

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 7794 of 2015

Date of Decision: 20.08.2015

Baljit Singh and Company

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

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

Present: Mr. K.K.Goel, Advocate
for the petitioner(s).

Mr. Rajinder Goyal, Additional Advocate
General, Punjab for respondents No.1 to 5.

Mr. D.V.Sharma, Senior Advocate
with Mr. Surinder Garg, Advocate
for respondent No.6.

S.J. Vazifdar, J.

1. The petitioner has challenged the award of a tender in favour of respondent No.6, namely, New Samagh Co-operative Labour and Construction Society.

2. Respondent No.5, namely, Deputy Director, Department of Food and Supplies-cum-Chairman, Tender Committee, Ferozepur had invited tenders in connection with the transportation of food grains and also in connection with labour and cartage work of storage point (open plinth and covered godowns) and P.E.G. godowns. Only the petitioner and respondent No.6 had submitted tenders. Respondent No.6 was considered and declared ineligible by the other respondents as is evident from the minutes of the proceedings of the Tender Committee

dated 16.4.2015 (Annexure P6). The tender was rejected on the ground that respondent No.6 had not uploaded the tender fee, i.e. the earnest money deposit. Subsequently, respondent No.6 was declared eligible and their tender was considered responsive.

3. The tender fee was an essential term of the invitation to tender and the same cannot be waived. The only question is whether respondent No.6 was bound to tender the earnest money or not. In this regard, the parties relied upon a notification dated 2.10.2014, paragraph Nos.1 & 4 whereof read as under:-

"1. All the unskilled work upto any amount, and all the skilled work upto the amount of ₹ 40 lacs be given to these societies at fixed ceiling rates through tenders by the concerned Superintending Engineer of every Branch of PWD. But the competency upto which these societies can work; the same be given upto that competency. If these societies may not offer tenders and may not accept the work, within the fixed ceiling rates then such works be got done from the contractors and societies both by calling open tenders. Tenders of Pucca works up to the amount of ₹ 40 lacs, which will be called through E-Tendering system, in those tenders, comparison will be got made, amongst cooperative labour and construction societies.

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4. The societies are exempted from the amount of biana (earnests money) for pucca works upto the amount of ₹ 6.50 lacs pucca works will be of more than ₹ 6.50 lacs and upto the amount of ₹ 13 lacs, for those works, 25% amount of biana fixed by the department will be taken from cooperative labour and construction societies.

Pucca works which will be of the amount exceeding ₹ 13 lacs, for those works, 50% of the amount of biana (earnest money) as fixed by the department will be taken from the cooperative labour and construction societies.”

4. As far as skilled work is concerned, the societies such as respondent No.6 are exempted from depositing the earnest money. The exemption does not apply to unskilled work. The result of this writ petition would, therefore, be based upon whether the present tender was with respect to skilled or unskilled work.

5. As we mentioned earlier, the contract involves transportation of food grains and labour & cartage work at the storage point.

A) In support of the contention that the present work constitutes unskilled work, the petitioner firstly relied upon the proceedings of the first meeting of the Committee for classification of skilled or unskilled works held on 5.12.1962 which was attended by various Government officials including the Chief Engineer, Irrigation (Works), Punjab, Superintending Engineer (B&R), Patiala, Managing Director, Labour & Construction Union, Gurdaspur and Joint Registrar (Finance), Co-operative Societies, Punjab. Paragraph of the minutes of the meeting dealt with the classification of the skilled and unskilled works. It was decided that loading and unloading and carriage

be treated as unskilled work.

- B) Reliance in this regard is also placed upon the proceedings of a meeting of the committee for classification of skilled and unskilled work held on 18.6.1963, which was also attended by various Government officials. The concluding paragraph states that the matter of classifying "supply and carriage of all sorts of material and equipment" was taken up and it was decided that the supply and carriage of material and equipment be treated as unskilled work.

6. It is not for us to decide as to how the classification ought to have been done. The point is that the parties inviting the tenders i.e. respondents No.1 to 5 considered such work to be unskilled work. It is not possible, while exercising our extraordinary jurisdiction under Article 226 of the Constitution of India, in this matter to interfere with the classification. Our attention has not been invited to anything which would render the classification arbitrary or irrational.

7. The only suggestion is that this classification was done in the year 1962 and ought not to be applied half a century later. The basis of this argument was the mode of transportation of the food grains in the year 1962 was archaic as contended by respondent No.6. There is nothing to suggest that in the year 1962, food grains were not transported by motor vehicles.

8. Thus, since 1962 the official respondents have considered

similar work to be unskilled work. There is no reason, more than 50 years later, for us to either interfere with that decision or to hold that the parties inviting the tenders contemplated the subject matter of the tender to constitute anything but unskilled work.

9. The respondents contend that paragraph No.4 of the notification dated 2.10.2014 impliedly contains an exemption from the deposit of earnest money for unskilled works.

10. That is incorrect. The notice inviting tenders requires earnest money to be deposited. If any party is entitled to exemption in response thereof, the exemption must be provided specifically. Clause 4 of the notification dated 2.10.2014 does not contain such an exemption in respect of unskilled work. Merely because clause 4 contains an exemption or part exemption from payment of earnest money in case of skilled work, it does not follow that there is a complete exemption in that respect for unskilled works.

The rejection, therefore, of the sixth respondent's tender was correct. The decision to consider respondent No.6 eligible thereafter, was incorrect.

11. The decision to award the works to respondent No.6 is, therefore, erroneous. However, it would be unfair to award the contract in favour of the petitioner. The petitioner was the only other eligible tenderer. The interest of justice requires that fresh tenders be invited from all the parties. The petitioner has very fairly agreed and undertaken to submit a tender at a rate or of an amount more competitive than the tender submitted by respondent No.6. The

statement and undertaking are accepted and it is so ordered.

12. The petition is, therefore, disposed off by the following order:-

- i) The award of the work in favour of respondent No.6 is set aside.
- ii) Respondent No.6, however, shall not be required to refund the amount received.
- iii) The official respondents shall make payment to respondent No.6 in respect of the work already done.
- iv) The process of inviting fresh tenders shall be undertaken as expeditiously as possible.
- v) However, as the matter involves the transportation of food grains and in the peculiar facts and circumstances of this case, respondent No.6 shall be permitted to work till the next tender is awarded.
- vi) The submission on behalf of the petitioner that they will submit a tender of a rate not less than the rate quoted by respondent No.6 in the present tender process, is accepted and it is also so ordered.

(S.J.Vazifdar)
Acting Chief Justice

(Tejinder Singh Dhindsa)
Judge

August 20, 2015
"DK"