

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Writ Petition No. 919 of 2015(O&M)

Date of Decision: April 7, 2015.

M/s Merittrac Services Private Limited

..... PETITIONER (s)

Versus

Post Graduate Institute of Medical Education & Research

..... RESPONDENT (s)

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

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate
for the petitioner.

Mr. Kshitij Sharma, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

HEMANT GUPTA, J.

The challenge in the present writ petition is to an order dated 08.09.2014 (Annexure P10) whereby the petitioner was debarred from participation in the process of any further assignment in the respondent-PGI for two years apart from forfeiting of security of ₹4,00,000/-.

The respondent-Post Graduate Institute of Medical Research and Education (for short, 'Institute') invited tenders from experienced service

providers for providing end to end computer based examination for recruitment of Lower Division Clerks and Stenographers. The eligibility criterion for the service provider was that it should have satisfactorily completed the similar works during the last seven years ending on the last day of the preceding month.

The petitioner submitted its bid giving details of the various projects carried out by it in the past. But when the complete details of participation by the petitioner in holding the online examination of Pre P.G. Entrance Examination 2012 for Rajasthan University of Health Sciences were sought, the Institute found that the petitioner was not able to start online examination of Pre P.G. Entrance Examination 2012 at one centre at scheduled time and the University had to face the litigation in judicial courts. The reply of the petitioner when sought by the Institute was not found satisfactory. The Tender Evaluation Committee thereafter decided to debar the petitioner for participation in the process of any further assignment in the Institute for two years as it has hidden the true facts in its reply also.

Learned counsel for the petitioner has argued that no conclusive contract between the petitioner and respondent came in existence as the eligibility condition of the petitioner itself was not found to be satisfactory. It is further argued that if the petitioner has violated any of the important conditions of the Request For Proposal (RFP) document, the earnest money alone could be forfeited.

On the other hand, Mr. Sharma, learned counsel for the Institute pointed out that petitioner has concealed material facts in respect of its experience of examination conducted on behalf of the Rajasthan University of Health Sciences. Therefore, the decision of the Institute is legal and proper and

after giving proper show cause notice to the petitioner.

We have heard learned counsel for the parties and find that the action of the Institute in blacklisting the petitioner even without conclusion of the contract is not sustainable in law. The relevant clause 18 of the tender document reads as under:-

“18. Penalty clause

1. The security deposit alongwith EMD is liable to be forfeited wholly or partially if any material deficiency is found in the services or bidder fails to fulfill the contract. The decision of the DPGI shall be final and binding on the bidder in this regard.
2. The service provider is liable to be blacklisted by the Institute.

The earnest money can be forfeited of a bidder

- i. Withdraws its bid during the period of bid validity specified by the Bidder on the Bid in the tender document
- ii. During the bid process, if a Bidder indulges in any such deliberate act as would jeopardise or unnecessarily delay the process of bid evaluation and finalisation. The decision of the client regarding forfeiture of the earnest money shall be final and shall not be called upon under any circumstances or
- iii. Violates any of such important conditions of this RFP document or indulges in any such activity as would jeopardize the interest of the client. The decision of the client regarding forfeiture of the earnest money shall be final and shall not be called upon under any circumstances.”

Clause 18 of the tender document contemplates that if any material deficiency is found in the services of Service Provider or he fails to fulfill the contract, the security amount alongwith earnest money deposited by him is liable to be forfeited and he is also liable to be blacklisted by the Institute. Such condition would arise only if the contract is awarded and tenderer fails to perform any part of the contract. Before finalization of the contract, the earnest

money only could be forfeited as contemplated in clause 18(2)(i) to (iii) of the tender document. Clause (iii) provides that in case a bidder violates any of the important conditions of RFP, the earnest money alone would be liable to be forfeited.

In the present case, it can at best be said that petitioner has not disclosed its adversity faced during the process of a contract with the Rajasthan University of Health Sciences. That aspect will disentitle the petitioner for awarding of the contract and make it liable for forfeiture of the earnest money. The blacklisting of a bidder is not contemplated in the tender document for such an eventuality.

In view thereof, we find order dated 08.09.2014 could not be sustained qua blacklisting of the petitioner thereby, debarring it for further assignment for a period of two years in the Institute. However, we find no error in forfeiting of the earnest money deposited by the petitioner.

The writ petition stands disposed of accordingly.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

April 7, 2015.
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