

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 16437 of 2015 (O&M)
Date of Decision: 4th December, 2015

Shree Mahalaxami Enterprises through its Manager, Sandeep Kumar.

..Petitioner

Versus

State of Punjab and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.**

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. Amandeep Saini, Advocate, for the petitioner.
Ms. Meenakshi Goyal, Addl. Advocate General, Punjab,
for respondent Nos.1 and 2.
Mr. Vishal Gandhi, Advocate, for respondent No.3.
Mr. Pankaj Chandgothia, Advocate, for respondent No.4.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner has sought a writ of certiorari to quash a corrigendum issued to respondent No.3 in tender notice No.2189 dated 13.05.2015 and the proceedings pursuant thereto.

2. Respondent Nos.2 and 3 are the Director, Department of Local Government, Chandigarh and the Municipal Corporation, Mohali, respectively. Respondent No.4 is M/s New Malwa Sales Corporation to whom the work has been awarded. Respondent No.5 is Gharda Chemicals Ltd. whose products are used by respondent No.4 for carrying out the work awarded to them by the official respondents.

3. Respondent No.3-Municipal Corporation invited e-tenders on a two bid system viz. 'technical and financial bids' for the works specified therein from the manufacturers, authorized dealers and companies. The

name of the work as per the NIT is “DELTAMETHRIN 1.25% U.L.V.”

Clause (j) of the NIT reads as under:-

“ (a) to (i).....

(j) Agency/manufacturer/authorized dealer should have WHO evaluated certificate of the concerned product.”

The bids were to be submitted by 4.00 P.M. on 28.05.2015 and were to be opened on 29.05.2015.

The impugned undated corrigendum issued by the official respondents reads as under:-

“Condition J is substituted as under:-

The product to be supplied should be WHO evaluated and an undertaking to the effect “that the product is WHO evaluated and fit to be certified by WHO if WHO issues such a certificate. He will be personally liable for any defect or in degree of effectiveness of his product” will be filed.”

The time and date for submitting the bids was extended upto 4.00 P.M. on 07.06.2015 and the technical and financial bids were to be opened on 08.06.2015 and 09.06.2015 respectively.

4. It is for the party inviting tenders to stipulate the terms and conditions. The Courts normally do not interfere in this regard unless the term is found to be unreasonable or malafide.

5. We had passed the following interim order dated 11.08.2015:-

“Issue notice of motion returnable on 18.08.2015.

Normally, it is for the official respondents to decide the terms and conditions of the tender. The only reason that we are issuing notice of motion is to satisfy ourselves that the official respondents have taken the precaution of ensuring that the product of the highest tenderer meets with the safety requirements. Indeed, at

all stages, all the respondents are responsible to ensure that the product of the highest bidder to whom the tender has been awarded is safe and meets with all legal requirements. It is emphasized that the authorities shall permit the successful tenderer to proceed with the work only upon being satisfied themselves that the product is safe in all respects and complied with all legal provisions”.

6. The learned counsel appearing on behalf of the petitioner submitted that the corrigendum insofar as it merely requires the bidder to furnish an undertaking to the effect that the product is WHO evaluated and fit to be certified by WHO, if WHO issues such a certificate, is totally undesirable.

7. Sub-standard products could pose serious health hazards. The work was awarded in favour of respondent No.4 who uses the said product manufactured by respondent No.5. The private respondents contend that with effect from the year 2010 WHO has stopped issuing such certificates. We will ignore this as nothing has been brought on record to substantiate the same. The official respondents have filed an affidavit explaining why the corrigendum was issued. It was in view of an objection raised by respondent No.4 to the effect that only four companies including respondent No.5 are WHO evaluated and only M/s BAYER CORPSCIENCE LIMITED possesses a WHO evaluated certificate. Thus the others though evaluated by WHO do not possess the WHO evaluated certificate. The original condition in clause-j of the NIT would, therefore, create a monopoly in favour of M/s BAYER CORPSCIENCE LIMITED. Respondent No.4 further stated that the product supplied by him is manufactured by respondent No.4 who has been licensed by the Bureau of Indian Standards and is also registered by the Central Insecticides Board. The official respondents state that it issued the

corrigendum after considering these facts. The official respondents have further stated that the product offered by respondent No.4 is 50% cheaper than the product proposed to be supplied by the petitioner. This, however, would not be an important consideration where issues of health are concerned. Even if a product is much cheaper but is likely to be a health hazard, it would be unacceptable. Thus the price of the product is not the sole criteria in such cases.

8. The official respondents, however, also stated that while issuing the corrigendum, they had not compromised the quality of the product as the product supplied by respondent No.4 was manufactured by respondent No.5 which is a well renowned company and is also used by other Municipal Corporations/Committees including of Chandigarh, Zirakpur and Khanna. Respondent No.4 has also filed an affidavit stating that the products offered by it which are manufactured by respondent No.5 are BIS and ISI hallmarks which are the highest quality bench marks in India.

9. The official respondents have, therefore, taken all the precautions necessary to ensure that the products supplied by respondent No.4 do not cause health hazards. They relied upon the certificate issued by respondent No.5 which is indeed a well renowned company and the same cannot be faulted.

10. Having said that, however, it would be desirable if the term is made more specific in future. The term ought to specify the certificate/certification acceptable to the respondents in respect of such product. The respondents also ought to include in the NIT the requirement of the bidders to submit the documents establishing that the product has been evaluated by the agency concerned. Absent the same in the given case it would be possible to compromise the quality of the product.

11. The respondents also contended that the petitioner's bid in any event was not responsive. The petitioner itself relied upon a WHO certificate issued by Bayer Environmental Science (formally known as Aventis Environmental Science) whereas the product proposed to be supplied was of M/s Bayer Cropscience Ltd. Thus, the petitioner also did not furnish a WHO evaluated certificate in respect of the products it proposed supplying.

Even if two foreign companies belong to the same group, a certificate issued in favour of one company cannot be relied upon in respect of the products supplied by another company. However, the petitioner's bid not being eligible would not be conclusive of the matter. If none of the other bidders had qualified, it would have been open to the petitioner to challenge the tender process. For in that event the entire tender process would have had to be set aside affording the petitioner then an opportunity of submitting a proper bid in the fresh tender process.

12. Thus, although in the facts and circumstances of the present case, we do not intend interfering, the official respondents are directed to consider stipulating more comprehensive and clear term in substitution of clause-(j) of the notice inviting e-tenders as modified by the corrigendum .

Petition is accordingly disposed of.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

4th December, 2015
'ravinder'

(TEJINDER SINGH DHINDSA)
JUDGE