IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 14469 of 2016

Date of Decision: 23.7.2016

M/s Prayas Multimedia Pvt. Ltd., Jalandhar

....Petitioner.

Versus

State of Punjab and others

...Respondents.

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

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

PRESENT: Mr. Pankaj Gupta, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the official respondents to declare the technical bid of respondent No.5 for conduct of extra-teaching in Senior Secondary Residential School for Meritorious Students at Jalandhar as non-responsive and award the contract to the petitioner being the lowest tenderer.

2. Respondent No.3 invited short term tender vide public notice, Annexure P-1, for conduct of extra teaching in Senior Secondary Residential School for meritorious students, Jalandhar for the academic sessions 2016-17 and 2017-18. In pursuance thereto, respondent No.3

issued the Request For Proposal (RFP), Annexure P-2, according to which, the sale of tender document was 27.5.2016, pre-bid meeting was to be conducted on 1.6.2016, the last date and time for submission of the bid was 10.6.2016 upto 1700 hours, the date of opening of the technical bid was 11.6.2016 at 11.00 AM and the date of opening of financial bid was to be intimated later to the eligible tenderers by e-mail and through the website. The said RFP was amended from time to time vide three corrigendums dated 28.5.2016, 3.6.2016 and 4.6.2016 (Annexure P-3 Colly). The petitioner and respondent No.5 submitted their bids. Respondent No.5 attached a copy of its audited balance sheet for the financial year 2014-15 (Annexure P-4) along with the bid showing nil income from coaching. As respondent No.5 had not conducted any coaching classes during the financial year 2014-15, it was not technically qualified in terms of the RFP and as such was non-responsive. As per the minutes of meeting dated 11.6.2016 (Annexure P-5), the technical bid of the bidders was opened on 11.6.2016 in which the petitioner, respondent No.5 and Aeon Educreation Private Limited were held to be responsive. Respondent No.3 informed all the bidders vide note dated 11.6.2016 (Annexure P-6) that the minutes of the technical bid uploaded on 11.6.2016 stands withdrawn as the technical bid process was still on. After that, respondent No.4 sent an e-mail dated 12.6.2016 (Annexure P-7) to respondent No.5 to clarify that how it was technically qualified as it had not conducted any coaching classes and not paid any service tax. In response thereto, respondent No.5 submitted an affidavit dated 13.6.2016 (Annexure P-8) to respondent No.4. On the basis of said affidavit, the technical bid of respondent No.5 was considered by the official respondents. In terms of the RFP, the DEMO was conducted by the petitioner, respondent No.5 and Aeon Educreation Pvt. Ltd. and on the basis of said DEMO, their technical bid was held to be responsive on 13.6.2016 and the financial bid was to be opened on the same day at 6 PM as per the minutes of the technical bid dated 13.6.2016 (Annexure P-9). As per the minutes of the meeting of opening of financial bid dated 13.6.2016 (Annexure P-10), the financial bid was opened on 13.6.2016. In the said bid, respondent No.5 had given the lowest bid of ₹ 1147/- per student per month whereas the petitioner had given the second lowest bid of ₹ 1187/- per student per month. After uploading the minutes of the meeting of opening of financial bid, Annexure P-10, respondent No.4 again intimated vide note dated 13.6.2016 (Annexure P-11) that the minutes and outcome of the financial bid opened on 13.6.2016 stands withdrawn and the final decision was yet to be taken by the rightful authority. According to the petitioner, respondent No.5 did not fulfil the terms of technical evaluation criteria of the bid and as such it was to be awarded 0 marks out of 80 marks. However, the official respondents have awarded 79.5 out of 80 marks in the technical evaluation criteria to respondent No.5 which is discernible from the chart of marks (Annexure P-12). The official respondents made the technical bid of respondent No.5 as responsive and opened its financial bid against which the petitioner moved a representation dated 14.6.2016 (Annexure P-13) to respondent No.3. The petitioner submitted another representation dated 16.6.2016 (Annexure P-14) to respondent No.3 for rejecting the bid of respondent No.5. In pursuance thereto, a meeting was held in the office of respondent No.3 on 16.6.2016 to discuss the eligibility of respondent No.5. As per the minutes of the meeting dated 16.6.2016 (Annexure P-15), it was resolved that regarding evasion of service tax, the reference be made to the Service Tax Department and the tender be awarded to respondent No.5 being the lowest tenderer. Accordingly, the issue of evasion of service tax by respondent No.5 was referred to the Central Excise and Tax Department who issued a notice dated 1.7.2016 (Annexure P-16) to respondent No.5 for providing various information with regard to the payment of service tax during the financial years 2013-14 to 2015-16. In response thereto, respondent No.5 submitted its reply. The Assistant Commissioner, Central Excise and Service Tax, Division No.1I, Jalandhar vide letter dated 11.7.2016 (Annexure P-17) informed respondent No.3 that respondent No.5 had shown all their income under the head "Sale of Printed Module" and income from the tuition fee was shown as zero. It was further informed that detailed scrutiny of the case was going on and appropriate action would be initiated as per service tax law on verification of documents submitted by respondent No.5. Thereafter, the petitioner moved a representation dated 14.7.2016 (Annexure P-18) to respondent No.3 for rejecting the bid of respondent No.5 and awarding the tender to it being the lowest bidder, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved representations dated 14.6.2016 (Annexures P-13), dated 16.6.2016 (Annexure P-14) and dated 14.7.2016 (Annexure P-18) to respondent No.3, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.3 to take

a decision on the representations dated 14.6.2016 (Annexures P-13), dated 16.6.2016 (Annexure P-14) and dated 14.7.2016 (Annexure P-18), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner and respondent No.5 within a period of two weeks from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

July 23, 2016 **(RAMENDRA JAIN)**
gbs **JUDGE**