IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 1457 of 2015
Date of Decision**:** **4th March, 2015**

Fiancus Solutions Pvt. Ltd. ..Petitioner

versus

State of Haryana and others ..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.

1. Whether Reporters of local papers may be allowed to see the judgment?
√-2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Anupam Gupta, Sr. Advocate with
Mr. V.K.Sachdeva and Ms. Deepali Puri, Advocates,
for the petitioner.

Mr. Amar Vivek, Addl. Advocate General, Haryana,
for respondent No.1.

Mr. Girish Agnihotri, Sr. Advocate with
Mr. Arvind Seth, Advocate, for respondent No.2.

Mr. Anand Chibber, Sr. Advocate with
Mr. Sahil Sharma, Advocate, for respondent No.3.

Mr. Pardeep Solath, Advocate, for respondent No.4.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner has sought a writ restraining respondent No.2-Haryana State Cooperative Apex Bank Ltd. (HARCO) from awarding any contract to respondent No.3-M/s Euronet Services India Pvt. Ltd. and if already issued, for the cancellation thereof. The petitioner has also sought an order directing respondent No.3 to allot the work related to the project in question to it.

2. Respondent No.2-HARCO intended commencing on boarding the Electronic Card Payment System by adopting a sub-membership route from an existing member for participating in the Electronic Card Payment System. The Co-operative Banks intended joining the National Financial Switch (NFS) through a ASP Switch Vendor to provide ATM services to their clients in the State of Haryana.

3. Respondent No.2 did not adopt the normal competitive bid system by issuing tenders and inviting bids in respect of the said work. It addressed identical letters to about 18 concerns engaged in the said field for the selection of a Application Service Provider (ASP) ATM Switch Vendor for sub-membership to join the National Finacus Switch (SFS)-Electronic Card Payment System. The letters were also addressed to the petitioner and to respondent No.3. They were requested to submit their detailed proposals covering all aspects of sub-membership model, key features etc. alongwith the information relating to their companies as per the format annexed as I and II upto 20.06.2014.

4. It is important to note that there was no specific eligibility criteria stipulated in these letters. For instance, the information was sought as to whether the Application Service Provider (ASP) was registered under the Companies Act, 1956; whether it was in the business of providing ATM driving Switching Services on hosted

platforms as ASP provider for the last three years; whether the ASP was certified with ISO 27001; whether the material provided by the ASP was certified by PA-DSS standards and whether the ASP's annual performance was profitable.

By Annexure-II, the ASP's were informed regarding the functional and technical specifications of EFT Switching Services.

5. Thus while respondent No.2 sought information regarding the nature of activities and the quality of the ASP's projects and services, it did not stipulate any eligibility criteria. In other words, this was not the usual tender process by inviting bids from the public at large. Due to the specialized and sensitive nature of the work certain known enterprises in the field were invited to participate in the process of selection.

6. The petitioner responded to the above communication by its proposal dated 20.06.2014. Respondent No.2-HARCO by its letter dated 18.07.2014 addressed to the ASP's including the petitioner and respondent No.3 invited the financial bids for the said work by 24.07.2014. The petitioner submitted its bid on 23.07.2014 and respondent No.3 submitted its bid on 24.07.2014.

7. A meeting of the committee constituted by respondent No.2-HARCO regarding the said work was held on 08.08.2014 *inter-alia* regarding the financial position of the ASP Switch vendors. The committee comprised of the Chief Executive Officers of various Co-operative banks and the Assistant General Manager of the National Bank for Agriculture and Rural Development (NABARD). The

proposal with regard to the eligibility criteria received from the various vendors was placed before the Committee. The minutes of the meeting recorded the interaction between the Committee and the various vendors. Mr. Anupam Gupta, learned Senior Counsel appearing on behalf of the petitioner strongly relied upon the noting in the minutes that the committee found the petitioner and respondent No.3 to have fulfilled all the eligibility criteria and that it had been decided to open the financial proposals received from them. The minutes further recorded that the financial proposals were opened by the Committee in the presence of the representatives of the vendors. The Committee found that the financials with regard to the PIN generation process were lacking. Both the petitioner and respondent No.3 were advised to quote their financials. The minutes recorded that a representative of the petitioner had 'maliciously altered the quote' in certain respects. The committee decided that the total cost of ownership per annum of both the petitioner and respondent No.3 be prepared and put up before it.

8. The position thus far is that the petitioner and respondent No.3 were found to be technically qualified for the work. The petitioner contends that its quote was lower than that of respondent No.3.

9. At another meeting held on 15.09.2014 the committee discussed the issue once again. The minutes of the meeting recorded that the committee decided that a format containing Questionnaire be formulated by respondent No.2-HARCO and NABARD covering all aspects of compliances made by the petitioner and respondent No.3 in

their respective proposals. The committee also decided to visit the head offices and operational centres of the petitioner and respondent No.3 situated at Mumbai for verification of the compliances made by them in their respective proposals. It was further noted that the committee would take a further decision in this respect after a visit.

10. The committee visited the head offices and operational centres of the petitioner and respondent No.3 at Mumbai. The responses obtained from the petitioner and respondent No.3 in respect of the technical specifications and services of their ATM Switch & Organization were placed before the Committee. The Committee after going through the report of the visit and the responses obtained from the petitioner and respondent No.3 concluded that respondent No.3 had made better Card Management System (CMS), PIN Generation Process & set up as compared to that of the petitioner. The relevant parts of the minutes of the meeting held on 10.11.2014 read as under:-

> "1. **Finalization of Application Service Provider (ASP) Switch Vendor**:-
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> Report of the committee on visit of Head Office (HO) and Operational Centres situated at Mumbai of M/s Finacus Solutions Pvt. Ltd. and M/s Euronet Services India Pvt. Ltd. and responses obtained from both the vendors in respect of technical specifications and services of their ATM Switch & Organization were placed before the committee.
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> After going through the Visit Report and responses obtained from both the vendors, the committee found that M/s Euronet Services India Pvt. Ltd. has much better Card Management System (CMS), Pin Generation Process & Setup, 24x7 Technical Support Team, Reconciliation services,

ATM Monitoring Centre & 24x7 Help Desk, Team Size & Setup, ATM Test lab with multiple makes & models, AADHAAR based solution, Escalation Matrix, Centralize EJ Pulling & Screen Push Application and Online Fraud & Risk Monitoring System as compared to M/s Finacus Solutions Pvt. Ltd. M/s Euronet Services India Pvt. Ltd. has already established Host to Host connectivity and integration with WIPRO, NABARD CBS instance whereas M/s Finacus Solutions Pvt. Ltd. has not any host to host connectivity and integration with WIPRO, NABARD CBS instance. M/s Finacus Solutions Pvt. Ltd. has also not implemented KCC cards in any of the banks on their switch. ATM Switch of M/s Euronet Services India Ltd. is currently processing approx 25 lacs transactions per day whereas M/s Finacus Solutions Pvt. Ltd. is processing only 27,100 transactions per day on its ATM Switch. The committee also found that M/s Euronet Services India Pvt. Ltd. has more compliances with the latest standard and mandates issues by card schemes and regulatory bodies with all relevant certificates and documentation as compared to M/s Finacus Solutions Pvt. Ltd.

M/s Finacus Solutions Pvt. Ltd. failed to provide any Certification for EMV (Chip & PIN) compliant for ATM & POS Transactions or implementation with any bank, provided name of their ATM Switch FinCONNECT instead of name of centralized EJ Pulling Software and its Platform and they provided M/s Atom Technologies Ltd. letter issued by NPCI as member entity for AADHAAR based transactions as Authentication Service Agency (ASA) of UIDAI instead of M/s Finacus Solutions Pvt. Ltd.

The Committee perused the Visit Report, email responses on queries submitted by both vendors and deliberated on the clarifications furnished by the vendors and found M/s Euronet Services India Pvt. Ltd. technically eligible on fulfilling all required

> criterion for selection of ASP ATM Switch and selected M/s Euronet Services India Pvt. Ltd. as ASP ATM Switch for the issuance of Rupay Debit and Rupay Kisan Card for Apex Bank and 18 DCCBs in the State of Haryana.
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> The committee further decided that M/s Euronet Services India Pvt. Ltd. will be called for negotiation on quoted rates in the next meeting of the committee."

Subsequently, the rates were infact renegotiated between the respondent No.2 and respondent No.3.

11. Mr. Gupta, submitted that respondent No.2 having found the petitioner technically eligible to perform the contract and its bid being lower than that of respondent No.3 ought to have been invited for further negotiations and awarded the contract. The bid of respondent No.3 being higher than that of the petitioner ought to have been rejected and respondent No.3 ought not thereof to have been invited even to renegotiate the financial terms.

12. The process adopted for the appointment of ASP Switch vendors cannot be faulted in any event at the instance of the petitioner. The petitioner was aware that respondent No.2-HARCO had not invited the competitive bids from the public. It was aware that respondent No.2 had chosen to invite the bids only from the selected enterprises. It participated in this process without demur. It cannot now challenge the process.

13. In any event, there is nothing to indicate that the process was unfair. The work was of a specialized nature. It is obviously of a

sensitive nature. Technical perfection and assured back up service is imperative for such work. A policy decision to invite the select bidders with experience and reputation in the field cannot be faulted.

14. Though the ordinary rule is to dispose of the property or award the contracts by public auction or by inviting tenders, it is not an invariable rule. This has been so held by the Supreme Court in ***Shri Sachindanand Pandey and another v. The State of W.B. and others 1987(2) SCC 295.*** This judgment was followed in several cases including in the case of ***ITC Ltd. v. State of Uttar Pradesh and others JT 2011(7) SC 602.***

15. It is not that the petitioner does not meet the eligibility criteria. However, due to the specialized and sensitive nature of the work, respondent No.2 considered respondent No.3 to be a more suitable enterprise.

16. The petitioner was technically qualified to perform the contract. This is clear from the minutes of the meeting of the Committee held on 08.08.2014. The committee had found the petitioner to have fulfilled all the eligibility criteria necessary to perform the contract. The record does not indicate a change of mind in this regard.

17. The only question is whether respondent No.2 was bound to enter into further negotiations and award the contract only to the petitioner on account of its bid having been lower than that of respondent No.3.

18. It is not an absolute rule that the tender must be awarded only to the lowest bidder. That is a normal rule. It is, however, always

open to a party inviting the tender to award the contract to a bidder other than the lowest bidder if it is in the interest to do so and when it becomes a public contract, the decision must be rational, well informed and *bonafide*.

19. In the present case on the face of the record there is nothing to indicate any *mala fides* on the part of respondent No.2. Nor is there anything to indicate that it acted arbitrarily or irrationally while awarding the work to respondent No.3 although its bid was higher than that of the petitioner. It did so after having studied the relevant material and after having made the necessary enquiries. This is evident from what is recorded in the minutes of the meeting held on 15.09.2014 and 10.11.2014. A committee was constituted specifically for the purpose of finalizing the APS Switch vendors. The committee visited the offices of the petitioner and respondent No.3, made necessary enquiries and studied the responses received from the petitioner and respondent No.3 to its queries.

20. It was not contended that the members of the committee were incompetent to judge the comparative merits and de-merits of the petitioner and respondent No.3. Nor was it suggested that they made the wrong enquiries or took irrelevant facts into consideration. Absent anything else the proceedings at the meeting held on 10.11.2014 indicate that an informed decision was taken by respondent No.2 in this regard.

21. In the circumstances, the writ petition is dismissed. There shall, however, be no order as to costs. The stay granted shall continue upto and including 6th April, 2015.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

4th March, 2015
'ravinder'