IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11810 of 2016
Date of decision: 26.7.2016

M/s Amrita Construction ……Petitioner

Vs.

Union of India and others …..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. R.K.Girdhar, Advocate for the petitioner.

Mr. Puneet Jindal, Sr. Advocate with Mr. Siddharth Kant, Advocate for respondent Nos. 1 to 4.

Ajay Kumar Mittal,J.

1. In the order dated 12.7.2016 passed by this Court, Mr. Puneet Jindal, Senior Advocate with Ms.Sakshi, Advocate has been inadvertently marked as counsel for respondent No.5 whereas he (senior advocate) had appeared for respondent Nos. 1 to 4. Record was also produced for perusal.

2. The petitioner prays for a writ in the nature of mandamus directing respondent Nos. 2 to 4 to award the work of "Ordinary repair and maintenance–Addl/alternations to staff quarters and service building including Elect. Shed DSL shed other service buildings and road works including emergent work at LDH and SNL-LDH section under Zone

No.1/2016-17 in jurisdiction of ADEN/LDH" to it as it fulfills the eligibility criteria and was found L-1 on opening of the tender on 26.4.2016. Further prayer has been made for quashing the decision, if any, taken by the respondents in rejecting the bid of the petitioner and award of work in favour of respondent No.5.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is working as railway contractor for Ferozepur division for the last more than 15 years. On 22.3.2016, Annexure P.1 an open tender notice was issued by respondent Nos. 3 and 4 inviting bids for various works. As the petitioner was fully eligible, it submitted its bid for the work in question. The approximate cost of this work was ₹ 1,24,98,246/- and on applying the criteria of 150%,it came to ₹ 1,83,00,000/-. As per Special Instructions to Tenderers and Regulations for Tenders and Contracts/the Standard Tender Document of Northern Railways, the tenderer was required to submit the details demonstrating that it had received total contractual payment against the works during the last three financial years and in the current financial year of a value not less than 150% of the advertised cost of the work. As per condition No.3.6.2, the petitioner produced all the requisite documents including the TDS (Form 16) apart from two TDS forms. The third TDS form w.e.f 1.4.2015 to 31.3.2016

was available with the same Ferozepur division and as such, the petitioner could not annex this certificate along with the tender form. The petitioner brought it to the notice of respondent Nos. 3 and 4. The petitioner requested the respondents to take into consideration this TDS certificate showing that it had executed the work of ₹ 1,45,19,772/- during the year 2015-16. The bid of the petitioner and respondent No.5 was opened on 26.4.2016 and the petitioner was placed at L-1 position amongst other contractors. However, the respondents refused to accept the tender submitted by the petitioner only on the ground that the it had not annexed the TDS certificate for the period from 1.4.2015 to 31.3.2016. According to the petitioner, instead of considering its bid, the respondents are now in the process of accepting the tender submitted by respondent No.5 and rejecting its tender on the ground of not annexing the TDS certificate for the year 2015-16. Aggrieved thereby, the petitioner submitted representation dated 5.5.2016 to respondent No.4 to consider its bid being L-1. The petitioner submitted that TDS form as on 31.3.2016 was not supplied to it till the last date of tender i.e. 26.4.2016 and as such the same could not be annexed with the tender form. Having received no response, the petitioner is before this court through the instant writ petition.

4. A written statement has been filed on behalf of respondent

Nos. 1 to 4 wherein it has been inter alia stated that Form 16-A for the financial year 2013-14 was available with the petitioner and even then the same was not submitted by it resulting in failure to fulfill eligibility conditions of the tender documents. It was further submitted that had the petitioner attached Form 16A for the year 2013-14 or its audited balance sheet for the last three years as a proof for fulfillment of financial eligibility criteria, it would have been enough for the committee to consider it within the said financial eligibility criteria required under the tender document. On these premises, prayer for dismissal of the petition has been made.

5. We have heard learned counsel for the parties.

6. The relevant clause 3.6.2 of the Standard Tender Document, Engineering Department, Northern Railways reads as under:-

> "***Financial Eligibility criteria*** : As a proof of financial capacity, the tenderer (s) should submit details as per Tender Form 4C of Annexure I demonstrating that the tenderer/s have received total contractual payments against all completed/ongoing works of all types (not confined to only similar works) during the last three financial years and in the current financial year (from the date of opening of the tender) of a value not less than 150% of the advertised cost of work including the cost of cement and steel. Authentic certificates like Form 16A issued by Payment Disbursing authority (other than private individual) audited balance sheet duly certified by

the Chartered Accountant etc. for each financial year must be attached."

7. A perusal of the above clause shows that in order to award the tender, the applicant had to fulfill the financial eligibility criteria which was 150% of the advertised cost. The advertised cost of the work in question was ₹ 1,24,98,246/- and 150% of the value came to ₹ 1,87,47,369/- whereas the petitioner in its application had mentioned 150% of the advertised cost as ₹ 1,83,00,000/- i.e. lower than the required value. Further, the petitioner had not submitted Form 16-A for the financial years 2013-14 and 2015-16 or the audited balance sheets duly audited by Chartered Accountant for the last three years as a proof for fulfillment of financial eligibility criteria. The original record was also produced to substantiate the same. Thus, the action of the respondents in refusing to accept the tender submitted by the petitioner cannot be held to be illegal or erroneous. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

July 26, 2016 **(Ramendra Jain)**
'gs' **Judge**

Whether speaking/reasoned Yes/No

Whether reportable **Yes**