

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.5216 of 2015(O&M)

Date of decision:26.5.2015

The Sunder Nagar Co-op. L&C Society Petitioner

VERSUS

State of Punjab and others Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. P.S. Sekhon, Advocate for the petitioner.

Mr. Vinod S. Bhardwaj, Additional Advocate General,
Punjab for respondents No.1 to 3.

Mr. Nakul Sharma, Advocate for respondents No.4 and 5.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the rejection of the bid of the petitioner for the reason that the petitioner has not executed one work amounting to Rs.50 lacs or two number of works of Rs.35 lacs or three number of works of Rs.28 lacs of sewerage work or similar nature.

The said challenge arises of the fact when the respondents invited tenders for the following four works:-

1. Construction of Sewer lines in streets of village Ferozepur banger Block Majri, District S.A.S. Nagar.
2. Construction of Sewer lines in streets of village Baraunjian Block Majri, District SAS Nagar.

3. Construction of Streets and drain with interlocking paver block at village Ferozepur Banger, Block Majri, District SAS Nagar.
4. Construction of Streets and drain with interlocking paver block at village Baraunjian, Block Majri, District SAS Nagar.

The petitioner submitted tenders for works No.2 and 4. The work No.2 was at the estimated cost of over Rs.70 lacs and work No.4 was at the estimated cost of over Rs.2 crores.

Learned counsel for the petitioner at the outset states that he does not press the rejection of his tender bid in respect of the work at Serial No.4 and restricts his challenge to the rejection of his bid made for construction of sewer lines in streets of village Baraunjian, Block Majri, District S.A.S. Nagar, i.e. work No.2 for the reason that the petitioner did not execute work of the required quantity earlier.

The argument of learned counsel for the petitioner is that the quantity of the work executed was required only for works above Rs.5 crores and not in respect of the works of less than Rs.5 crores. The relevant condition at para 4.3 reads as under:-

“4.3 To qualify for award of the contract, each bidder in its name should have:

- A. **For works upto Rs.5.00 Crore;**
 - a) Copy of the valid enlistment with Panchayati Raj Circle, Punjab under appropriate Class and Category of work;
- B. **For works above Rs.5.00 Crore:**
 - a) achieved a minimum annual financial turnover (in all classes of civil engineering, construction work only) equal to 40% of the estimated cost of work in any one of the last three (3) financial years immediately preceding the Financial Year in which bids are invited [For Lump sum

works estimated cost is not to be disclosed, this amount should be given in figures];

b) satisfactorily completed in the last five (5) years ending last day of month previous to the one in which bids are invited as a prime Contractor (or as a nominated sub Contractor, where the subcontract involved execution of all main items of work described in the bid document, provided further that all other qualification criteria are satisfied).

one similar work (as defined in the Bid Data Sheet) of value not less than 80% of the estimated cost of work

or

two similar works each of value less than 40% of the estimated cost of work

[For Lump sum works where estimated cost is not to be disclosed, these amounts should be given in figures]. The values of works can be updated current price levels by enhancing the value of executed works at the given in the BDS;

c) availability (either owned or leased) of the key and critical equipment for this Project/Work as per Annexure-1.

[The bidders should, however, undertake their own studies and furnish with their bid, a detailed construction planning and methodology supported with layout and necessary drawings and calculations (detailed) as stated in clause 4.1 above to allow the employer to review the proposals. The number, types and capacities of each plant/equipment shall be shown in the proposals along with the cycle time for each operation for the given production capacity to match the requirement];

d) availability of personnel with adequate experience as required for this work as per Annexure-II;

e) liquid assets and/or availability of credit facilities of amount not less than that indicated in the BDS.

(Credit limit/letter of credit/certificates from Banks for meeting the funds requirement etc- usually the equivalent of the estimated cash flow for 3 months in peak construction period);

f) submitted an undertaking that he will be able to invest a minimum cash up to 25% of contract value of work, during implementation of work.

g) given to the Employer or his representatives the authority to seek references from the bidder's bankers;”

Since the estimated cost of laying of sewer line is Rs.70 lacs, therefore, the tender of the petitioner could not have been rejected for the reason that the petitioner has not carried out one work of Rs.50 lacs or two works of Rs.35 lacs or three works of Rs.28 lacs on the parity of reasons mentioned in the para 4.3 (B) of the tender documents which condition was required to be satisfied by the bidders participating in the tender for over Rs 5 crores.

Mr. Vinod S. Bhardwaj, learned State Counsel submitted that in fact the petitioner does not have the experience of carrying out similar work and that the mentioning of quantity was a mere surplusage, therefore, the bid of the petitioner was rightly rejected.

On the other hand, learned counsel for respondent No.3 points out that all tenderers including the petitioner understood the terms of the contract so as to mean that experience of carrying out similar works is necessary. Since the petitioner has not carried out similar work of laying of sewer line, its bid was rightly rejected.

We have heard learned counsel for the parties and find that the rejection of the bid of the petitioner is on a ground other than permissible in terms of the tender documents.

The tender document clearly categorizes the works up to Rs.5 crores and the works above Rs.5 crores. Different parameters are specified for finding out the suitability of the tenderers to carry out the work. In respect of works above Rs.5 crores, the minimum annual financial turnover required is equal to 40% of the estimated cost of

work in one of the last three financial years whereas in respect of works of less than Rs.5 crores, the only requirement is valid enlistment with Panchayati Raj Circle, Punjab under appropriate Class and Category of work. It is not disputed that the petitioner is enlisted for carrying out the work of sewer line. Therefore, the quantity of the works executed in the previous years is not relevant in respect of works which are less than Rs.5 crores. Thus, we find that the irrelevant considerations have been taken into consideration to reject the bid of the petitioner. We find that the process of consideration of the bid of the petitioner suffers from illegality and irregularity. Consequently, the same is set aside.

The respondents are directed to consider the bid of the petitioner in the light of the discussion hereinbefore and pass an appropriate order in accordance with law.

The present writ petition is disposed of accordingly.

(HEMANT GUPTA)
JUDGE

MAY 26, 2015
‘D. Gulati’

(LISA GILL)
JUDGE