

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 16560 of 2015 (O&M)
Date of Decision: 06.11.2015

M/s Innovision Limited.

..Petitioner

Versus

Punjab State Civil Supplies Corporation Ltd. (PUNSUP) & another

..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. Naveen Sharma, Advocate, for the petitioner.
Ms. Deepali Puri, Advocate, for respondent No.1-PUNSUP.
Mr. Akshay Bhan, Sr. Advocate with
Mr. Alok Mittal, Advocate, for the respondent No.2.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner has sought an order directing the official respondents to convey the reasons for not opening its financial bid and an order directing the official respondents to consider its financial bid. The reasons have now been furnished with the first respondent's reply. Respondent No.2 who was awarded the contract was subsequently impleaded as respondent No.2.

2. The question in this case is whether respondent No.1 rightly rejected the petitioner's bid as being non-responsive on the ground that the petitioner was technically unqualified. The impugned order which was produced with the affidavit in reply filed by the first respondent was passed on the basis that the EPF and ESI documents were in the name of SRT Innovision Services Limited and not in the petitioner's name. Admittedly, however, SRT Innovision Services Limited was the original name of the

petitioner which was duly changed as is evident from the certificate issued by the Registrar of Companies dated 01.03.2011 under Section 23(1) of the Companies Act, 1956. This certificate of the Registrar of Companies was furnished alongwith the tender documents. There was, therefore, no doubt that the EPF and ESI documents pertained to the petitioner. The authorities had not changed the name of the petitioner to its present name although the petitioner had made an application for the same. The petitioner, therefore, cannot be faulted for the same. In any event, the first respondent could have been under no illusion as to the identity of the company and in whose favour the documents were issued in view the fact that the certificate of the Registrar of Companies had been enclosed with the petitioner’s bid.

3. Respondent No.1 invited tenders from the security agencies for deployment of 1400 security guards at various storage centres of the Punjab State Civil Supplies Corporation throughout the State. The following provisions of the notice inviting tenders are relevant:-

CHECK LIST DULY FILLED TO BE ATTACHED WITH THE TECHNICAL BID

7.	<i>Whether self attested copy of all registration(s)/permission(s) license(s) etc. such as valid EPF, ESI and EDLI License/Code Number, Security License under PSAR Act for all districts of Punjab which are required under any Labour Law and other Legislation for providing the services under the Service Agreement, has been attached?</i>	Yes/No
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4. The petitioner submitted its bid. The petitioner’s financial bid was not opened on the ground that the petitioner’s bid was not technically qualified. The reasons for this are conveyed vide letter dated 04.08.2015 (Annexure R-4) which read as under:-

“Subject: For opening Financial Bid submitted by the applicant against non-communication of the reasons for not opening the same.

Please refer to your letter No. INV/Tender/2015 dated 06.08.2015 on the subject cited above.

It is informed that tender for the engagement for the security agencies for watch and ward of wheat stocks was opened as per schedule at 3.00 P.M. on 04.08.2015.

Your technical bid did not qualify because the documents relating to EPF and ESI submitted alongwith the tender were in the name of M/s SRT Innovision Services Pvt. Ltd. New Delhi while the tender bid was submitted in the name of M/s Innovision Ltd. Gurgaon and as such the technical bid was rejected due to which the financial bid cannot be opened. The same was conveyed to your authorized representative in the presence of other participants.”

5. The order suffers on account of non-application of mind. Originally the petitioner was registered with the Registrar of Companies as ‘SRT Innovision Services Pvt. Ltd’. Its name was changed to its present name ‘Innovision Ltd.’ w.e.f. 01.03.2011 as is evident from the fresh certificate of Incorporation issued by the Registrar of Companies dated 01.03.2011. The certificate was issued under Section 23(1) of the Companies Act, 1956. The Registrar of Companies certified that the petitioner was originally i.e. on 11.01.2007 incorporated as ‘SRT Innovision Services Private Limited’ and that after complying with the provisions of the Companies Act and in particular Section 21 thereof and obtaining the approval of the Central Government the petitioner’s name was changed on 01.03.2011 to its present name ‘Innovision Ltd’. Admittedly, this certificate of the Registrar of Companies was enclosed with the bid. What is even more important to note is that the documents relating to EPF & ESI were also submitted with the bid as is evident from the impugned order itself. It is evident from the order that the documents relating to EPF and ESI were submitted alongwith the tender but that the tender was rejected as the same

were in the name of M/s SRT Innovision Services Private Limited. i.e. the petitioner's original name. The identity of the petitioner and the identity of the party in whose name the EPF and ESI documents were submitted was, therefore, established beyond doubt.

6. It was not contended that respondent No.1 was under the impression that the name of the party on the EPF and ESI documents may have pertained to another party in another company with the same name. This contention was rightly not raised. In view of Section 20 of the Companies Act, 1956, the presumption is that the Registrar of Companies would not have registered another company with the identical name.

7. The petitioner cannot be faulted for his new name not being brought on record by the authorities under the Employees Provident Funds & Miscellaneous Provisions Act, 1952 and the Employees State Insurance Act, 1948. The petitioner had made an application for the same, as is evident from the Annexures produced as Annexures P-11 and P-12 (colly), which were brought on record by the rejoinder. The petitioner had addressed the letters to the Regional Provident Fund Commissioner regarding the change in name of the company and requested him to update its new name. Similarly the petitioner addressed a letter to the Regional Director, Employees State Insurance Corporation, informing him of the change in name of the company and requesting him to bring the new name on record.

8. That documents Annexures P-11 and P-12 were not submitted alongwith the tender form or even at the meeting is irrelevant. The covering letter Annexure P-9 addressed to the Regional Provident Fund Commissioner was admittedly submitted to the first respondent. This letter refers to the change in name and to the certificate issued by the Registrar of Companies. Infact, even if this letter had not been forwarded, it would make

no difference. The certificate issued by the Registrar of Companies under Section 23(1) of the Companies Act, 1956 was itself sufficient.

9. This, therefore, is not a case where the parties submitting the bid had not furnished the correct information. Nor is this a case where the bid was not in conformity with the terms and conditions of the notice inviting tenders. The impugned order rejecting the petitioner's technical bid was passed mechanically and without application of mind. We are informed that the petitioner's bid was otherwise the lowest and the most competitive one.

10. In the circumstances, the petition is allowed. The impugned order is quashed. The first respondent is directed to issue the work order in favour of the petitioner subject to its otherwise complying with all the terms and conditions.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

06.11.2015
'ravinder'

(TEJINDER SINGH DHINDSA)
JUDGE