

IN THE PUNJAB & HARYANA HIGH COURT
AT CHANDIGARH

CWP No.5808 of 2015

Date of Decision: 30.04.2015

M/s Balaji Associates

...Petitioner

Versus

Chandigarh Administration & others

...Respondents

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

Present: Mr. A.K.Jain, Advocate,
for the petitioner.

Mr. Sanjeev Ghai, Advocate,
for the respondents.

HEMANT GUPTA, J.

The petitioner is claiming a writ of mandamus to direct the respondents to accept the annual financial turnover of the petitioner and his associates to consider him eligible for e-tender in the tender process for allotment of work of construction of houses.

Respondent No.3 – the Executive Engineer issued e-tender notice on 26.02.2015 (Annexure P-1) inviting tenders on percentage rate basis through electronic tendering process for the construction of 5 Judges' Houses in Sector 10, Chandigarh. The estimated tender amount is Rs.8,40,74,000/-. The eligibility conditions are contained in para 1.1.1 of the e-tender notice. The relevant conditions read as under:

“1.1.1 Eligibility criteria of having satisfactory completed similar works during the last seven years ending last day of Previous month in which the tender is invited. The works completed upto previous day of last day of

submission of tenders shall also be considered for each component.

- (i) Three similar works each of value not less than Rs.3,36,29,600/- or two similar works each of value not less than Rs.5,04,44,400/- or one similar work of value not less than Rs.6,72,59,200/-.
- (ii) One work of any nature (either part of (i) above or a separate one) costing not less than Rs.3,36,29,600/- with some Central/State Government/Central Autonomous Body/ Central Public Sector Undertaking.

Similar work shall mean – satisfactory completion of Building work on composite basis including Civil, Public Health, Rain Water Harvesting and Electrical Work.

The value of executed works shall be brought to current costing level by enhancing the actual value of work at simple rate of 7% per annum calculated from Date of completion to last date of receipt of tenders.

- (iii) The bidder should have average annual financial turnover of Rs.8,40,74,000/- (100%) on construction works during the last three years ending 31st March, 2014(Scanned copy of Certificate from CA to be uploaded).”

In para 1.2.1, there is relaxation that if a civil contractor/agency does not fulfill the eligibility criteria individually, they will have to associate agencies(s) for minor components as per eligibility criteria for minor components mentioned in the said para. The relevant extract from para 1.2.1 reads as under:

- “1.2.1 Further main civil contractor/agencies, if do not fulfill the eligibility criteria individually, they will have to associate agencies(s) for minor components(s) as per eligibility criteria for minor components given below:-

- (i) Enlistment of the minor components contractor/agencies as Public Health/Electrical Contractor of appropriate class in the respective wing of the Engineering Department Chandigarh Administration/CPWD/ State PWD/ Punjab/ Haryana and Himachal Pradesh and eligible for participation of tender for minor components

OR

- (i) Experience of having satisfactory completed similar work during last 7 year ending last day of previous month in which the tender is invited. The work completed upto previous day of the last day of submission of tender shall also be considered.

Minor components	3 similar works, each of value not less than		2 similar works, each of value not less than		1 similar work of value not less than
1	2	3	4	5	6
1. Public Health services & sanitary installation	30,77,600/-	OR	46,16,400/-	OR	61,55,200/-
2. Rain water Harvesting	11,40,000/-	OR	17,10,000/-	OR	22,80,000/-
3. Electrical installation	25,68,930/-	OR	28,53,400/-	OR	51,37,900/-

And

The minor component agencies should have also completed one similar work of any nature costing not less individual amount of each minor component as mentioned in Column 2 with some Central/State Government/Central Autonomous Body/Central Public Sector Undertaking. Similar work means satisfactory completion of minor component specialized works i.e. PH services work, Rain Water Harvesting for public Health wind and Electrical Installation/ for Electrical Wing by taking each components separately, wherever applicable.

The value of executed works shall be brought to current costing level by enhancing the actual value of work at simple rate of 7% per annum calculated from Date of completion to last date of receipt of applications for tenders.

- (ii) Average annual financial turnover during the last 3 years ending 31st March, 2014 should be at least 100% of the estimated cost of respective component.”

The stand of the petitioner is that the petitioner does not fulfill the eligibility criteria individually, as it had the annual financial turnover of Rs.706.73 crores only, therefore, it has associated two agencies namely Bir Chand Kala for the execution of Public Health Services & Sanitary Installation having the turnover of Rs.148.88 crores and Durga Electrical for the purpose of Electrical installation having turnover of Rs.106.68 crores. Thus, the total turnover comes to Rs.962.29 crores, as against the requirement of Rs.8,40,74,000/-. The grievance of the petitioner is that though the petitioner is eligible in terms of the tender conditions, but still the petitioner is not being considered eligible for the reason that it does not fulfill the criteria of annual financial turnover of Rs.8,40,74,000/- during the last 3 years, whereas by associating two agencies, it meets out the said criteria as well.

In reply, the stand of the respondents is that eligibility criteria has been relaxed in respect of works experience, but there is no relaxation in respect of requirement of average financial turnover. Since the petitioner does not meet the criteria of average turnover of 3 years of Rs.8,40,74,000/-, the petitioner is not eligible for the consideration.

Having heard learned counsel for the parties at length, we do not find any merit in the present writ petition. The eligibility criteria in para 1.1.1, as reproduced above, is based upon two different parameters i.e. one

relating to satisfactory completion of similar works that is works experience and another of annual financial turnover. It is in respect of work experience, a tenderer can add the component of work undertaken by the other contractors, but in respect of average annual financial turnover, there is no relaxation.

Clause (i) of para 1.1.1 contemplates execution of three similar works each of value not less than Rs.3,36,29,600/- or two similar works each of value not less than Rs.5,04,44,400/- or one similar work of value not less than Rs.6,72,59,200/-. It also contemplates that it can be one work of any nature, as mentioned above, executed with some Central/ State Government/ Central Autonomous Body/ Central Public Sector Undertaking. Clause (i) of Para 1.2.1 is an exception to such condition of execution of similar works. Thus, such condition in the tender notice relates to the working experience of the tenderer to execute the contract himself or in association with others. Clauses (i) & (ii) of para 1.1.1 have to be read alongwith clause (i) of para 1.2.1.

However, in respect of assessing the financial capacity i.e. annual financial turnover, clause (ii) of para 1.1.1 is absolute. There is no relaxation of such condition, which is apparent from clause (ii) of para 1.2.1. The average annual financial turnover has to be more than Rs.8,40,74,000/-, which admittedly the petitioner does not satisfy having the annual turnover of Rs.706.73 crores only.

The argument of the petitioner that para 1.2.1 is exception to para 1.1.1 cannot be accepted, as it relaxes the condition of execution of similar work. While calculating the capacity to execute work, the work of other contractors in association can be taken into consideration, but not in

respect of financial capacity, which is to be determined on the basis of average annual financial turnover.

In view of the above, since the petitioner admittedly does not satisfy the criteria of average annual financial turnover, we do not find any merit in the present writ petition. Consequently, the same is dismissed.

(HEMANT GUPTA)
JUDGE

30.04.2015
Vimal

(LISA GILL)
JUDGE