

COCP No.1475 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**COCP No.1475 of 2015
Date of decision:01.07.2015**

Sudarshan Kumar

...Petitioner

Versus

Shri Anil Kumar Sood and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Anand Chibbar, Senior Advocate, with
Ms. Harpriya, Advocate, for the petitioner.

Rakesh Kumar Jain, J.

This petition is filed for the alleged non-compliance of the order dated 29.05.2015 passed in CWP No.9607 of 2015.

The CWP No.9607 of 2015 was dismissed by this Court with the following observations:-

“We have heard learned counsel for the parties at length and find no merit in the present writ petition. Condition No.16, as reproduced above, is a condition, which restricts a contractor to be awarded with contracts equivalent to its average annual turnover. Such condition is fair and reasonable as one contractor on the basis of his average turnover should not be able to garner all the contracts quoting rates, which may be to oust other bidders from contest, but at the cost of risk of non-completion of the awarded contracts by such contractor. The award of contracts may defeat the competition and

would create a monopolistic hold over the contracts to be executed. If a contractor is able to obtain more contracts than what is within the financial capacity and technical capability, the contractor may not be able to execute work, which are time bound keeping in view the rainy season. The interest of the State is that all contracts should be executed and the State should not be subjected to delay and frustration of the contracts on account of the inefficiency or inability of the contractors to execute the works.

On the other hand, the method adopted will ensure that the contractor will get the contracts equivalent to its financial capacity and technical capabilities. Work will, thus, be distributed amongst the contractors and such process will not create a monopoly in favour of one tenderer. The petitioner has already got contracts from the Irrigation Department and to say that all the contracts in which he participates should be granted to him is unreasonable and is to create a monopoly in his favour, which cannot be countenanced.

The power of judicial review in respect of the conditions in the contract can be exercised if the conditions are impossible to perform or so arbitrary and discriminatory, which do not serve the purpose of the public contracts. Merely because there could be a better condition or more refined condition will not confer jurisdiction in this Court to set aside condition No.16 for the reason that one or the other contracts stands excluded from the execution of the work keeping in view the average turnover of a bidder. Thus, we do not find any merit in the present writ petition.”

Learned counsel for the petitioner has submitted that this Court

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has further observed that *“the State shall be free to negotiate the rates offered by the bidders so as to bring it par with the rates quoted by the petitioner”*.

Before filing this petition, the petitioner has already approached the Chief Director, Punjab Vigilance Bureau, Chandigarh and made a complaint against the Executive Engineer, Drainage Division, Amritsar, who alleged to have recommended sanction of rates at 8.5% above CSR rates instead he should have applied 6% less rate and the Chief Engineer, Drainage, accepted the recommendations of the Executive Engineer and did not apply his mind, causing loss to the State exchequer.

After hearing learned counsel for the petitioner and examining the record, I am of the considered opinion that since the matter is under consideration of the Chief Director, Punjab Vigilance Bureau, Chandigarh, to whom a complaint has been made by the petitioner on 18.06.2015, the present petition is not maintainable and the same is hereby dismissed.

July 01, 2015
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(Rakesh Kumar Jain)
Judge