

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 4564/2025

M/s. Chemicals India, 27, Mahadev Nagar, Near Nandpuri, Hawa Sadak, 22 Godam, Jaipur 302019, Through Its Partner Shri Dhiraj Pathak

----Petitioner

Versus

1. State of Rajasthan, Through Secretary, Department Of Medical Education, Government Of Rajasthan Secretariat, Jaipur.
2. Rajasthan Medical Education Society (Directorate Of Medical Education), Chikitsa Shiksha Bhavan, Near Pink Square Mall, Opp. Psychiatric Centre, Janta Colony, Jaipur 302004 (Raj.) Through Director.
3. First Appellate Authority, Joint Secretary, Medical Education (Gr-1) Department, Secretariat, Jaipur (Raj.)
4. Second Appellate Authority, Principal Secretary, Medical Education Department, Government Of Rajasthan, Secretariat, Jaipur (Raj.)
5. Redical Scientific Equipments Private Limited, 9Th Milestone, Ambala-Jagadhri Road, P.o. Khuda Kalan, Nh 444A, Ambala Cantt-133104A, Thruogh Head Institutional Business Vikram Singh Chouhan.

----Respondents

For Petitioner(s)	:	Mr. R.P. Garg, Mr. R.K. Daga, Mr. Rahul Singh Chauhan, Mr. Sahil Sharma, Mr. Anupam Dwivedi, Mr. Pankaj Soni
For Respondent(s)	:	Mr. Archit Bohra, AGC along-with Mr. Yashwant Singh for respondents No.1 and 2 Mr. Sanjay Rahar for respondent No.5

HON'BLE MR. JUSTICE GANESH RAM MEENA

Arguments concluded on	:::	March 13, 2026
Order reserved on	:::	March 13, 2026
Order pronounced on	:::	April 15, 2026

1. The instant writ petition has been filed by the petitioner under Article 226 of the Constitution of India with a challenge to the order dated 03.02.2025 passed by the learned Second Appellate Authority, Medical Education Department, Govt. of Rajasthan, in Second Appeal No. RS/08-2024/216/40/VK/SA dated 01.08.2024 and prayed to uphold the order dated 19.07.2024 passed by the learned First Appellate Authority and further prayed to restore the work order dated 09.10.2024 in favour of the petitioner.

2. Learned counsel appearing for the petitioner submitted that the first appeal filed by the respondent No.5- Radical Scientific Equipments Pvt. Ltd. before the learned First Appellate Authority was not even maintainable in view of the provisions of section 38 of the Rajasthan Transparency in Public Procurement Act, 2012 (for short 'the Act of 2012') as the financial bid was opened on 13.06.2024 in favour of the petitioner and the technical bid submitted by the No.5- Radical Scientific Equipments Pvt. Ltd. was not found to be responsive. It is further submitted that out of all the bidders, the technical bid of the petitioner was found to be responsive which was opened on 14.12.2023 and the status was uploaded on

12.06.2024. He further submitted that the financial bid submitted by the petitioner was also accepted and the work order was also assigned to the petitioner and during the commencement of the work order i.e. supply of the required equipments, the first appeal preferred by the No.5- Radical Scientific Equipments Pvt. Ltd. was dismissed vide order dated 19.07.2024 and the second appeal filed by the No.5- Radical Scientific Equipments Pvt. Ltd. was allowed vide order dated 03.02.2025, which caused a great harassment and financial loss to the petitioner. Counsel further submitted that after the verification of M/s. Digilab Bio Analytical Instruments Pvt. Ltd., which is said to be the original supplier of Binocular Microscope (Faculty) to the petitioner- M/s. Chemicals India by the officers of the Rajasthan Medical Education, it was found to be perfect. Counsel submitted that once the verification report has been received as regards the production of the equipments to be supplied, the order of the Second Appellate Authority is without consideration of the verification report and the same deserves to be quashed and set aside. Counsel also submitted that the First Appellate Authority after having made due consideration of the material available on the record, dismissed the first appeal filed by the respondent No.5/ appellant giving out the findings and observations on due application of mind over the material available on the record, however, the Second Appellate Authority without

giving any findings and observations given by the First Appellate Authority, allowed the second appeal and set aside the order of the First Appellate Authority. Counsel further submitted that the Second Appellate Authority has exceeded its jurisdiction for the reason that the first appeal was preferred by the respondent No.5/ appellant with a challenge to the rejection of his technical bid and there was no challenge to the technical bid or financial bid of the petitioner. However, the Second Appellate Authority has given the findings as regards the bid of the petitioner and ordered to cancel the work order issued in favour of the petitioner without there being any favourable order in favour of respondent No.5/ appellant as regards rejection of his technical bid.

3. Mr. Archit Bohra, learned counsel appearing for the State and Mr. Sanjay Rahar, counsel appearing for the respondent No.5 submitted that the order of the Second Appellate Authority is just and proper in the facts and the circumstances of the case. It is also submitted by them that the action of the respondents in rejection of the technical bid of the respondent No.5 was illegal and arbitrary. It was also submitted that the second appeal was maintainable and the first appeal was filed within a limitation period of 10 days. Counsels have raised certain issues regarding the genuineness of the documents submitted by the petitioner along-with his bid.

4. Considered the submissions made by the counsels appearing for the respective parties and made scrutiny of the material available on the record.

5. As per the facts on record, the respondent No.2 issued a bid invitation notice dated 27.06.2023 inviting tenders for procuring Binocular Microscope (Faculty) for Government Medical Colleges, Rajasthan for the period 2023-24. As per the terms and conditions of the bid notice, the bid was of two stages process i.e. the first technical bid and the second financial bid. The petitioner, respondent No.5 and four other bidders submitted their technical and financial bids. The tender was opened On-line on e-procurement system of Government of Rajasthan on 14.12.2023. The technical bid and the evaluation report of the said tender was uploaded on e-procurement website on 12.06.2024 wherein only the petitioner's technical bid was found to be responsive and the technical bid of the remaining bidders was rejected. The technical bid of respondent No.5 was rejected on the count that 'quoted models not as per desired specification'.

6. Thereafter, the financial bid was opened on 13.06.2024 and the petitioner being the eldest one, his bid was accepted. A letter of acceptance of the petitioner's bid was issued on 21.06.2024 and thereafter the petitioner deposited the security amount and entered into an agreement signed on

11.07.2024 and further a rate contract was also signed on 15.07.2024 for a period of two years.

7. In the meantime, the responden No.5-Radical Scientific Equipments Pvt. Ltd. preferred an appeal on 13.06.2024 on various grounds and prayed that detailed explanation on the reasons of rejection of his bid be disclosed and the investigation be conducted by the Senior Officers by forming a neutral Technical Committee and in the meantime subsequent procurement stage i.e. the price bid was opened and order placement was to be stayed. The first appeal filed by the respondent No.5/ appellant was dismissed vide order dated 19.07.2024. Against the order of the First Appellate Authority, the respondent No.5/ appellant preferred second appeal before the Second Appellate Authority raising the issues regarding acceptance of the technical bid of the petitioner.

8. The Second Appellate Authority vide order dated 03.02.2025 allowed the second appeal in terms of section 11(ii) and (v) of the Act of 2012 and held that the bidding process leading to declaration of petitioner-M/s. Chemicals India as the successful bidder stands cancelled and directing procuring entity to cancel LOI / work order issued in favour of the petitioner and further ordered that the proceedings should be initiated for forfeiting the bid security and debarring the petitioner from participating in future procurements for three years.

9. Section 38 of the Act of 2012 provides for appeals against the decision, action or omission of the procuring entity. Section 38 of the Act of 2012 is quoted as under:-

"38. Appeals.- (1) Subject to section 40, if any bidder or prospective bidder is aggrieved that any decision, action or omission of the procuring entity is in contravention to the provisions of this Act or the rules or guidelines issued thereunder, he may file an appeal to such officer of the procuring entity, as may be designated by it for the purpose, within a period of ten days or such other period as may be specified in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, from the date of such decision or action, omission, as the case may be, clearly giving the specific ground or grounds on which he feels aggrieved:

Provided that after the declaration of a bidder as successful in terms of section 27, the appeal may be filed only by a bidder who has participated in procurement proceedings:

Provided further that in case a procuring entity evaluates the technical bid before the opening of the financial bid, an appeal related to the matter of financial bid may be filed only by a bidder whose technical bid is found to be acceptable.

(2) On receipt of an appeal under sub-section (1), the officer designated under that sub-section shall, after affording a reasonable opportunity of being heard to the parties, determine as to whether or not the procuring entity has complied with the

provisions of this Act, the rules and guidelines made thereunder and the terms of the prequalification documents, bidder registration documents or bidding documents, as the case may be, and pass an order accordingly which shall, subject to the order passed under sub-section (5), be final and binding on the parties to the appeal.

(3) The officer to whom an appeal is filed under subsection (1) shall deal with the appeal as expeditiously as possible and shall endeavour to dispose it of within thirty days from the date of filing of the appeal.

(4) If the officer designated under subsection (1) fails to dispose of the appeal filed under that sub-section within the period specified in subsection (3), or if the bidder or prospective bidder or the procuring entity is aggrieved by the order passed under subsection (2), the bidder or prospective bidder or the procuring entity, as the case may be, may file a second appeal to an officer or authority designated by the State Government in this behalf within fifteen days from the expiry of the 30 period specified in sub-section (3) or of the date of receipt of the order passed under sub-section (2), as the case may be.

(5) On receipt of an appeal under subsection (4), the officer or authority designated under that sub-section shall, after affording a reasonable opportunity of being heard to the parties, determine as to whether or not the procuring entity has complied with the provisions of this Act, the rules and guidelines made thereunder and the terms of the pre-qualification

documents, bidder registration documents or bidding documents, as the case may be, and pass an order accordingly which shall be final and binding on the parties to the appeal.

(6) The officer or authority to which an appeal is filed under subsection (4) shall deal with the appeal as expeditiously as possible and shall endeavour to dispose it of within thirty days from the date of filing of the appeal:

Provided that if the officer or authority to which an appeal is filed under sub-section (4) is unable to dispose of the appeal within the aforesaid period, he shall record reason for the same.

(7) The officer or authority to which an appeal may be filed under sub-section (1) or (4) shall be indicated in the prequalification documents, bidder registration documents or bidding documents, as the case may be.

(8) Every appeal under sub-sections (1) and (4) shall be filed in such form and manner and shall be accompanied by such fee as may be prescribed.

(9) while hearing an appeal under this section, the officer or authority concerned shall follow such rules of procedure as may be prescribed.

(10) No information which would impair the protection of essential security interests of India, or impede the enforcement of law or fair competition, or prejudice the legitimate commercial interests of the bidder or the procuring entity, shall be disclosed in a proceeding under this section."

10. As per the facts available on the record, the technical bid was opened on 14.12.2023 and the status was uploaded on 12.06.2024 and further financial bid was opened on 13.06.2024 and the status was uploaded on 13.06.2024 itself. The respondent No.5/ appellant preferred a first appeal on 13.06.2024. As the facts regarding filing of an appeal on 13.06.2024 mentioned in para No.8 of the writ petition has been admitted by the respondents No.1 and 2- the State and the Rajasthan Medical Education Society. Before filing of the appeal the financial bid was also opened and the bid of the petitioner being the lowest one was accepted by the Procuring Entity. Second proviso to section 38 of the Act of 2012 clearly speaks that any appeal related to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable. In the present case, the technical bid of the respondent No.5/ appellant was found to be not responsive and rejected. Therefore, cancelling the LOI/ work order issued in favour of the petitioner by the Second Appellate Authority can be safely held to be illegal and arbitrary.

11. The first appeal filed by the respondent No.5/ appellant against the rejection of his technical bid was dismissed with the following observations:-

"अपीलार्थी द्वारा किये गये अभिकथन एवं अपील में प्रस्तुत किये गये दस्तावेजों के परिप्रेक्ष्य में उपापन संस्था के प्रतिनिधि श्री राजेश कुमार मीणा, सहायक लेखाधिकारी-प्रथम ने लिखित दस्तावेजों के साथ अभिकथन किया है कि

बिड का तकनीकी मूल्यांकन एक निष्पक्ष तकनीकी कमेटी द्वारा किया गया है जिसमें किसी प्रकार का पक्षपात नहीं किया गया है। लिखित दस्तावेज प्रस्तुत करते हुए यह भी अवगत कराया कि 'निविदा की **SECTION:-INSTRUTION TO BIDDERS (ITB)** की शर्त **Eligibility of bidders: 1.3.5:- The bidder must be manufacture, or where permitted, distributor, authorized dealer, registered bidder, bono-fide dealer in the Goods and if required he shall furnish necessary proof of same in the specified format. Where applicable, proof of authorization by the manufacture or country distributor in india, shall be enclose.** में का उल्लेख है। चूंकि उक्त निविदा में **distributor/authorized dealer** हेतु भी आमंत्रित की गई थी। जिसमें फर्म **M/S Chemical India Ltd.** द्वारा निविदा में **manufacture /authorization** परिशिष्ट 8 व 9 प्रस्तुत किया गया है जो कि निविदा की शर्तों के अनुरूप है। अतः निविदा में **dealer/distributor** के रूप में भाग लेने पर **manufacture** अनुसार के उद्योग आधार प्रस्तुत करने का उल्लेख नहीं होने से निविदा की दस्तावेजी जांच में **manufacture** के उद्योग आधार पर टिप्पणी अपेक्षित नहीं है।

फर्म मैसर्स **Chemical India Ltd.** द्वारा प्रस्तुत उत्पादनकर्ता फर्म मैसर्स डीजीलैब के उद्योग आधार को ऑनलाईन वेरीफाई कर लिया गया है। फर्म द्वारा प्रस्तुत उद्योग आधार में **3250-Manufacture of medical and dental instruments and supplies** तथा **32503-Manufacture of medical, surgical, dental or veterinary furniture such as operating tables, examination tables, dentists' chairs etc.** का उल्लेख है।

उद्योग आधार में आईटम **Binocular Microscope** हेतु पृथक से **NIC Code (26600)** का अंकन उपलब्ध है परन्तु निविदा शर्तों के अनुसार **dealer/distributor** को भाग लेने की अनुमति थी। अतः उद्योग आधार प्रमाण पत्र के होने या न होने से निविदा की कार्यवाही को प्रभावित नहीं करता है।

निविदा के तकनीकी मापदण्डों के अनुसार निविदादाताओं के द्वारा कोटेड आईटम के **'The complete unit shall be US FDA approved/European CE'** होने के संबंध में शर्त का उल्लेख है। निविदा अंतर्गत कोटेड आईटम हेतु प्रस्तुत किया जाने वाले सर्टिफिकेट के **US FDA approved/European CE** के **US from Notified Body** से होने की शर्त का उल्लेख नहीं है। अतः अपीलकर्ता फर्म द्वारा प्रस्तुत यूरोपियन सीई नोटिफाईड बॉडी के डायरेक्टिवस् पर टिप्पणी अपेक्षित नहीं है।

निविदा के अंतर्गत फर्म मैसर्स **Chemical India** द्वारा प्रस्तुत **Certificate** एजेन्सी **ICR Poiska** द्वारा जारी किया गया है जो कि यूरोपियन यूनियन के अंतर्गत आने वाले पोलैंड गणराज्य में होने से उक्त फर्म द्वारा प्रस्तुत सर्टिफिकेट निविदा की शर्त के अनुसार है। इस संबंध में बायोमेडिकल इंजिनियर से प्राप्त की गई रिपोर्ट प्रस्तुत की गई है एवं बायोमेडिकल इंजीनियर से सत्यापित करवा लिया गया है।

निविदा संख्या **53/2023-2024** आईटन/उपकरण **Microscope Binocular (Faculty)** के लिए जारी **Corrigendum /Addendum/Clarification** के आदेश क्रमांक **8290** दिनांक **21.11.2023** के **Addition** विन्दु "**Bidder with installation and user satisfaction from government organization shall be preferred. Relevant Document Shall be enclosed**" की शर्त के कम में फर्म **M/S Radical Scientific Equipments Pvt. Ltd.** द्वारा सफल निविदादाता फर्म **M/S Chemical India Ltd.** द्वारा प्रस्तुत **Performance Report from Bharati Vidhapeeth** एवं **GeM Orders** को **Forged** बताया है। इस संदर्भ में निविदा की शर्तों के अनुसार **installation and user satisfaction Report government organization** से मांगी गई थी। उक्त के कम में सफल निविदादाता फर्म **M/S Chemical India Ltd.** द्वारा **RUHS** की रिपोर्ट तकनीकी बोली के साथ प्रस्तुत हुई है। सफल बोलीदाता फर्म **M/S Chemical India Ltd.** द्वारा **Bharati Vidhapeeth** की **Performance** रिपोर्ट भी प्रस्तुत की गई है, लेकिन **Bharati Vidhapeeth, government organization** नहीं होने के कारण उनके द्वारा प्रस्तुत की गई रिपोर्ट का निविदा की शर्तों के तहत कोई औचित्य नहीं है एवं **GeM** के **Orders** के संदर्भ में भी निवेदन है कि निविदा की शर्तों के तहत किसी भी प्रकार के आपूर्ति आदेश नहीं चाहे गये थे। अतः सफल निविदादाता फर्म द्वारा निविदा में चाहे गये सभी दस्तावेजों की पूर्ति की गई है एवं चाहे गये सभी दस्तावेजों का उपापन संस्था द्वारा जांच / परीक्षण उपरांत फर्म को **Responsive** घोषित किया गया है।

इस प्रकार से फर्म मैसर्स **M/S Radical Scientific Equipments Pvt. Ltd.** द्वारा आईटम / उपकरण **Microscope Binocular (Faculty)** के लिए प्रस्तुत प्रथम अपील के लिए यह भी उल्लेखनीय है कि अपीलार्थी फर्म स्वयं तकनीकी डेमों में **Non-Responsive** हुई है तथा उपापन प्रक्रिया को बाधित करने के उद्देश्य से **Responsive** फर्म के विरुद्ध अपील दायर की है। उपापन प्रक्रिया पूर्ण हो चुकी है, **Responsive** फर्म को **LOA (Letter of Acceptance)** जारी किया

जा चुका है। अपील में उठाए गए आधार मिथ्या एवं सही नहीं होने के कारण अपील स्वीकार योग्य नहीं है।

अपीलार्थी के कथन के परिप्रेक्ष्य में उपापन संस्था द्वारा प्रस्तुत अभिकथन का आरटीपीपी अधिनियम, **2012** एवं नियम, **2013** के परिप्रेक्ष्य में अवलोकन एवं विवेचन किया गया। अपीलार्थी द्वारा प्रस्तुत की गई बिड में कोटेड **Microscope Binocular** बिड में अंकित तकनीकी मापदण्डों के अनुसार नहीं होने एवं अपीलार्थी द्वारा **M/S Chemical India Ltd.** के द्वारा कोटेड **Digilab Microscope Binocular** के संबंध में प्रस्तुत दस्तावेज **Forge** होने के संबंध में उपापन संस्था द्वारा प्रस्तुत तथ्य एवं दस्तावेजों के आधार पर अपील स्वीकार्य नहीं है। अतः अपीलार्थी द्वारा प्रस्तुत की गई अपील निरस्त की जाती है। ”

12. The Second Appellate Authority without making any otherwise observations in regard to the findings given by the First Appellate Authority allowed the second appeal. It is the basic principle of law that when an Appellate Authority in an appeal gives certain findings and observations and the order of the Appellate Authority is being reversed by the higher Appellate Authority then it is obligatory upon the Second Appellate Authority to give reasons and the findings regarding the findings and particularly the observations given by the First Appellate Authority, if it differs in opinion and passes the reversal order.

13. The respondent No.5/ appellant filed an appeal with a challenge to the order of rejection of his technical bid which has been held to be non-responsive. The First Appellate Authority rejected the appeal of the respondent No.5/ appellant and the Second Appellate Authority without there being any

favourable findings and observations in favour of the respondent No.5/ appellant as regards rejection of the technical bid has ordered to cancel the LoI/ work order issued in favour of the petitioner and further to initiate the proceedings for forfeiting the bid security and debarring from participating in future procurements. Until and unless some order is passed in favour of the respondent No.5/ appellant in connection with rejection of his technical bid, the cancellation of the LoI or the work order given in favour of the petitioner on the basis of his financial bid being lowest one, is per se illegal, arbitrary and is beyond the jurisdiction of the Second Appellate Authority because the scope of the appeal is only consideration of issue of the rejection of the technical bid of the respondent No.5/ appellant. Only if there is an order regarding acceptance of the technical bid of the respondent No.5/ appellant, thereafter, only any interference can be made in the LoI or the work order in favour of the petitioner that too if law permits at the stage when the petitioner has commenced the work. On the complaints being filed against the petitioner as regards his genuineness pertaining to the documents submitted along-with the bid for supply of the Binocular Microscope (Faculty) by the original manufacturer M/s. Digilab Bio Analytical Instruments Pvt. Ltd., Noida, the Committee constituted by the Director, Medical Education Society, Jaipur, vide order dated 23.10.2024 made a physical verification

of M/s. Digilab Bio Analytical Instruments Pvt. Ltd., Noida on 24.10.2024 and everything was found to be in order. The Second Appellate Authority while passing the order has not taken care of the verification report.

14. As per the bid notice and the rate contract dated 15.07.2025 the technical specifications of Binocular Microscope (Faculty) was that the complete unit shall be US FDA approved / European CE. The Second Appellate Authority could not point out any deficiency in the technical specifications of the equipments to be supplied by the petitioner.

15. As per the facts available on the record, the technical bid of the respondent No.5/ appellant was rejected at the initial stage and not found to be responsive and in such circumstances he has no right to interfere in the further financial bid procurement process including acceptance of the bid, issuance of the work order and performance of the contract till any order as regards acceptance of his technical bid is passed by any authority competent under the Act of 2012. In the present case, the order of rejection of the technical bid of the respondent No.5/ appellant has never been set aside by any authority.

16. In view of the discussion made above, the writ petition filed by the petitioner deserves to be allowed and is accordingly allowed.

17. The order dated 03.02.2025 passed by the Second Appellate Authority, Medical Education

Department, Government of Rajasthan, is set aside. The letter of acceptance dated 21.06.2024 (Annex.6). agreement dated 11.07.2024 (Annex.7) and rate of contract dated 15.07.2024 (Annex.8) are declared as restored and the respondents are directed to allow the petitioner to perform the work of supply of Binocular Microscope (Faculty) as per the contract agreement.

18. In view of the order passed in the main petition, any stay or interim order passed shall stand vacated. Pending application/s, if any, also stand disposed of.

(GANESH RAM MEENA),J

Sharma NK/JR