Annexure P-1) floated by Respondent No. 6;*

*10.2 Any other relief or relief(s) which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case, may also kindly be granted.”*

7. The petitioner, in WPC No. 5514/2024, has prayed for the following relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to pass any appropriate writ, order or direction for setting aside the impugned tender notice bearing Ref. No. 242/CGMSCL/Reagent, Control, Calibrator, Consumable/2024-25 dated 14.10.2024 (Annexure P-1) floated by Respondent No. 6;*

*10.2 Any other relief or relief(s) which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case, may also kindly be granted.*

8. The petitioner, in WPC No. 5516/2024, has prayed for the following relief(s):

*“10.1 That, this Hon'ble Court may kindly be pleased to pass any appropriate writ, order or direction for setting aside the impugned tender notice bearing Ref. No. 237/CGMSCL/Reagent, Control, Calibrator, Consumable/2024-25 dated 10.10.2024 (Annexure P-1) floated by Respondent No. 6;*

*10.2 Any other relief or relief(s) which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case, may also kindly be granted.”*

9. WPC No. 4553/2024 is taken as the lead case for consideration of this

batch of writ petitions. The facts, in brief, as projected by the petitioner in this petition is that the petitioner is a partnership firm engaged in the business of manufacturing of pharmaceuticals products and equipment. The petitioner was desirous of setting up manufacturing unit of pharmaceutical product and equipment in the State of Chhattisgarh as a result of which a memorandum of understanding (*for short, the MoU*) dated 15.12.2020 was executed between the petitioner and State of Chhattisgarh for establishment of manufacturing of pharmaceutical products and equipment with investment of Rs 15.65 crores. As per the said MoU, the Government of Chhattisgarh agreed to provide all help and facilitate clearance necessary for the said manufacturing project through intervention of Chhattisgarh Investment Promotion Board, as per clause-3.5 of MoU, the State Government will provide all incentives available to mega/very large industrial project in the State as per Industrial Policy and notification of Government applicable from time to time. Clause-3.5 of MoU stated that the State Government will provide all incentives available to mega/very large industrial projects in the state, as per industrial policy and notification of the Government applicable from time to time.

- 10.** In pursuance of the MoU entered into between the petitioner and respondent State authority, a missive communication dated 17.02.2021 was addressed to respondent Chhattisgarh Medical Services Corporation Ltd. (*for short, the GMSCL*) thereby communicating the proprietorship certificate in respect of reagent kit. The said fact discloses that the machines supplied by the petitioner firm are closed system machine and can be operated by proprietor reagent specifically supplied by the petitioner firm. In pursuance of MoU dated 15.12.2020, notification dated 06.09.2021 was issued by respondent No.4 by exercising the power conferred under Chhattisgarh State Industrial Policy 2019-24. The said notification was issued for the

vendors who have invested minimum Rs. 15 crores and also executed MoU with State Government and the said policy is termed as special investment promotion package. Subsequent to the same, a gazette notification dated 26.11.2021 was issued by State Government and special investment promotion package was declared. As per the clause-6 of the said notification, if vendor enlisted in Annexure-A participates in the tender process and technically and financially qualifies for the same, then in said condition, 50% of the quantity of the tender or maximum capacity of the unit shall be procured from the said vendor. Clause-6 of the notification states as under:

*"6. यदि विचाराधीन ईकाईयां छत्तीसगढ़ राज्य के विभिन्न विभागों / उपक्रमों द्वारा जारी निविदा में भाग लेती हैं, निविदा में निर्धारित गुणवत्ता मापदण्ड पूर्ण करती है तथा निविदा में प्राप्त न्यूनतम दर पर अपनी उत्पादित सामग्री प्रदाय करने की सहमति देती है, तो इन ईकाईयों से निविदाधीन सामग्री का 50 प्रतिशत अथवा ईकाई की उत्पाद क्षमता तक की मात्रा जो कम हो, तक सामग्री का क्रय किया जावेगा।"*

- 11.** Finally, after huge investment of around Rs. 22.06 crore and after all necessary clearance, the petitioner had established its manufacturing unit on the strength of MoU and the gazette notification issued by the State Government. The permission to establish manufacturing unit and license was issued to the petitioner by appropriate authorities and manufacturing unit was established in the year 2022. Subsequently, a Notice Inviting Tender (*for short, the NIT*) was issued for supply of medical equipment and its consumable and reagents bearing tender No. 168(R) which was ultimately cancelled and upon consideration as explicit in the note sheet proceeding dated 18.08.2022, a fresh NIT was floated on 26.08.2022 bearing tender No. Ref.No.182/EQP/ CGMSC/2022-23. The petitioner was having the requisite qualification to participate in the tender process and was the lowest bidder and tender was finalized in favour of the petitioner.

Pursuant to that, a rate contract was executed between CGMSCL and petitioner for supply of medical equipment and its consumable and reagents. As per the terms and conditions of the said contract, the price quoted for reagent/consumable by bidder shall remain firm and fixed during currency of contract and will be valid for another period of 8 years.

- 12.** Mr. Ankit Singhal, learned counsel appearing for the petitioner submits that a communication was made by the Director, Health Services to the office of Additional Chief Secretary vide dated 05.06.2024 whereby permission for issuance of indent for purchase of reagent for running of machines in hospitals was sought. The said fact reveals the fact that the payment was not made and appropriate action was warranted. Thus also the act on part of the respondent in terminating the contract on ground of convenience is absurd and untenable. It was like bolt from the blue, when the petitioner got to know that the respondent No.6 in its Board Meeting relying upon the Notification dated 11.07.2024 illegally terminated the rate contract awarded to the petitioner. Pursuant to the decision in the meeting the impugned order has been passed by the virtue of which rate contract awarded to the petitioner has been terminated. The respondent authority ought to provide a reasonable opportunity to the petitioner before any decision was taken to terminate the existing valid rate contract. Even while the functioning of machines and equipment installed by the petitioner firm and due scrutiny of same, it was revealed that the respondent have used unauthorized reagent in the same. The said act has caused the machines to not function and thus the report generated on the said basis suffers of material inconsistencies and irregularity. The petitioner firm has duly communicated the said fact vide letter dated 26.08.2024 to the respondent authorities.
- 13.** Mr. Singhal further submits that a bare perusal of letter dated 28.08.2024 communicated by respondent CGMSCL to Director, Health Services reveals

the fact that on account of machines installed by petitioner firm and due to termination of contact by the respondent authorities the Health Services are impaired and the public interest doctrine invoked by the respondent authority to terminate the contract is absolutely an eye wash and without any rational cause. The petitioner has investment huge corpus and has materially changed the financial positions of firm based on promises and conduct of the respondent authorities and therefore the respondent State instrumentality cannot act as per their own whims and fancies and thereby infringe the right to equality of the petitioner firm and also as the respondents are bound by promissory estoppels. The said action of the respondent authorities, is arbitrary, malafide and without any authority of law.

14. It is next submitted by Mr. Singhal that the petitioner has impugned the Notification dated 23.08.2024, 11.07.2024 and the decision of the respondent authorities dated 14.08.2024 on the ground that the doctrine of legitimate expectation, is a facet of Article 14, and is essential to maintain the rule of law. Such a doctrine, which ensures predictability in the application of law, in its very essence, fights against the corrosion of the rule of law, and prevents arbitrary state action. It has been upheld by Hon'ble Supreme Court that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons. In the instant case no opportunity whatsoever has been afforded to the petitioner while passing the impugned order. In a contractual matter while exercising the power of judicial review the Hon'ble Court has power to examine the decision making process to prevent arbitrariness.

Moreover the concept of natural justice implies fairness, reasonableness, equality and equity, if has not been followed, then is violative of Article 14 and 21 of the Constitution of India. In the instant case the impugned decision and order has been passed without affording the opportunity to the petitioner and simply existing rate contract has been illegally terminated and petitioner are debarred from further participation. The petitioner had been allured by the State of Government to set up new manufacturing unit in expectation of getting benefit as per clause 6 of the gazette notification dated 05.10.2021 and once such industrial unit is given such benefit, subsequently, by way of new notification such right cannot be taken away same would be manifestly unfair and arbitrary to deprive petitioner within the State of their legitimate entitlement. The State authority has in a blanket manner simply terminated the rate contract, without taking into account the fact that the rate contract of the petitioner is valid for further 8 years as per tender document and contract executed. The petitioners' rights were crystallized from the day gazette notification was issued as per clause 6 of the said notification the petitioner is entitled to get participate in all future tender and further the petitioner is entitled to continue the supply as per rate contract till its validity. The illegal termination of rate contract has not only caused irreparable loss to the petitioner but has also put on stake enormous public exchequer money spent of procuring and installing them. The clandestine act of the respondent authority in the garb of public interest is rather an act of detriment to public interest by rendering the public exchequer money to be wasted without any rationale or due application of mind. In the present case, the doctrine of "*Wednesbury unreasonableness*" is squarely applicable to the case at hand. The authority cannot act unreasonably and is subject to scrutiny of reasonableness in its decision making process. Even the respondent are bound by promissory estoppel

and thereby cannot terminate the contract invoking convenience clause as the convenience has to pass the test of rationality and equality before law must be upheld. The reliance of impugned notification to carry on the order of termination lacks competence as the same has been retrospectively applied to already executed contractual agreement which is binding on parties and thus the same also shall not be made applicable on the petitioner firm. In support of his contentions Mr. Singhal relies on the decision of the Supreme Court in ***Subodh Kumar Singh Rathour v. Chief Executive Officer & Others*** {2024 SCC OnLine SC 1682, paragraphs 56, 71, 126, 127, 128 and 129}, ***M.P. Power Management Co. Ltd. Jabalpur v. Sky Power Southeast Solar India Pvt. Ltd.*** {(2023) 2 SCC 703, paragraphs 138 and 139} and ***Union of India & Others v. Tania Construction Pvt. Ltd.*** {(2011) 5 SCC 697, paragraph 33}.

15. With respect to other petitions i.e. WPC No. 5508/2024, Mr. Singhal submits that here, the propriety, legality and validity of Tender bearing Ref. No. 238/CGMSCL/Reagent, Control, Calibrator, Consumable/2024-25 dated 10.10.2024 floated by Respondent No. 6 for "e-TENDER FOR RATE CONTRACT OF REAGENTS, CONTROL, CALIBRATOR & CONSUMABLE, SUITABLE IN SEMI AUTOMATED BIOCHEMISTRY ANALYZER (MAKE-MOKSHIT CORPORATION., MODEL-CHANDA 9903) TO CHHATTISGARH MEDICAL SERVICES CORPORATION LTD", is under challenge, whereby the Respondent No.6 has issued a fresh tender without adhering to the rules prescribed in Chhattisgarh Store Purchase Rules, 2002. Earlier, the petitioner was awarded work order pursuant to the tender floated by the respondent/CGMSCL on 18.08.2022 for supply of medical equipment alongwith its consumables and reagents and according to the contract terms, the price quoted by the bidder for reagents/ consumables shall remain firm and fixed throughout the contract duration

and will be valid for an additional 8 years. Thereafter, vide letter dated 23.08.2024, the CGMSCL in an arbitrary and illegal manner terminated the aforesaid rate contract agreement of the petitioner on the ground that as per the amended Chhattisgarh Store Purchase Rules, 2002, the tender would need to be floated through GeM portal. Pertinently, the tender awarded to the petitioner was cancelled only for the reason that the same was not floated in the GeM portal and to comply with the amended provision of the Chhattisgarh Store Purchase Rules, 2002. However, it is submitted that the impugned tender herein has not been issued in the GeM portal which clearly shows the *malafides* of the respondent authorities in cancelling the tender awarded to the petitioner and issuing the fresh impugned tender. The impugned tender floated by the Respondent No. 6 is contrary to the amended provisions of the Chhattisgarh Store Purchase Rules, 2002 as it has not been floated in GeM portal and on this ground alone is liable to be quashed and set aside. It is further submitted that the manner in which the tender awarded to the petitioner has been cancelled and fresh impugned tender has been released, clearly shows the malafides, arbitrariness and high handedness of the respondent authorities. The petitioner holds exclusive authorization from the principal manufacturers for its supply. The action of Respondent No. 6 in floating impugned tender for machines that are within the ambit of the petitioner's exclusive rights, through an open tender process for proprietary products, are alleged to be both malicious and unlawful.

- 16.** Mr. Singhal further submits that in other petitions i.e. WPC No. 5508/2024, 5479/2024, 5511/2024, 5512/2024, 5514/2024, and 5516/2024, all other contentions remain same except for the tender number and the article for which it has been floated by the CGMSCL. In support of his contentions in these petitions also, he would adopt the arguments advanced in WPC No.



4553/2024.

- 17.** Mr. Prafull N Bharat, learned Advocate General assisted by Mr. Shashank Thakur, learned Deputy Advocate General would submit that the main contesting party in these petitions would be the respondent No. 6 and 7. He further submits that he would be arguing in this petition on behalf of the respondents No. 6 and 7/CGMSCL as well, in the capacity of a Senior Advocate.
- 18.** Mr. Prafull N Bharat, learned Senior Advocate assisted by Raghavendra Pradhan and Mr. Trivikram Nayak, relying on the return filed, submits that CGMSC has been incorporated on 7<sup>th</sup> October 2010 as a public limited Company under the Companies Act 1956 and it is overseen by the Health & Family Welfare Department of Chhattisgarh. The CGMSC works under the aegis of the State Government and it is dependent on the State Government through the respective directorates i.e. DME or DHS, etc. for funds, etc. The main object of CGMSC is to- (a) procure, test, store and supply all kinds and variety of generic drugs & medicines, Suture and Surgical items, etc. to the various Health facilities (Medical Colleges, District Hospitals, CHCs and PHCs) as per requirement received from Health Department; (b) It further deals with procurement, Distribution, Installation, Maintenance of all types of medical equipment's and instruments required in various Health facilities across the State and; (c) it is also concerned with Designing and Construction of hospitals and other building for Health Department, Govt. of Chhattisgarh. The CGMSC acts on the demands/indents placed by various departments and accordingly issues tenders and rate contracts on their behalf at the request of those departments. The CGMSCL is authorised through its Memorandum of Association and Articles of Association to transact the aforementioned category of works. The CGMSCL had floated 'e-Tender For The Rate Contract And Supply Of Medical Equipment (Open

System) To Chhattisgarh Medical Services Corporation Limited bearing Tender Reference No.: 182/EQP/CGMSC/2022-23, dated: 26/08/2022. As per Annexure 23 of the Tender documents, it specified the Schedule of Requirements i.e. it clearly specified the 11 kinds of equipment and its reagents which were required by the CGMSCL. It is an undisputed fact that in the aforementioned tender, the petitioner company as well as 3 other Companies had participated in which subsequently the petitioner Company was awarded the tender and after detailed negotiations the Rate Contract vis-à-vis agreement dated 13/02/2023 was entered between the petitioner firm and CGMSCL for supply of 9 equipment and requisite reagents as mentioned therein. *Firstly*, the tender was for open system machines, *secondly*, the tender provided for dispute resolution mechanisms i.e. as per Section III, Clause 20 of the tender documents any matter or dispute between the concerned parties would be resolved through Arbitration under Arbitration and Conciliation Act, 1996 apart from this there was also a separate provision for Appeal i.e. an Appeal could be preferred before the Principal Secretary/Secretary Health. *Thirdly*, Section III, Clause 19 of the tender documents provided for termination for convenience and accordingly as per the terms and conditions so agreed by the parties, the purchaser i.e. CGMSCL had been given the power to terminate the contract at clause 19. *Fourthly*, it is submitted that as far as the rate contract and price of product is concerned, Clause 28 of Section III of the tender documents provided that this tender is also a 'Rate Contract and the rates quoted therein by the bidder i.e. petitioner shall remain valid for 02 years and 06 months from the date of signing of contract and the purchaser/ CGMSCL would have the option to extend further period on mutual acceptance. The 2nd part of Clause 28 i.e. 28(2) provided that price quoted for reagent by bidder/petitioner firm shall remain firm and fixed during the current contract

and will be valid for another eight years but may be reviewed in every 02 year on providing proper justification. However, it is submitted that this 2nd part is not to be read in abstract isolation but in consonance with first part of Clause 28. Therefore the rates were valid only for 2 year 6 months and could also be reviewed in every two years. Clause 28 of Section III of tender documents reads as under:

**“28. RATE CONTRACT**

*1. The tender is also a 'Rate Contract. The bidders are expected to quote their best rates for the item(s). The rates quoted by the bidder shall remain valid for 02 years and 06 months from the date of signing of contract and the purchaser will have the option to extend further period on mutual acceptance during which CGMSC or any of the user Institutions under the Government of Chhattisgarh, may place order for the supply of same item procured under this tender. If the purchaser/user institutions choose to place the orders for supply, the supplier is bound to supply at the same rate as per same terms and conditions of this tender to such agencies/institutions, placing such order. Non- supply or short supply or refusal to supply, in any manner whatsoever, under this rate contract will tantamount to non-performance of supply and attract relevant action against successful bidder, under terms of this tender.*

*2. Price quoted for reagent by bidder shall remain firm and fixed during currency of the contract and will be valid for another eight years but may be reviewed in every 02 year on providing proper justification.”*

- 19.** The aforementioned clause 28 is *pari materia* and has been adopted in the terms of the rate contract as mentioned in the rate contract agreement dated 13/02/2023. Therefore, the rate contract is for a period of 2 year 6 months which is further extendable after due review. In the matter at hand, certain Purchase Orders were placed with the petitioner firm for reagents against which certain dues if raised would be cleared, however, it is submitted that CGMSCL is dependent on the Directorate for funds for the same and if any payment has to be made it has to be done post clearance from the concerned authority. Moreover, in the matter at hand, with regard to the reagents provided by the petitioner firm, a high level enquiry has been instituted by the Directorate for looking into the cost and price of products

being provided by petitioner firm. Also, the Office of Principal Accountant General (Audit), Chhattisgarh has given grave findings in its transaction audit of petitioner firm with the CGMSCL and therein it has been found that in Fully Auto analyser, Semi-Automated Biochemistry Analyser, Automated Hormone Analyser, HBA1C Analyser, Electrolyte Analyser, Urine Analyser the procurement of reagents has been done at upto 1726% higher rates in some of the reagents thereby causing huge loss to the public exchequer on one hand and causing financial benefit to the tune of hundreds of crores to petitioner firm on the other hand. All these aspects need to be borne into mind before any payment if at all any has to be made to petitioner firm. In the State of Chhattisgarh, the State Government had provided an incentive for setting up of manufacturing plants. In the matter at hand, the petitioner firm had entered into an MoU dated 15/12/2020 with the State of Chhattisgarh for setting up a plant/facility for the following- pharmaceutical products, different reagents/rapid test kits, electromedical, etc. equipment and walking stick/walker for a sum of Rs. 15.06 crores. Clause 2.7 of the MoU provided that the project should be commenced immediately but not later than 2 years and if project not started since 2 years from date of signing, the MoU would be deemed to have expired. Also, as per this MoU clause 3.1 to 3.3, the CSIDC and the Government would give all the benefits and necessary assistance including procurement of land, expeditious grant of proposal, etc. to the petitioner firm. Further Clause 3.5 of MoU provides that the State Government would provide all incentives under Mega/Very Large Scale industrial projects as per the requisite Industrial Policy amended from time to time. At the relevant point of time i.e. in the case of petitioner, the policy that was effective was published vide gazette Notification No. F/20-43/2021/11/6 titled 'फार्मास्यूटिकल क्षेत्र के मेगा प्रोजेक्ट के लिए बेस्पोक पालिसी के अंतर्गत हेतु आर्थिक प्रोत्साहन योजना'. As per Clause 2 of the said policy the

units/plants should commence production on or before 31/10/2024. Clause 3 provided that the investment of Rs. 15 Crore and above should be made as permanent capital and the production should commence on or before 31/10/2024 and not later. In the matter at hand, the production/manufacturing as per MoU whether has actually commenced or not needs proper verification and it must be substantiated by the petitioner firm through cogent evidence and approval from concerned authorities on the same. Further, Clause 6 of the policy provides incentives for the manufacturing units i.e. it provides, if all the requisite and technical criteria are met in a tender by the bidder which is also a unit under-consideration in the said policy and also if the said unit is found to be the lowest bidder, then in that case 50% of the required quantity or upto the capacity of the unit, whichever is lower, that particular quantity would be procured by the tendering authority from the said unit/plant. In the instant case with regard to the Tender Ref. No. 182/EQP/CGMSC/2022-23, dated: 26/08/2022, the petitioner has never applied nor taken the benefit of the aforementioned policy till date and its reliance in the instant petition is misplaced and misdirected and the documents submitted by the petitioner during participation in the tender at hand also indicates that it had not relied on the said policy nor any benefit was ever claimed or availed by the petitioner firm, hence, at this belated stage the petitioner cannot improvise its stance. The petitioner had not participated in the Tender as a manufacturer, rather it had participated in the capacity of 'supplier' who is importing/procuring the products from manufacturing entities registered abroad and some even from China which can be ascertained from the documents submitted in Cover-A by the petitioner firm itself while participating in the instant tender. Moreover, it has to be borne into mind that the petitioner firm if at all it is setting up a plant/unit in the State, then it is NOT for the sole purpose for

selling/providing materials, reagents, etc. to CGMSC, rather the petitioner firm has already been given relaxations, benefits and exemptions for setting up of the plant by the State and once production of products commences, then that would not at all be for the sole purpose for providing reagents, equipment, etc. to the CGMSCL rather the petitioner firm is and has always been free to sell, export, etc. the said products not only across India but globally as well. The only benefit that the petitioner firm can take is if apart from manufacturing the said products as per the industrial policy, it participates in any particular tender, then after fulfilling the aforementioned desired criteria as per Clause 6 of bespoke policy, the benefits mentioned therein could be availed.

- 20.** It is submitted by Mr. Bharat that in the State of Chhattisgarh the CSIDC is the industrial arm of the State and it deals with the procurement aspect and tenders in general, the Department of Commerce and Industries, State of Chhattisgarh had issued the Bhandar Kray Niyam, 2002 (Store Purchase Rules, 2002) which deals in detail with the mode and method of procurement and the do's and don'ts for tenders, etc. which are to be followed. Rule No. 3 to 3.3 and Rule No. 4 to 4.14 are the relevant rules/sub-rules therein. The State Government vis-à-vis the Cabinet, vide its resolution dated 09/07/2024 had duly approved the amendment to the requisite part of Rule 3 and 4 of the Bhandar Kray Niyam and it was also decided to cancel all the existing rate contracts, which was done with a view to curb corruption as can be seen from the website of the Chhattisgarh Jansampark Sanchnalay. The said amendment to the Bhandar Kray Niyam was published vide notification dated 11.07.2024 in the name of Governor and signed by the Secretary, Department of Commerce and Industries. The GeM Portal has its own exclusive benefits and is beneficial not only for the purchaser department in terms of robust system for procurement,

assurance of lower rates as Pan India participation is ensured, etc. but also there are benefits for the sellers, however, the parties i.e. the seller/manufacturer/supplier, etc. must get registered themselves with the GeM portal in order to enable them to participate. The procurement through GeM enhances transparency, efficiency and speed in public procurement. It provides the tools of e-bidding, reverse e-auction and demand aggregation to facilitate the Government users, achieve the best value for their money and further it is committed in delivering value by ensuring right quality at right price. In light of the amendment to the Chhattisgarh Store Purchase Rules wherein it was resolved that the procurement should be done preferably through the Government of India's- 'Government-e-Marketplace' portal (GeM Portal). Subsequently, in light of the policy decision, the Board of Directors of CGMSCL in its 48th Board of Directors Meeting held on 06/08/2024 vide Agenda No. 48/05 and 48/06 had duly resolved to cancel all the existing rate contracts and tenders in 'Reagent', 'Consumables', and 'Equipment' category in order to bring uniformity in procurement and to preferably procure through GeM portal and only in case the said product was not available on Gem, then the procurement was to be done through public tender. The decision of the Board of Directors of CGMSC was just, proper, adequate and looking into the policy decision of the State. Further, this would not only provide uniformity in the procurement system but would also ensure procurement at competitive rates and best use of the public exchequers money as the tenders would be pan-India through the Gol's GeM portal preferably. In furtherance of the resolution passed by the Board of Directors, the Managing Director in compliance thereof had issued the orders dated 23/08/2024 (for reagents and equipment) and orders dated 27/08/2024 (for consumables) thereby directing cancellation of all tenders and rate contracts in the category of 'Reagent', 'Consumables', and

'Equipment' and the same was duly communicated to the companies/firms in exercise of the right of termination for convenience which already grants the power to the purchaser i.e. CGMSCL. The exercise undertaken was uniform across all sectors by CGMSCL in light of the policy decision and the power vested as per the terms of contract entered between the parties. Further, there is no discrimination as being alleged, because, it is not merely the petitioner firm but rather entirety of hundreds of firms across the categories of Reagents, Consumables and Equipment whose entire tenders/rate contracts have been duly terminated in light of the aforementioned decisions. Furthermore, it is submitted that none of the firms including petitioner firm has been blacklisted or debarred from participating in any tender and it is free to participate, moreover, the petitioner firm like others should get itself registered at GeM portal which would enable procurement through the same and provide benefits both to Seller and Purchasers, whereas, from the records it is clear that the petitioner has not registered itself at the GeM portal.

- 21.** Mr. Bharat further submits that the petitioner has not only challenged the impugned order vis-à-vis termination of Rate Contract but it has also challenged the notification dated 11/07/2024 issued by the State Government vis-à-vis Department of Commerce and Industries on due approval from Cabinet of the State. Challenge to the impugned notification dated 11/07/2024 tantamount to challenging vires of the said statute and since the notification and amendment has been carried out by the State therefore, that part would have to be dealt with the State Government respectively. However, it is submitted that it is settled law that merely on account of personal difficulty a valid piece of legislation/statute/rules/ cannot be set aside or declared ultra vires. The aforementioned challenge to the notification of State Government has been merely made just to thwart the



applicability of the same and as an escape route from its implementation. This challenge is nothing but an opportunity being used to create an impediment for the State Government and its instrumentalities who are trying to standardize and bring uniformity in the procurement process which would also save public exchequers money and curb corruption in the process. As far as the impugned cancellation of Rate Contract is concerned, the dispute arising in the instant matter is purely contractual in nature and has to be adjudicated in light of the respective agreements entered between the petitioner and the CGMSCL. Also, it is worthwhile to mention that as per the agreement between the parties there exists statutory alternate remedy of Arbitration for resolution of any disputes. Therefore, in the instant matter the Petition should be dismissed sans merit. The petitioner ought to have been relegated to exercise its efficacious alternative remedy as provided by the terms and conditions of the tender. The sole ground that the petitioner firm was not heard while passing the termination notice is immaterial, *firstly*, as Clause 19 of the Tender provides for 'termination for convenience' and gives the discretion directly to the tendering authority/purchaser/CGMSCL and *secondly*, the impugned termination order had been passed without any prejudice or bias against any firm but rather to comply with the directions of the State Government and subsequent decision of the Board of Directors and also to bring uniformity in procurement process, etc. As a matter of fact the decision of the Board of Directors which is binding on the CGMSCL and is also the basis of the entirety of the orders for termination of rate contracts/tenders of all firms under the category of Reagents, Consumables and Equipment, including the impugned order challenged by petitioner as per which rate contract of petitioner firm had been terminated. It is submitted that the petitioner has failed to challenge the same i.e. challenge the decision of the Board of Directors and therefore no relief to the extent of

setting aside the impugned termination of rate contract can be given effect to unless that very decision is under challenge and hence the Petition deserves be dismissed on this ground alone. Pursuant to the termination of rate contracts of all firms including the petitioner, the CGMSCL had taken steps for procuring reagents, etc. from the GeM portal which would be as per the tailored needs of the CGMSCL with reference to reagents. In due course, the Directorate of Health and Family Welfare was informed about the decision and subsequently, for fresh procurement of reagents, steps would have to be initiated. Accordingly, vide letter dated 19/09/2024, the Director of DHS had granted permission for rate discovery and issuance of tender for the 9 category of products/Reagents. This was finalised and re-affirmed by the letter dated 04/10/2024 as per which the CGMSCL was given the permission to issue open tender for the requisite reagents, etc. and also lead to rate discovery, hence the indent for procuring the said 9 category of items/Reagents was duly received by the CGMSCL.

- 22.** It is further submitted that the CGMSCL had also approached the concerned officials of the GeM portal with regard to procurement of reagents, etc. as preference in procurement has to be given to the GeM, and in relation to the same the CGMSCL had issued multiple communiqué(s) dated 24/09/2024, 30/09/2024, 07/10/2024, etc. Due to the concerted efforts of the CGMSCL out of the original indent received from DHS for 9 category of products/Reagents, it was found that Reagents for 'Urine Analyzer make-Diasys QDX 100pro' and also for the 'HB1AC analyser make-Diasys Insta Check II' (the HB1AC has multiple parameters) is available on the GeM portal, furthermore, it was found that the same is available at the GeM portal at a fraction of cost on which the petitioner firm was providing reagents as can be seen from the letters dated 07/10/2024 and 16/10/2024 through which the said information has been communicated

to the DHS. Accordingly for the aforementioned two kinds of Reagents namely (a) the Urine Analyser Reagents is available at GeM portal for a price of Rs. 12.15/- as against the petitioners rate of Rs.38.86/- for the exact same Reagent; (b) for HB1AC Analyser Reagent, it is available at GeM portal for the following schedule of prices as compared to the rates of petitioner firm as detailed in paragraph 22 of the return. Henceforth, considering not only the huge savings of public exchequer money but also looking to the aspect of having quality and Pan India supply it would be appropriate to say that the decision to procure through GeM portal was an appropriate, just and rational decision. It is reiterated that it is the vendors/ suppliers/ manufacturers, etc. who need to get themselves registered with GeM which would enable procurement in a steadfast, time saving, quality assured and cost-effective way. Now, for the remaining 7 category of products/Reagents, it was found that some of them are even Chinese make. Howsoever, as Reagents are required on daily basis at the medical establishments, therefore a detailed study was conducted across other States by the team of experts of the CGMSCL, wherein it was found that for the similar nature of products/Reagents being made available across India for e.g. in the State of Kerala, one particular reagent i.e. Diluent is made available in the pack of 20000ml, whereas the petitioner firm provided one identical and exact Diluent of 20L for a staggering cost of Rs. 6,372/-, whereas in Kerala the same Diluent in 20000ml (20L) pack is available at a price of Rs. 1,984/-. Therefore, it has become pertinent that the Open Tender must be floated and proceeded in order to secure Reagents not only in a stead-fast and streamlined manner but most importantly in a cost-effective manner which would ultimately be beneficial for the public exchequer. Pursuant to the termination of rate contract of petitioner firm and after receiving indent for 9 Reagents out of which two are readily available

on GeM portal, the CGMSCL in order to cater to the needs of the Health Department has issued 7 fresh tenders for procuring the remaining 7 Reagents and the details of the fresh tenders issued for requisite Reagents are as follows- a) "Tender Reference No. 233/ CGMSCL/ Reagent, Control, Calibrator, Consumable/ 2024-25, dated: 10/10/2024" which is an 'e-TENDER FOR RATE CONTRACT OF REAGENTS, CONTROL, CALIBRATOR & CONSUMABLE, SUITABLE IN ELECTROLYTE ANALYZER (ISE BASED) MAKE-GENURI BIOTECH INC., MODEL-G 300'

b) "Tender Ref. No. 234/ CGMSCL/ Reagent, Control, Calibrator, Consumable/ 2024-25, Dated: 10/10/2024" which is an 'e -TENDER FOR RATE CONTRACT OF REAGENTS, CONTROL, CALIBRATOR & CONSUMABLE, SUITABLE IN BLOOD CELL COUNTER (MAKE-MOKSHIT CORPORATION., MODEL-CHANDA 9904) c) "Tender Ref. No. 235/ COMSCL/ Reagent, Control, Calibrator, Consumable/ 2024-25, Dated: 15-10-2024" which is an e-TENDER FOR RATE CONTRACT OF REAGENTS, CONTROL, CALIBRATOR & CONSUMABLE, SUITABLE IN FULLY AUTO BIOCHEISTRY ANALYZERS (MAKE-DIASYS., MODEL-RESPONSE 910)' d) "Tender Ref. No.237/ CGMSCL/ Reagent, Control, Calibrator, Consumable/ 2024-25, Dated: 10/10/2024" which is an "e-TENDER FOR RATE CONTRACT OF REAGENTS, CONTROL, CALIBRATOR & CONSUMABLE, SUITABLE IN HEMATOLOGY ANALYZER 5 PART (MAKE- DITRON., MODEL-ABUCUS 5)" e) "Tender Ref. No. 238/ CGMSCL/ Reagent, Control, Calibrator, Consumable/ 2024-25, Dated: 10/10/2024" which is an "e-TENDER FOR RATE CONTRACT OF REAGENTS, CONTROL, CALIBRATOR & CONSUMABLE, SUITABLE IN SEMI AUTOMATED BIOCHEMISTRY ANALYZER (MAKE-MOKSHIT CORPORATION., MODEL- CHANDA 9903)" f) "Tender Ref. No. 241 /CGMSCL/ Reagent, Control, Calibrator, Consumable/ 2024-25,

Dated: 14/10/2024" which is an 'e -TENDER FOR RATE CONTRACT OF REAGENTS, CONTROL, CALIBRATOR & CONSUMABLE, SUITABLE IN AUTOMATED 5 PART HEMATOLOGY ANALYZER (MAKE-SHENZHEN MINDRAY BIO-MEDICAL ELECTRONICS COL LTD., MODEL-BC6000)' g) "Tender Ref. No. 242/ CGMSCL/ Reagent, Control, Calibrator, Consumable/ 2024-25, Dated: 14/10/2024" which is an 'e-TENDER FOR RATE CONTRACT OF REAGENTS, CONTROL, CALIBRATOR & CONSUMABLE, SUITABLE IN CHEMILUMINESCENCE IMMUNOASSAY SYSTEM (AUTOMATED HARMON ANALYZER, MAKE-SHENZHEN MINDRAY BIO-MEDICAL ELECTRONICS COL LTD., MODEL-CL9001)'.

- 23.** Mr. Bharat next submits that the Hon'ble Supreme Court in a catena of judgments has held that procurement through tender for public related services and products should not be interfered with and derailed at any cost as that would ultimately affect the public at large. Hence, not only should the termination of rate contract of petitioner firm by CGMSCL should not be interfered with but also the issuance of fresh tenders should be allowed to continue to its logical end.
- 24.** Another important aspect that has to be dealt is that the petitioner claims to be the proprietary owner and supplier of the machines and Reagents that it had provided to the CGMSCL in the instant Tender Reference No.: 182/EQP/CGMSC/2022-23. However, it is *first* and foremost reiterated that the instant Tender was for Open System which is duly mentioned in the Tender, *Secondly*, the petitioner firm had participated as a supplier and not manufacturer and it is not the proprietary owner of the machines and its Reagents, the same can be sourced and provided from any of the authorised suppliers across the Globe. Last but not the least and most importantly as far as the issue of proprietary nature of the two machines

namely 'Blood Cell Counter' (BCC Machine Model Chanda, Make Moshit) and 'Semi Automated Biochemistry Analyser' (Model Chanda Make Mokshit) is concerned, it is submitted that on detailed scrutiny and thorough investigation by the department it has been found that earlier in Tender Ref. No. Ref. No. 53 E(P)/CGMSC/EQP/2017, dated 15/06/2017 wherein again the petitioner firm was the successful bidder, therein in the Annexure-II details of specification at Serial No. 6, though the name of machine prevalent was different, however, the petitioner firm had provided the exact same machine with the exact identical specifications as an Open System Machine which it now claims that the Semi-Automated Biochemistry analyser is closed system, also, Tender instant the in Reference No.: 182/EQP/CGMSC/2022-23 on comparing the schedule of requirement of the said 'Semi Automated Biochemistry Analyser' with that of the machine provided in the Tender Ref.No: 53 E(P)/CGMSC/EQP/2017 it is found that both are identical and one and the same. Furthermore, with regard to the claim of proprietary nature of 'Blood Cell Counter' (BCC Machine Model Chanda, Make Moshit), the DHS has set up an expert committee vide order dated 11/09/2024 comprising of expert members from the medical fraternity which had been set up to examine the said machine and check the claim whether if at all it is proprietary in nature and actually a closed system or not, and what kind of readily available compatible nature of Reagents can be used in it effectively. So *prima facie* even their claims in the Blood Cell Counter machine needs thorough verification and their claims cannot be accepted as gospel of truth, and the outcome of the expert Committee would be instrumental in the issue at hand. As a corollary, on detailed scrutiny and investigation the petitioner's claim that certain machines provided by it in the instant tender are proprietary articles is *prima facie* not true, and the matter must be looked into. The termination of rate contract of

petitioner firm was done without any bias and rather rate contracts of all firms across Reagents, Equipment and Consumables category were terminated and hence, the firm has been treated fairly and equally as other firms, rather, from the aforementioned instances it is clear that the petitioner firm has actively engaged in a systematic and complex design to cause huge loss to the public exchequer. As a corollary the termination of rate contract of petitioner firm was just, appropriate, reasonable and commensurate and any revocation/setting aside/quashing of the impugned order vis-à-vis order for termination of rate contract of the firm would not only derail and hamper the synchronized, systematic and streamlined process of recent procurement of reagents, etc. which is an essential commodity and the fresh procurement process can be seen to be saving hundreds of crores of public exchequer money but it would boost the morale of such firms which indulge in such tactics. Also, revocation of petitioner's Rate Contract would open pandora's box as that would be discriminatory to other firms whose rate contract have already been cancelled/terminated.

25. In support of his contentions, with reference to scope of interference by the Courts in tender and policy matter, reliance has been placed by Mr. Bharat on the decisions of the Supreme Court in ***Tata Motors Ltd. v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) & Others***, {2023 SCC OnLine SC 671, paragraphs 48, 52, and 54}, ***State of Orissa & Others v. Gopinath Dash & Others***, {(2005) 13 SCC 495, paragraphs 3, 6, 7 and 8}. With reference to non-entertainment of contractual disputes by the Courts in a tender matter in writ jurisdiction, reliance has been placed in the decision of the Supreme Court in ***Kerala State Electricity Board & Another v. Kurien E Kalathil & Others***, {(2000) 6 SCC 293, paragraphs 10 and 11} and ***Joshi Technologies International Inc. v. Union of India & Others*** {(2015) 7 SCC 728, paragraphs 59, 69, 69.1 to 69.4}, on the

ground of availability of alternative remedy, reliance has been placed on the decision in ***Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. & Others*** {(1985) 1 SCC 260, paragraph 3} and ***PHR Invent Educational Society v. UCO Bank & Others*** {2024 SCC OnLine SC 528, paragraph 22, 29, 30 and 31}, with respect to the issue of declaration of ultra vires on account of hardship and on limited grounds, reliance is placed on ***Dental Council of India v. Biyani Shikshan Samiti & Another*** {(2022) 6 SCC 65, paragraph 30 and 41}, ***Prafulla Kumar Das & Others v. State of Orissa & Others*** {(2023) 11 SCC 614, paragraph 45}, ***PGF Limited & Others v. Union of India*** {(2015) 13 SCC 50, paragraph 36 and 37}, and with respect of the contention that without holding a provision to be unconstitutional, Court cannot stop its implementation through direction, reliance is placed on ***Dhanraj v. Vikram Singh & Others*** {2023 SCC OnLine SC 724, paragraph 13}.

26. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
27. According to Mr. Singhal, initially, the tender was floated by the CGMSCL on 26.08.2022 and pursuant to the same, a rate contract agreement was entered into between the petitioner and the CGMSCL on 13.02.2023 which ought to have been continued upto February 2025. The contention of the petitioner is that the notification dated 11.07.2024 (Annexure P/2) is being tried to be given retrospective effect and the rate contract entered into between them has been cancelled vide the letter dated 23.08.2024 (Annexure P/1). For ready reference, the operative portion of the same is quoted herein below:

*“Dear Sir,*

*This is to inform you that, the State Government vis-a-vis*



*Government of Chhattisgarh had issued Notification No. F20-70/2004/11(6) on 11.07.2024 where in the government has taken a policy decision and in public interest has amended the Chhattisgarh Store Purchase Rules, 2002 (Chhattisgarh Bhandar Kray Niyam 2002) as per which it has made it mandatory for all the departments, corporations, bodies, etc. in the State of Chhattisgarh that they shall as far as procurement of goods, services, etc. is concerned that would need to be done specifically from the GeM portal Government-e-Marketplace and accordingly the Chhattisgarh Medical Services Corporation Ltd. which in government undertaking is also bound to comply with the same.*

*That, in consonance and furtherance of the aforementioned direction by the State government, the Brand Directors in their meeting held on 06.08.2024 have resolved that all the existing rate contracts in process for 'Equipments' & 'Reagent' would stand terminated with immediate effect and as a corollary the procurement would be made through GeM portal. Further the same has been approved by the Managing Director of Chhattisgarh Medical Services Corporation Ltd.*

*That, accordingly, in exercise of the powers vested and in accordance with Clause 19(a) of Section III of the Terms and Conditions of the Contract, which stipulates termination for convenience [See Clause 19(a) TERMINATION FOR CONVENIENCE], it is hereby informed and directed that your Rate Contracts/agreements stands terminated 'in whole' immediately for the entirety of performance of work' for the convenience of the Purchaser/CGMSC Ltd. as per the Contract and this termination shall be final and would come into effect "Immediately" for the following products/items mentioned below:-  
....."*

- 28.** As per the learned counsel for the CGMSCL, the petitioner was supplying 9 items. A query was made from the GeM portal where the vendor, supplier and manufacturer all are eligible to get themselves registered. For two articles, some of the parties had registered in the GeM Portal which were

available in the GeM portal, for those articles, no tender has been floated. For the remaining articles for which there was no registration in the GeM portal, open tender has been floated only with respect to those articles where every one was invited to offer their rates.

- 29.** So far as contention of the petitioner that the notification dated 11.07.2024 (Annexure P/2) is concerned, on the basis of which the communication dated 23.08.2024 (Annexure P/1) has been issued terminating the rate contract with the petitioner, attention has been drawn to clause 19 of the rate contract agreement dated 26.08.2022 (Annexure R-6/2). It would be beneficial to quote the same for ready reference:

*“19. Termination for convenience*

*(a) The purchaser, may by written notice sent to the Supplier, may terminate the contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser’s convenience, the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.*

*(b) The Goods that are complete and ready for shipment within 30 days after the Supplier’s receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect.*

*(i) To have any portion completed and delivered at the Contract terms and prices: and/or*

*(ii) To cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and for materials and parts previously procured by the supplier.”*

- 30.** Further, clause 20 of the said agreement provides for resolution of disputes. It provides that the purchaser and the supplier shall make every effort to resolve any disagreement or dispute arising between them under or in connection with the Contract. Further, in case of dispute or difference arising between the CGMSC Ltd. and a supplier relating to any matter arising out of

or connected with this agreement, such dispute or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996 and the venue of the arbitration has been provided to be at Raipur. It further provides for an appeal stating that any tender aggrieved by the order passed tender accepting authority may appeal to Principal Secretary/Secretary Health, Government of Chhattisgarh within 30 days of receipt of order and the Principal Secretary /Secretary Health shall dispose the appeal as early as possible. Further it provides that no appeal shall be preferred while the tender is in process and until tender is finalized and notification of award is issued by the CGMSCL. As such, the petitioner has alternative efficacious remedy which has not been availed of by the petitioner.

- 31.** The petitioner has failed to establish any arbitrariness on the part of the respondent-CGMSCL. On the contrary, one aspect which relates to public exchequer is also involved in this petition. The materials/equipment supplied by the petitioner is on a much higher rate than comparison to that is available through GeM portal which has been explained in detailed in paragraph 22 of this judgment in the form of the response of the CGMSCL.
- 32.** As per the learned counsel for the CGMSCL, the fresh tenders have been floated on 10.10.2024 and the last date for submission of the tender documents/bids is 25.11.2024. Though the higher rates charged by the petitioner for supply of articles/equipment is not the reason for cancellation of the rate contract but the notification (Annexure P/2) issued by the Government, however, when certain articles could not be found on the GeM portal, the open tender has been floated in which the petitioner can very well participate.
- 33.** There is no quarrel with regard to the ratio laid down by the Apex Court in the cases referred to by the learned counsel for the parties on various issues, but the fact remains that there is very little scope for the Courts to

interfere with the contractual matters. We do not find any illegality in the notification impugned herein which has been issued for the benefit of the State and the petitioner has utterly failed to prove that the same has caused any prejudice to petitioner as it is equally applicable for all the intending bidders and the parties who are presently providing their services/ supplying materials to the CGMSCL.

34. Recently, the Apex Court, in the matter of ***Banshidhar Construction Pvt. Ltd. v. Bharat Coking Coal Ltd. & Others***, {Civil Appeal No. 11005 OF 2024, decided on 04.10.2024}, taking note of the decisions rendered in various other celebrated judgments, observed as under:

*“21. There cannot be any disagreement to the legal proposition propounded in catena of decisions of this Court relied upon by the learned counsels for the Respondents to the effect that the Court does not sit as a Court of Appeal in the matter of award of contracts and it merely reviews the manner in which the decision was made; and that the Government and its instrumentalities must have a freedom of entering into the contracts. However, it is equally well settled that the decision of the government/ its instrumentalities must be free from arbitrariness and must not be affected by any bias or actuated by malafides. Government bodies being public authorities are expected to uphold fairness, equality and public interest even while dealing with contractual matters. Right to equality under Article 14 abhors arbitrariness. Public authorities have to ensure that no bias, favouritism or arbitrariness are shown during the bidding process and that the entire bidding process is carried out in absolutely transparent manner.*

*22. At this juncture, we may reiterate the well-established tenets of law pertaining to the scope of judicial intervention in Government Contracts.*

*23. In **Sterling Computers Limited vs. M/s. M & N Publications Limited and Others**<sup>1</sup>, this Court while dealing with the scope of judicial review of award of contracts held: -*

*“18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the “decision making process”. In this connection reference may be made to the case of*

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1 (1993) 1 SCC 445

*Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141] where it was said that: (p. 144a)

*“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court.”*

*By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the aforesaid case, Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141] the courts can certainly examine whether “decision-making process” was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.”*

24. In **Tata Cellular vs. Union of India**<sup>2</sup>, this Court had laid down certain principles for the judicial review of administrative action.

*“94. The principles deducible from the above are:*

*(1) The modern trend points to judicial restraint in administrative action.*

*(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*

*(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*

*(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*

*(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be*

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2 (1994) 6 SCC 651

*free from arbitrariness not affected by bias or actuated by mala fides.*

*(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”*

25. It has also been held in **ABL International Limited and Another vs. Export Credit Guarantee Corporation of India Limited and Others**<sup>3</sup>, as under: -

*“53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution.”*

26. In **Jagdish Mandal vs. State of Orissa and Others**<sup>4</sup>, this Court after discussing number of judgments laid down two tests to determine the extent of judicial interference in tender matters. They are: -

*“22. (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached;”*

*(ii) Whether public interest is affected. If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”*

27. In **Mihan India Ltd. vs. GMR Airports Ltd. and Others**<sup>5</sup>, while observing that the government contracts granted by the government bodies must uphold fairness, equality and rule of law while dealing with the contractual matters, it was observed in Para 50 as under: -

*“50. In view of the above, it is apparent that in government contracts, if granted by the government bodies, it is expected to uphold fairness, equality and*

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3 (2004) 3 SCC 553

4 (2007) 14 SCC 517

5 (2022) SCC OnLine SC 574

*rule of law while dealing with contractual matters. Right to equality under Article 14 of the Constitution of India abhors arbitrariness. The transparent bidding process is favoured by the Court to ensure that constitutional requirements are satisfied. It is said that the constitutional guarantee as provided under Article 14 of the Constitution of India demands the State to act in a fair and reasonable manner unless public interest demands otherwise. It is expedient that the degree of compromise of any private legitimate interest must correspond proportionately to the public interest.”*

28. It was sought to be submitted by the learned Counsels for the Respondents relying upon the observations made in **Central Coalfields Limited and Another vs. SLL-SML (Joint Venture Consortium) and Others**<sup>6</sup>, that whether a term of NIT is essential or not is a decision taken by the employer which should be respected. However, in the said judgment also it is observed that if the employer has exercised the inherent authority to deviate from the essential term, such deviation has to be made applicable to all the bidders and potential bidders. It was observed in Para 47 and 48 as under:-

*“47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651] there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision “that no responsible authority acting reasonably and in accordance with relevant law could have reached” as held in Jagdish Mandal [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] followed in Michigan Rubber [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216].*

48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be

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6 (2016) 8 SCC 622

respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] . However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot.”

**35.** Applying the well settled proposition of law to the facts of these cases, we do not find any merit in these petition and the petitioner is not entitled to any relief as claimed in this petition. As such, all these petitions are **dismissed**. Needless to say that the petitioner is at liberty to participate in the fresh tender floated by the respondent CGMSCL on 10.10.2024.

**36.** No order as to cost.

Sd/-  
(Amitendra Kishore Prasad)  
**JUDGE**

Sd/-  
(Ramesh Sinha)  
**CHIEF JUSTICE**