

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 26.05.2015

C.W.P. No.1852 of 2015

M/s S.K. Construction Company

...Petitioner

Versus

State of Punjab & another

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Vinod Gupta, Advocate, for the petitioner.

Mr. Vinod S. Bhardwaj, Addl. AG, Punjab, for respondent No.1.

Mr. J.S.Toor, Advocate, for respondent Nos.2 & 3.

HEMANT GUPTA, J.

The petitioner – Company has sought a writ of certiorari for quashing the e-tender dated 19.01.2015 (Annexure P-6), whereby fresh tenders have been invited for the ‘construction of metalled road at Saheed Bhagat Singh Nagar, Guru Nanakpura Mohalla, Basti Bhagwanpura, main road of W-6, Moga’.

Respondent No.2 – Municipal Corporation, Moga invited tenders for the ‘construction of metalled road in Saheed Bhagat Singh Nagar, Guru Nanakpura Mohalla, Basti Bhagwanpura, main road of W-6’. The last date for online submission of the bidding document was 26.12.2014. Pursuant to

such notice, the petitioner submitted its bid alongwith earnest money of Rs.2,54,000/- on 26.12.2014. M/s Ganesh Construction Company also submitted its bid for the said work at the rate of 1.36% over the schedule rate, whereas the petitioner-Company quoted the rate of 6.13% less than the schedule rates. The petitioner was the lowest tenderer, but the work order was not issued. It is, thereafter, the Municipal Corporation invited fresh bids for the same work alongwith other works on 19.01.2015, which is being disputed by the petitioner in the present writ petition.

The grievance of the petitioner is that in the same tender process, the Corporation has given contract to various tenderers, who have quoted less than the schedule rates, but though the offer of the petitioner was the lowest, the Corporation has not granted contract to the petitioner and has adopted the re-tender process. There is no reason as to why the offer of the petitioner should not have been accepted for the grant of contract.

In the written statement, it has been pointed out that the rate quoted by the petitioner was not accepted for the reason that in the previous tender, the lowest rate was 15.56% less from the schedule rates. Therefore, in the interest of the Municipal Corporation, fresh tender was called. In the fresh tender, the petitioner has quoted the same rate i.e. 6.13% less from the schedule rates, whereas M/s Ganesh Construction Company has quoted the rate of 7.36% less from the schedule rates. Thus, the rate offered by the petitioner is not lowest in the second tender process.

Having heard learned counsel for the parties, we do not find any merit in the present writ petition. It is admitted that the bids were invited by the Municipal Corporation vide common advertisement for 55 works. Since

each of the work is different, the process of consideration was also different. In respect of the work in question, the rate quoted by M/s Dass Builders on 24.02.2014 was 15.56% less than the schedule rate, but the work order could not be issued due to non-issue of approval of expenditure of grant from Punjab Industrial Development Board. In the previous tender process, the lowest rate was 15.56%. The offer of 6.63% submitted by the petitioner was not accepted, as lower rates were received in the previous tender in the same year. It was on 09.01.2015, the petitioner was asked to give more saving in favour of the Corporation, but the petitioner refused to negotiate its rate. The tender was re-invited after the petitioner refused to negotiate the rates. Therefore, the Municipal Corporation has decided to re-invite the tender.

A Full Bench of this Court in **Subhash Chand Vs. State of Haryana & others, AIR 2007 Punjab and Haryana 167** has examined the issue of the right of the bidder giving highest or the lowest bid as the case may be. It has been held that giving of a bid does not create any enforceable right of grant of contract, but only confers a right of fair consideration. The Competent Authority is at liberty not to grant contract for the reasons which may be made available. The relevant extract from the judgment reads as under:

“9.the Full Bench further held that every order of the State or its functionaries has to meet the twin-test of ”reason” and “relevance” and they cannot pass a vagarious order it was held that the competent authority is duty bound under the Rules to record relevant reasons for refusing to accept the highest or other bid, even though such reasons may not necessarily be disclosed to the bidders but are required to be placed before the Court in the process of judicial review.”

In the present case, the previous offer of the same work was 15.56% less than the schedule rate as against 6.63% less from the schedule rates offered by the petitioner. The petitioner has also refused to negotiate the rates offered. Therefore, the Municipal Corporation is well within its right to re-invite the bids for the work.

We do not find any error in the decision making process, which may warrant interference by this Court in exercise of its writ jurisdiction. Consequently, the present writ petition is dismissed.

(HEMANT GUPTA)
JUDGE

26.05.2015
Vimal

(LISA GILL)
JUDGE