

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.19927 of 2015

Date of decision:18.09.2015

M/s Sareen & Company

... Petitioner

v.

State of Punjab & others

... Respondents

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

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Sarju Puri, Advocate for the petitioner.

...

S.J. VAZIFDAR, ACTING CHIEF JUSTICE.

The petitioner has challenged an award of tender in favour of respondent No.7 on three grounds. Reliance is firstly placed on the following clauses in the notice inviting tenders:

“C. In addition, each bidder shall submit the following information for his qualification:

(a) xxx

(b) Affidavit/undertaking of not having been black listed by any Govt/Semi-Govt Organization/Corporation at any stage and/or debarred by the department of Punjab PWD (B&R).

(c) the Affidavit/undertaking that information being submitted is correct and true, and that any false information shall lead to disqualification at any stage;

(d) xxx”

2. The petitioner contends that respondent No.7 was blacklisted by virtue of a communication dated 10.08.2015 addressed by the Punjab Pollution Control Board to the Environmental Engineer, Punjab Pollution Control Board and other authorities including the PWD, Hoshiarpur. This communication merely states that the Hot Mix Plant owned by respondent

No.7 was sealed; that it was not in operation and had not got the consents renewed/extended from the Board. The communication directs the PWD not to allot work to the Hot Mix Plant.

3. This is not an order of blacklisting respondent No.7 himself. It merely seals his Hot Mixed Plant and directs that no work be allotted to the Hot Mix Plant.

4. It was then contended that respondent No.7 does not have any other Hot Mix Plant. Even assuming that is so, it would make no difference.

Clause 16 of the notice inviting tender reads as under:

“(16) Agency applying for the work should either own a Hot Mix Plant within shortest road (metalled) distance of 45 km of middle of site of work or shall have given an undertaking that it shall procure the Mix Material for the bituminous work from a Hot Mix Plant falling within 45 km of middle of site of work. The Hot Mix Plant should have necessary valid NOC from Punjab Pollution Control Board.”

5. It was assumed that the said Hot Mix Plant is the only one owned and possessed by respondent No.7 and that he also does not own any other Hot Mix Plant. The petitioner is unable to state that in fact respondent No.7 has failed to procure a Hot Mix Plant. It would be open to the petitioner to inform the official respondents about the said order of the Punjab Pollution Control Board dated 10.08.2015, in order to enable them to take appropriate action, if necessary, in respect of the work order issued to respondent No.7.

6. It was contended that respondent No.7 failed to calculate the bid capacity as per the provisions of the contract. Clause 4.4 of the Notice Inviting Tenders reads as under:

“4.4 Bid Capacity:

The bid capacity of the prospective bidders will be calculated as under:

$$\text{Assessed Available Bid Capacity} = (A * N * 2 - B)$$

Where

A=Maximum value of Civil Engineering works executed in any one year (year means financial year) during the last five years (updated to the price level of the Financial year in which bids are received at a rate per years as indicated in the BDS) taking into account the completed as well as works in progress.

N=Number of years prescribed for completion of the Project/Works for which these bids are being invited (e.g. 7 months=7/12 years)

B=Value (updated to the price level of the year indicated in BDS) of existing commitments (only allotted works) on the last date of submission of bids as per bidding document and on-going works to be completed during the period of completion of the Project/works for which these bids are being invited.

Note: The statement showing the value of existing commitments and on-going works as well as the stipulated period of completion remaining for each of the works listed should be attached along with certificates duly signed by the Engineer-in-Charge, not below the rank of an Executive Engineer or equivalent.”

7. Learned counsel appearing for the petitioner invited our attention to a certificate dated 08.12.2011 issued to the 7th respondent by Chartered Accountants, Jalandhar in which he has stated the annual turn over pertaining to the financial years 2004-05 to 2010-11. We will assume that the turn over for the years 2009-10 cannot be taken into consideration as it falls beyond the period of five years stipulated in clause 4.4. The petitioner is unable to establish that their bid capacity would be more competitive even if the annual turn over of respondent No.7 pertaining to

the year 2010-11 is taken into consideration.

Petition is, accordingly, dismissed.

It is clarified that this order would not prevent the official respondents from cancelling the work order or taking any other action in respect thereof.

**(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE**

**(TEJINDER SINGH DHINDSA)
JUDGE**

18.09.2015

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