

IN THE HIGH COURT OF PUNJAB & HARYANA HIGH COURT CHANDIGARH

CWP No.21136 of 2015 (O&M)

Date of decision:07.12.2015

M/s Khosla Builders

... Petitioner

VS.

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. Munish Bansal, Advocate for the petitioner.
Mr. Rajinder Goyal, Additional Advocate General, Punjab.
Mr. Rahul Rampal, Advocate for respondent No.2.

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE.

The petitioner has challenged the respondents' decision to call for fresh tenders despite the fact that its bid was the most competitive. The respondents had invited tenders on 24.08.2015 in respect of certain construction work at Ludhiana, Mohali and Amritsar. The petitioner submitted the bid for Mohali and Ludhiana. The petitioner's bid was the lowest. However, the work order was not issued in favour of the petitioner. The respondents' tender committee at a meeting held on 23.09.2015 recommended the issuance of fresh tenders as the partnership firm refused to reduce their bid. As recorded in the meeting, the tender committee found the petitioner's rates to be too high as compared to the rates bid by other bidders in respect of similar work at Amritsar. The official respondents accepted the recommendation of the tender committee and therefore initiated the fresh tender process by issuing an advertisement on 23.09.2015.

2. The petitioner's contention is that this was done malafide. It is difficult in the facts and circumstances in this case to hold that the respondents' action was malafide. The fact is that the rates quoted by the other bidders at Amritsar for similar work were substantially lower. The

respondents, therefore, took a decision keeping their commercial interests in mind. That their decision was not incorrect is established by the fact that in the fresh tender process, the bids are infact much lower resulting in a saving of about Rs.21 lacs to the public exchequer. It is difficult then to say that the decision was even commercially incorrect. Indeed the petitioner's offer to now match these rates further justifies the decision to invite fresh tenders.

3. It was contended that the recommendation of the tender committee was erroneous. This contention is raised on the ground that the party in whose favour work at Amritsar has been awarded was ineligible and his bid therefore ought to have been rejected at the threshold. Affidavits have been filed in this regard. The respondents have denied that the party to whom the work has been awarded in Amritsar was not qualified. It is not necessary to consider this question for two reasons.

4. Firstly, the party in whose favour the work has been awarded in Amritsar is not before us. It would be unfair to the party to adjudicate the question of his eligibility in his absence. It is not possible to record adverse findings against the party especially when it would result in various consequences without giving such a party an opportunity of being heard.

5. Secondly, even assuming that the party to whom work has been awarded in Amritsar was ineligible, it would make no difference. The question of that parties eligibility does not arise for consideration before us. The bid had been made and the work was awarded to the party at Amritsar as their rates were much lower. The respondents in the case before us took a decision to invite fresh tenders based on the bids for the work at Amritsar. There is nothing to indicate that if the party was qualified, the bid would have been much higher. In other words, there is nothing to indicate any

co-relation between the quantum of the bid at Amritsar and the alleged ineligibility of the party to whom it was awarded. The fact also remains that the commercial decision taken by the respondents is established to be correct even on facts as there is a substantial savings to the public exchequer.

6. At this stage, the petitioner states that in the event of the fresh tender being invited, they are willing to bid rates much lower than the rates at which the work is proposed to be awarded. It is further submitted that the petitioner is willing to give any security to the satisfaction of the respondents to ensure that they do not suffer any loss if fresh tenders are invited.

7. We understand that the tender process has to stop some where. However, it is upto the respondents to decide as to whether or not to invite fresh bids in view of the categorical statement made on behalf of the petitioners that they would bid far better rates, if fresh tenders are invited and simultaneously, secure the respondents in any respect to ensure that the respondents do not suffer any loss. If such an offer is made in writing, it is for the respondents to consider the same in the first instance.

8. The writ petition is accordingly disposed of.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

07.12.2015
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