

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CWP No.22734 of 2015 (O&M) Date of Decision: 19.11.2015.

Ajay Kumar

--Petitioner

Versus

Post Graduate Institute of Medical
Education & Research and others

--Respondents

2. CWP No.22736 of 2015 (O&M)

Abhishek

--Petitioner

Versus

Post Graduate Institute of Medical
Education & Research and others

--Respondents

3. CWP No.22820 of 2015 (O&M)

M/s Defence Catering

--Petitioner

Versus

Post Graduate Institute of Medical
Education & Research and others

--Respondents

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR.
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Mr. Rahul Sharma-I, Advocate for the petitioners
(in CWP Nos.22734 & 22736 of 2015).

Mr. R.K. Girdhar, Advocate for the petitioner.
(in CWP No.22820 of 2015).

Mr. Amit Jhanji, Advocate for respondents no.1 to 3.

Mr. Vishal Aggarwal, Advocate for respondent no.4.

S.J. VAZIFDAR, A.C.J. (Oral)

CWP No.22736 of 2015 (Reconstructed Petition)

Each of the petitioners has challenged the first respondent's decision rejecting their bids as being non-responsive. We dismiss CWP No.22736 of 2015 but allow the other two writ petitions.

2. The first respondent in each of the petitions, invited tenders for

running a cafeteria in its premises on the terms and conditions mentioned in the notice inviting tenders.

3. We will firstly deal with CWP No.22736 of 2015.

4. The petitioner's bid was not considered as he was held to be ineligible in view of clause 5(d) of the NIT, which reads as under:-

“PRE-QUALIFICATION DOCUMENTS

5. The following pre-qualification documents are to be submitted along with the tender form in a separate envelope from the envelope containing the commercial bid. However, the tenders received without any of the following documents, may render the tender invalid and the commercial bid would not be opened:-

a) xxx xxx xxx

b) xxx xxx xxx

c) xxx xxx xxx

*d) The tenderer applying for Cafeteria/Canteen/Restaurant/Mess should have experience of **minimum two years** of providing similar services with cooking facility and serving not less than two hundred persons per shift (Experience of running snack bar will not be considered).*

***The tenderer should submit experience certificate of satisfactory services** from the concerned Institute. Copy of contract/licence deed will not be accepted.”*

5. The certificate relied upon by the petitioner reads as under:-

*“This is certified that the management of SMM entered into contract with the service provider Mr. Abhishek s/o Sh. Ramkrishan of Chandigarh from **01st May 2008** to **31st January 2011** to cater beverages, food and snacks in the cafeteria and hot & cold beverages on the work place to our staff. Approximate 225 number of staff, clients, guests and visitors were catered daily by the service provider.*

The quality of stuff catered and the services extended by the service provider during the above said tenure

met the expectation of the management, staff and other customers.”

6. The terms “shift” has not been defined. However, clause 38 of the NIT is as under:-

“BUSINESS TIMINGS OF THE PREMISES

*39. The timings of the said premises for providing services shall be from **7.00 AM to 5.00 AM**. The presence of licensee or his persons shall be ensured during the said working hours, otherwise it would be a violation of the terms and conditions calling for termination of licence followed by eviction. The Cafeteria will be remaining closed on the days, OPDs will be closed on account of Sunday/Public Holidays.”*

7. Clause 38 indicates that services would be required for at least two shifts namely breakfast and lunch, if, not more. The eligibility provided in clause 5(d) requires experience of serving not less than 200 persons per shift. Even assuming that there are only two shifts, it would require experience of serving around 400 persons. The certificate issued in favour of this petitioner stipulates his experience to be limited to serving only 225 persons.

8. The rejection of the bid submitted by the petitioner in CWP No.22736 of 2015, is, therefore, upheld.

CWP No.22820 of 2015 (Reconstructed Petition)

9. The bid submitted by the petitioners in this petition was rejected on the ground that they failed to submit an affidavit as required by clause 7 which reads as under:-

“OTHER CONDITIONS REGARDING ALLOTMENT OF SHOP

7.(i) The tenderer who do not have any licence of similar trade from PGI on the date of filling of this tender shall submit

an affidavit to the effect that:

“The applicant/firm either himself/herself or through any partner/close relation i.e., son/daughter/father/mother does not already have a concurrent licence from the PGI for running the trade mentioned in this tender.” (Annexure-II).”

10. The rejection is not justified. The affidavit was not to be filed along with the tender. Clause 7 itself does not require the petitioner to file the affidavit along with the tender. Where the respondents required a document to be submitted along with the tender it specifically provided for the same in the NIT. For instance the check list for submission of tenders stated “all the documents enclosed with the tender form should be numbered and signed.” The documents in this check list does not include the said affidavit. Further clause 5 which we have already set out also requires “the pre-qualification documents to be submitted along with the tender form”. The said affidavit to be filed pursuant to clause 7 was not one of these documents. The rejection of the tender on this basis, therefore, is not well founded.

11. Mr. Jhanji submitted that clause 7 required the affidavit to be filed along with the tender. In this regard he placed considerable emphasis on the words “on the date of filling of this tender” in clause 7. These words do not qualify or stipulate the time when the affidavit is to be filed. They qualify the condition of eligibility namely tenderers, who do not have any license of a similar trade from respondent no.1 on the date of filling of the tender.

12. Writ petition CWP No.22820 of 2015 is, therefore, allowed. The first respondent is directed to consider the petitioner's bid, if, it otherwise satisfies all the other terms and conditions.

CWP No.22734 of 2015 (Reconstructed Petition)

13. The tender submitted by the petitioner in this petition was rejected on the ground that the petitioner had failed to comply with the following terms in the NIT, which read as under:-

“TERMS AND CONDITIONS FOR TENDER

1. Tender must be submitted in two sealed envelopes separately i.e., the tender form duly signed on every page along with all the required documents in one envelope (Envelope-A) and price bid/financial bid on the prescribed Performa in the second envelope (Envelope-B). Both the envelopes are to be sealed in Master Envelope and the name of tenderer and shop with address be clearly mentioned on the envelopes. Those who fail to follow this procedure may be disqualified forthwith.”

14. The petitioner submitted two envelopes. The master envelope was admittedly sealed. The envelope containing the price bid was not sealed although the master envelope was sealed. The clause is not mandatory. This is clear from the use of word “may” in the sentence. We repeatedly asked the respondents whether any prejudice of any nature was or could have been caused to any of the respondents including the private respondents on account of this alleged lapse. There was no answer. This clause is also not unambiguous. It is possible to construe the second sentence to mean that the master envelope had to be sealed and the right of the respondents to disqualify a bid is only when the master envelope is not sealed.

15. In the circumstances, the rejection of the petitioner's tender in this case was arbitrary. This writ petition (CWP No.22734 of 2015) is, therefore, allowed. Respondent no.1 shall consider the petitioners bid along

with the bids of the other tenderers.

16. It was made clear by our order dated 21.10.2015 that the award of the work in favour of respondent no.4 would be subject to the orders in this writ petition. Accordingly, if, the bid submitted by respondent no.4 is otherwise not the most competitive, the work order issued to respondent no.4 shall stand withdrawn.

17. The writ petitions are, accordingly, disposed of.

(S.J. Vazifdar)
Acting Chief Justice

(Tejinder Singh Dhindsa)
Judge

19.11.2015
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Whether to be referred to Reporter? Yes/No.