

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 1338 of 2016

Date of Decision: 8.8.2016

M/s Ding Manpower and Security Services Pvt. Ltd., Sirsa

....Petitioner.

Versus

State of Haryana and others

...Respondents.

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

PRESENT: Mr. Sukhvir Singh Sahu, Advocate for the petitioner
in CWP No. 1338 of 2016 and
for respondent No. 6 in CWP No. 4836 of 2016.

Mr. H.R. Chaudhary, Advocate for
Mr. Sanjay Verma, Advocate for the petitioner in
CWP No. 4836 of 2016 and
for respondent No.6 in CWP No. 1338 of 2016.

Mr. Anil Kumar Yadav, Addl. Advocate General, Haryana.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two petitions bearing CWP Nos. 1338 and 4836 of 2016 as according to learned counsel for the parties, common questions of law and facts are involved therein. For brevity, the facts are being extracted from CWP No. 1338 of 2016.

2. Challenge in CWP No. 1338 of 2016 has been laid to the letter dated 21.12.2015 (Annexure P-11) vide which respondent No.3 had cancelled the tender. Further, a direction has been sought to respondent No.3 to withdraw the letter, Annexure P-11, and allot the tender to the petitioner being lower in rate than respondent No.6.

petition as narrated therein may be noticed. Respondent No.5 vide E-Tender notice dated 23.11.2015 (Annexure P-1) invited applications from the contractors having license for outsourcing 110 Safai employees for sanitation of Main Roads, Sewage, Streets and Main Market within the area of Municipal Council, Kaithal. In response thereto, the petitioner along with others applied for the contract of outsourcing the employees. As per Tender Summary Report and price bid dated 30.11.2015 (Annexure P-2), the bids of six bidders including the petitioner and respondent No.6 were found valid. Respondent No.5 vide letter dated 2.12.2015 (Annexure P-3) sought approval for appointment of 110 Safai Karamchari in favour of respondent No.6 for sanitation and lifting the garbage and drainage under outsourcing policy under Swachh Bharat Programme from respondent No.3. Prior to the E-Tender Notice, Annexure P-1, respondent No.5 had also issued E-Tender Notice on 26.6.2015 and the petitioner participated and being eligible was selected for the allotment which is discernible from the Tender Summary Report dated 29.6.2015 (Annexure P-4). However, the tender was cancelled. Again E-Tender Notice was issued on 19.10.2015 (Annexure P-5) and again on 2.11.2015 inviting applications for outsourcing 110 Safai employees for appointment in the office of respondent No.5. The petitioner and respondent No.6 along with other contractors applied against the said E-Tender notice dated 26.6.2015 and 19.10.2015 which is clear from the bid submission report along with price bid dated 26.10.2015 (Annexure P-6). Respondent No.3 opened technical bid and accepted all the applications and thereafter financial bid was opened on 26.10.2015 and on examination of price bids, two companies including the petitioner were found to be eligible and since both the contractors had given same rates, the petitioner having

more experience and high turnover was to be allotted the tender. However, respondent No.4 had cancelled the said tender without any reason. Thereafter, respondent No.5 again issued tender notice dated 2.11.2015 (Annexure P-7). The petitioner again applied for the said tender and on evaluation of financial bid only two companies, i.e. respondent No.6 and M/s High Tech Security Services were found eligible as is clear from the bid submission confirmation and price bid dated 9.11.2015 (Annexures P-8 and P-9, respectively). Since respondent No.6 was not coming in the zone of selection and M/s High Tech Security Services was going to be selected as per criteria fixed, tender notice dated 2.11.2015 was scrapped/rejected. Again fresh tender notice dated 23.11.2015 was issued. The petitioner and respondent No.6 applied for the said tender and were found to be eligible for allotment of outsourcing 110 Safai employees. The rate quoted by both the companies, i.e. the petitioner and respondent No.6 were same and the rate to supply the material was already fixed ₹ 1 lac. Since the petitioner was having more experience and turnover, therefore, it was to be selected for the allotment of 110 Safai employees. However, respondent No.6 was selected instead of the petitioner. Feeling aggrieved, the petitioner filed CWP No. 26259 of 2015 and this Court while issuing notice of motion stayed the allotment of tender. Thereafter, respondent No.3 vide letter dated 21.12.2015 (Annexure P-11) cancelled the tender. This Court vide order dated 6.1.2016 (Annexure P-12) disposed of the said writ petition with liberty to the petitioner to challenge the letter dated 21.12.2015 (Annexure P-15). As per Annexures P-13 and P-14, the petitioner was having more experience and high turnover as compared to respondent No.6. Hence, the present writ petition.

4. Upon notice of motion having been issued, respondent No.5 filed the written statement controverting the averments made in the writ petition. It was pleaded therein that there was no contract between the petitioner and the respondents and the tender had been cancelled due to the reasons given in the order, Annexure R-1. It was further pleaded that tender notice does not amount to an offer or proposal but is only invitation to the contractors for making an offer and till the proposal is accepted, no right is created in favour of anybody. A prayer for dismissal of the writ petition was made.

5. After hearing learned counsel for the parties, we do not find any merit in the writ petitions.

6. Respondent No.5 issued E-Tender Notices inviting applications for outsourcing 110 Safai employees for sanitation of Main Roads, Sewage, Streets and Main Market within the area of Municipal Council, Kaithal. The reasons for cancellation of the E-Tender notices issued in June, 2015; again on 19.10.2015; 2.11.2015 and 23.11.2015 have been given in paras 3 to 6 of the preliminary submissions in the written statement filed by respondent No.5. It was within the domain of the respondents to have cancelled E-Tender Notices and to call for the fresh E-Tender Notice. Further, the respondents had taken the decision for fresh E-Tender Notice in the best interest of the official respondents. In such a situation, in view of explanation tendered by respondent No.5 in paras 3 to 6 of the preliminary submissions giving reasons for cancelling each E-Tender notice, it cannot be said that the action taken by the official respondents was actuated with malafide or for the benefit of somebody. No letter regarding award of contract having been issued to the petitioner, no legally enforceable right

accrues in favour of the petitioner.

7. As stated above, the decision to cancel the tender process was in no way discriminatory or malafide. On the contrary, if a contract had been awarded despite the deficiencies in the tender process, serious questions touching the legality and propriety affecting the validity of the tender process would have arisen. Inasmuch as the competent authority decided to cancel the tender process, it did not violate any fundamental right of the petitioner nor could the action of the official respondents be termed unreasonable so as to warrant any interference from this Court.

8. The Supreme Court in **Jagdish Mandal v. State of Orissa and others 2007(14) SCC 517** examining the issue of scope of judicial review in the matters of award of contracts had held that the contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

9. Learned counsel for the petitioner could not point out any illegality or perversity in the letter dated 21.12.2015 (Annexure P-11) cancelling the E-Tender Notice dated 2.11.2015 (Annexure P-7) issued by respondent No.3 warranting interference by this Court under Articles 226/227 of the Constitution of India. The action of the official respondents cannot be held to be malafide. Consequently, finding no merit in the writ

petitions, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 8, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes