

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 26.05.2015

C.W.P. No.9060 of 2015

Shivji Singla & Sons

...Petitioner

Versus

State of Punjab & others

...Respondents

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

Present: Mr. R.S.Khosla, Senior Advocate, with
Mr. K.S.Mamrat, Advocate, for the petitioner.

Mr. Vinod S. Bhardwaj, Addl. AG, Punjab.

Mr. Aman Kashyap, Advocate, for respondent Nos.8, 9 & 10.

Mr. S.S.Narula, Advocate, for respondent No.11.

HEMANT GUPTA, J.

The petitioner has sought a writ of mandamus for directing the respondents to accept the bids of the petitioner in respect of works of '(1) *Clearing weed, jala, booti, sarkanda etc. from Aspal Drain RD 0-142078, Bam Drain Rd 0-68300, Sarwan Toe Drain RD 0-65300, Sotha Bhunder L/Drain RD 0-21000, Gilzewala L/Drain RD 0-17980, Karniwala L/Drain RD 0-7900, Sherewala L/Drain Rd 0-16100 and Ratta Tibba Field Drain RD 650-3000*'; (2) '*Clearing weed jala booti and sarkanda from Bura Gujjar drain RD 0-63020 Akalgarh Link drain RD 0-16730 Chak Madrassa Link drain RD 0-2170, Khirkianwala Link drain RD 0-18600 Thandewala Link Drain Rd 0-36275 Doda Link Drain RD 0-11000 Bhullar Link drain RD 0-16750 Sotha Rupana Link drain RD 0-18600 Muktsar Town Outfall drain RD 0-29000 and*

Mahabadhar Link drain RD 0-1840; (3) *'Resectioning of Dyalpura Drain RD 0-148000 and Mari Drain RD 0-40000'* and (4) *'Desilting/Cleaning of weed, jala, booti, sarkanda etc. Golewala Drain RD 222000-183250 etc.'* invited vide tenders Annexures P-2, P-3, P-4 & P-5 respectively.

It is pleaded by the petitioner that the financial bid of the petitioner in respect of work of *'Desilting/Cleaning of weed, jala, booti, sarkanda etc. Golewala Drain RD 22000-183250 etc.'* amounting to Rs.333.30 lacs invited vide Annexure P-5 was not opened by the respondents though the offer was 24% less than the estimated amount. It is pleaded that the sole reason for not accepting the lowest bid of the petitioner was that the petitioner has not undertaken similar nature of works. It is pointed out that similar works have not been defined anywhere and that such clause in the tender notices gives liberty to play with the bids of the participants.

In the written statement filed on behalf of the State, it is pointed out that the petitioner seek allotment of works floated by way of tender notice dated 30.04.2015 though the petitioner is in-eligible in terms of the Eligibility for Participation Conditions for Pre-qualification (for two tier system) and that the petitioner has not participated in the re-tender process, but seeks contract on the basis of previous tender. The petitioner ought to have successfully completed similar works during the last 7 years ending last date of the month previous to the one in which applications are invited. The experience certificates furnished by the petitioner were not in the nature of similar works. It has been stated to the following effect:

“2. That the experience certificates, which were provided by the petitioner could however not be taken into consideration as these are not in the nature of similar works. The works which were floated vide

notice inviting tenders (NIT) in which the petitioner participated, all pertain to rain/flood water drains, the banks and the bottom whereof is 'kacha' and not brick lined i.e. to say, there is no cement or brick work on the sides or bottom of the drain which are created by only digging out earth. There is also no means or mode of controlling flow of water in these drains and the work of clearing weed, jala, buti, sarkanda etc. (the works for which the tenders floated) is to be done on 'as is where is' basis. The drains are thus required to be cleared of weed etc. despite the sides and bottom being soggy with loose earth, and sometimes even with water flowing through them. The area in which these drains pertaining to the tenders are situated is also water logged, with ground water level being at a depth of about one feet at certain places.

3. That the experience certificates which the petitioner seeks to be considered as similar works relate to the distributaries etc. which are made of cement concrete and brick lined on the sides as well as at the bottom and all distributaries have mechanism of stopping of flow of water for any works being carried out with regard to the distributaries. Further the experience certificates sought to be relied upon by the petitioner pertain to only brick lining and cement concrete works on the distributaries which cannot under any circumstances be equated with cleaning of drains which are completely kacha and are amenable to the risk of man and machinery being embedded in wet soil/earth. The experience certificates submitted by the petitioner are being attached herewith as Annexure R-1 for ready reference. In view of the above, the petitioner was and is clearly ineligible for the works which were floated vide the tender in question and hence he has absolutely no local standi to seek allotment of works by way of present writ petition."

Apart from the above, it is pointed out that the petitioner has not participated in the fresh tenders for three works in which his bid was cancelled. In the re-tender published on 30.04.2015, the technical bids were opened on 05.05.2015 and the financial bids were opened on 07.05.2015. Pursuant to the fresh notices, works have been allotted to those bidders, who have been found eligible on the basis of experience and their bid was lower than the bid earlier offered by the petitioner. It is also pleaded that the petitioner has not

impleaded the successful tenderers, who were successful in on-line tenders dated 30.04.2015. It is pointed out that the work experience of the petitioner was not in consonance with the requirement of experience of the similar work as detailed in the notice inviting tenders. The said conclusion was arrived at for all three works in which the petitioner was the lowest bidder and it was consequently recommended that the tenders should be cancelled and fresh tenders should be invited for the works so as to provide equal opportunity to all those who wanted to bid for the works in the interest of justice. The decision of the Committee consisting of four Superintending Engineers dated 29.04.2015 has been appended with the written statement as Annexure R-4. The averments made in the written statement are based upon such minutes.

Learned counsel for the petitioner has vehemently argued that the expression 'successfully completed similar works' is vague and is capable of being mis-used. What is similar nature of work is dependent upon the whims and fancies of the Evaluation Committee. Therefore, the bids offered by the petitioner could not have been rejected for the reason that the petitioner has not carried out similar works.

Before dealing with the argument raised on behalf of the petitioner, the relevant condition from the Tender Notice needs to be extracted. The same is as under:

- “3. Contracts / L&C Societies / Firm who have experience of having successfully completed similar works during last seven years ending last day of month previous to the one in which applications are invited should be either of the following:
 - a. One similar completed work costing not less than the amount equal to 80% of the work in the tender.

Or

- b. Two similar completed works costing not less than the amount equal to 50% of the work in the tender.

Or

- c. Three similar completed works costing not less than the amount equal to 40% of the work in the tender.

A documentary proof issued by the officer not below the rank of Executive Engineer of the concerned department should be attached.”

The similar works as mentioned in the notice inviting tenders are similar to the works in respect of which bids have been invited. As explained by the Committee consisting of Superintending Engineers and also in the written statement, the petitioner has experience of distributaries etc., which are made of cement concrete and brick lined on the sides as well as at the bottom and all distributaries have mechanism of stopping of flow of water for any works being carried out with regard to the distributaries, whereas the work in nature relates to cleaning of drains, which are completely *kacha* and without any cement or brick work on the sides or bottom of the drain, which are created by only digging out earth. There is also no means or mode of controlling flow of water in these drains and the work of clearing weed, jala, buti, sarkanda etc. is to be done on ‘as is where is’ basis. Sometimes the area, in which drains pertaining to the tenders are situated, is also water logged with ground water level being at a depth of about one feet, for which the petitioner has no experience.

We find that the expression ‘similar works’ in the notice inviting tenders is not vague. Similar nature of work relates to the work for which bids are being invited. In case of civil contracts, whether the work carried out by a

bidder is similar in nature or not is required to be examined by the experts. Four Superintending Engineers in their meeting held on 20th, 22nd and 23rd of April, 2015 have examined each of the work for which bids were invited who have come to the conclusion that the petitioner has no experience of handling similar works. Therefore, the petitioner has been rightly disqualified at the time of evaluation of technical bid.

Initially the members of the Committee were impleaded as the party-respondents. The petitioner levelled sweeping allegations, but bereft of any specific allegations of malafides. The petitioner has given up such Members of the Technical Evaluation Committee. Such experts of the level of Superintending Engineers have considered the nature of works carried out by the petitioner and the works for which bids were invited. This Court while exercising the power of judicial review examines the decision making process. The Technical Evaluation Committee has evaluated the tenders of the petitioner and found that the works carried out by the petitioner are not similar to which the bids have been invited.

Thus, the reasoning recorded by the Technical Evaluation Committee cannot be said to be unfair, unreasonable and unjustified, which may warrant interference in the writ jurisdiction of this Court.

Consequently, the present writ petition is dismissed.

(HEMANT GUPTA)
JUDGE

26.05.2015
Vimal

(LISA GILL)
JUDGE