

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.6967 of 2015

Date of decision:05.11.2015

The Madina Cooperative Labour and Construction Society Ltd., Katpuri
... Petitioner

Versus

Haryana State Warehousing Corporation Ltd. & others
... Respondents

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

Present: Mr. R.S. Hooda, Advocate for the petitioner.
Mr. Lekh Raj Sharma, Advocate for respondent No.1.

....

TEJINDER SINGH DHINDSA, J.

The first respondent i.e. the Haryana State Warehousing Corporation Limited (in short the Corporation) issued notice inviting e-tenders in the month of February, 2015 for various construction works. As per tender notice, earnest money of 2% of the estimated cost of the work was to be deposited by the tenderer. Downloading of tender document and online bid preparation/submission was to be made between 24.02.2015 and 08.03.2015. The submission of technical bids manually was to be done on 09.03.2015 between 10 A.M. to 2 P.M. and the opening of financial bids/price bid was stipulated as 12.03.2015.

2. The petitioner is a registered Labour and Construction Society and submitted tenders on 08.03.2015 in respect of three works

(i) strengthening of roads and other special works at SWH,

Ferozepur Jhirka, District Mewat (ii) Strengthening of roads and other special works at SWH Pinangwan, District Palwal and (iii) strengthening of roads and other special works at SWH Hathin, District Palwal.

3. Grievance raised in the instant petition is that inspite of having furnished the most competitive bids in relation to the works noticed hereinabove, the work orders have not been issued in its favour and rather the work has been allotted in favour of private contractors i.e. respondents No.2 & 3.

4. It has been submitted on behalf of the petitioner/society that even though a specific order in writing has not been conveyed, yet its representative has been informed orally by the respondent/Corporation that the tenders submitted were rejected at the stage of evaluation of the technical bids on the ground that the requisite earnest money had not been deposited. Counsel appearing for the petitioner/society would invite our attention to a Notification dated 19.04.2012 (Annexure P-4) issued by the Cooperation Department, State of Haryana in terms of which certain concessions have been extended to the Cooperative Labour and Construction Societies in the State of Haryana upto 31.03.2017. Para III (a) of the Notification has been placed reliance upon, which reads as under:

“Clause III(a)-The Cooperative Labour and Construction Societies will make payment of earnest money of Rs.15,000/- or 1% whichever is less for works upto Rs.30 lacs and for works beyond Rs.30 lacs upto Rs.50

lacs, earnest money will be 50% of the earnest money applicable to the Contractors.”

5. It has been contended that the earnest money that had been duly deposited by the petitioner/society in relation to the three works was as per concession contained in para III (a) of the Notification dated 19.04.2012 and as such, there was no justifiable basis for having rejected the tender of the petitioner/society at the stage of evaluation of technical bids.

6. In response to the petition, a written statement of the Executive Engineer of the respondent/Corporation has been filed. It has been stated that the condition contained in the notice inviting tenders of depositing of earnest money of 2% of the estimated cost of work had not been fulfilled by the petitioner/society. As per Corporation, since at the time of opening of technical bids the earnest money deposited by the petitioner/society was found to be deficient, accordingly, the tenders were rejected and as such, the question of opening its financial bids does not arise. As regards the Notification dated 19.04.2012 issued by the Cooperation Department, Haryana Government is concerned, a stand has been taken that the same would not be applicable to the Corporation as the same has not been adopted. An additional affidavit dated 02.11.2015 of the Managing Director of the Haryana State Warehousing Corporation has also been placed on record clarifying that the Notification dated 19.04.2012 would not be binding upon the Corporation as a similar Notification issued by the Government of Haryana earlier in point of time i.e. 29.03.2007, wherein also certain

concessions had been extended to the Labour and Construction Societies was considered by the Board of Directors in its 186th meeting held on 30.01.2012 and was also not adopted. Counsel appearing for the Corporation would submit that under Section 20 of the Warehousing Corporation Act, 1920, it is the prerogative of the Board of Directors to adopt or not to adopt the Government policies and the decision taken by the Board of Directors is binding upon the respondent/Corporation.

7. In the written statement, the rationale for not adopting and adhering to the State Government Notifications issued from time to time has also been furnished. It has been stated that in the past, the Corporation has had an unhappy experience while allotting works to the Cooperative Societies. Instances of seven Cooperative Societies, who were allotted various works have been furnished and who had failed to execute the works satisfactorily. Counsel for the Corporation contends that the objective is to ensure quality work and timely execution thereof and in furtherance of such objective, a decision has been taken by the Corporation not to grant any benefit to the Labour and Construction Societies in the matter of deposit of requisite earnest money.

8. The instant petition poses a substantial question as to whether a Notification issued by the State in exercise of its executive powers would not be binding on the first respondent which is otherwise a State instrumentality?

9. We, however, do not find it necessary to address such issue in the present proceedings. The time limit for execution of works for which the petitioner/society had submitted its bids was stipulated as 180 days in the notice inviting tenders. We have been informed that the works having been allotted in favour of the private respondents are nearing completion. It is not even the case made out on behalf of the petitioner/society that the works in question were not allotted to it only to favour any particular Contractor/Agency. It has also gone uncontroverted that technical bids of certain other societies were also rejected on the same very basis i.e. the earnest money deposit being deficient and as such, such societies having been denied the concession envisaged under the Government Notification dated 19.04.2013.

10. In view of such peculiar facts, we decline to interfere in the matter. The question as has been culled out hereinabove is, however, kept open.

The writ petition is dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

05.11.2015
harjeet