

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 16599 of 2015
Date of Decision: 25.02.2016

Dheeraj Dhawan

..Petitioner

Versus

State of Haryana and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.**

Present : Mr. Balbir Singh Sewak, Advocate, for the petitioner.
Mr. Rahul Dev Singh, Deputy Advocate General,

S.J.VAZIFDAR A.C.J. (Oral)

The petitioner has sought a writ of certiorari to quash the allotment of a canteen in favour of respondent No.5 by the District Child Development Organization of which respondent Nos.3 and 4 are the officer and Chairman respectively. Respondent No.2 is the Deputy Commissioner, Panchkula.

2. On 16.06.2015, the official respondents invited applications for running a canteen. Completed forms were to be deposited latest by 5.00 p.m. on 22.06.2015. The petitioner obtained the form on 19.06.2015 and thereafter obtained a demand draft dated 20.06.2015 for the sum of ₹ 25,000/- in the name of respondent No.3. According to him, he sought to tender the same alongwith the form to the third respondent. The respondents deny the same.

3. The case turns entirely on facts. The petitioner's case is that respondent No.3 refused to accept the form and the demand draft stating that the department was interested in allotting the canteen to another party and a decision to that effect had already been taken to accommodate that party.

The respondents deny the same. The question, therefore, is whether or not the petitioner infact sought to tender the form and the demand draft as alleged by him on 22.06.2015. The petitioner mentioned the name of the officer who refused to accept his form. That officer has filed an affidavit denying the allegation.

4. It is difficult in this petition to decide which of the cases is true. There are facts that support both cases. On the one hand, it is possible that the petitioner had sought to tender the form on 22.06.2015. The facts on record that support the petitioner's case are that he obtained the form on 19.06.2015 and the demand draft on 20.06.2015. There is no reason why he would not have submitted the same on 22.06.2015. Further, he made an application on 29.06.2015 seeking relevant information under the Right to Information Act, 2005. On the other hand if on 22.06.2015 he had been informed that the official respondents had decided to award the contract to another party and not to anyone else, the petitioner would have filed this petition immediately instead of making enquiries under the Right to Information Act.

5. Further, the contract was awarded in favour of respondent No.5 at the rate of ₹ 25,000/- per month and the petitioner is willing to offer an amount of ₹ 60000/- per month. He also contended that the official respondents deliberately refused to accept the petitioner's form only with a view to awarding the contract in favour of respondent No.5 at a substantially lower rate. In support of this contention apart from his higher offer he relies upon the fact that a smaller canteen in the same premises was allotted at a rate of ₹ 1,70,000/- per month. On the other hand, however, admittedly the contractor had terminated the contract and upon the same being reauctioned the official respondents received a bid of only ₹ 90,000/- per month. Further

in respect of this canteen, the infrastructure was already in place and the bidder, therefore, did not have to incur any expenditure to set it up.

6. It is, therefore, difficult in this writ petition to state with any degree of certainty that the allegations of *mala fides* are established. The petitioner must adopt appropriate proceedings to establish the same after leading further evidence.

7. We are also not inclined to entertain the petition further as there is considerable uncertainty regarding the petitioner's eligibility. Clauses 1 and 2 of the terms and conditions read as under:-

- "1. That only person with capacity to work can participate.
2. The person applying for canteen has to submit a certificate that he is running presently similar canteen built up on his own expenditure."

8. (A.) In respect of these clauses, the petitioner submitted a certificate dated 19.06.2015 from "Shaheed Bhagat Singh Public Senior Secondary School, Fatehgarh Sahib" which reads as under:-

"TO WHOMSOEVER IT MAY CONCERN

It is certified that Sh. Dheeraj Dhawan s/o Sh. Sukhdev Kumar, Resident of # 1797, Mohalla Raiyan, Manimajra, Chandigarh is presently running the canteen of our school with the student strength of 1200 students. The canteen was allotted to him on built on operate (BOT) basis for three years started from 1st January, 2013 to 31st December, 2016. He bears good moral character and capable of running any canteen of any department."

In the petition, the petitioner averred that he was presently running the said canteen. This statement is admittedly incorrect.

(B.) Respondent No.5, however, produced another certificate in respect of the petitioner dated 15.02.2016 from the same school which reads

as under:-

“TO WHOMSOEVER IT MAY CONCERN

It is certified that the School Management had given a small room (front gate) constructed by the School Management at its own to Sh. Dheeraj Dhawan son of Sh. Sukhdev Kumar, R/o House No.1797, Manimajra, Chandigarh for running a canteen. Sh. Dheeraj Dhawan run this Canteen from January, 2013 to July, 2015 for which he deposited an amount of Rs.50,000/- in cash in lumpsum to the School Management towards monthly rent of three years and no other amount was paid by him. The said room is now being used as security guard room. The School Management is now being used as security guard room. The School Management had neither entered into nor signed any agreement for running Canteen on BOT basis with the said Sh. Dheeraj Dhawan for this purpose.

This certificate is being issued in connection with the visit of the team consisting of (i) Sub Divisional Magistrate, Panchkula (ii) District Child Welfare Officer, Panchkula and (iii) Assistant Superintendent Revenue, DC Office, Panchkula on 15.02.2016.

Sd/-Principal. 15.02.2016”

9. If the second certificate is to be believed, the petitioner does not meet the eligibility criteria stipulated in the terms and conditions of the notice inviting tenders. It expressly states that the management had neither entered into nor signed any agreement for running the canteen on BOT basis with the petitioner. The petitioner for whatever reason has not filed a rejoinder to this further affidavit of respondent No.5 which refers to the said certificate dated 15.02.2016. Despite the same we called upon the petitioner to produce the agreement between himself and Shaheed Bhagat Singh Public Senior Secondary School. The petitioner, however, states that it was only an oral contract. He has not chosen to produce any evidence to indicate that he was running the canteen on BOT basis. There is no reason for us to speculate

in his favour. The least that must be said, therefore, is that the petitioner's eligibility itself is seriously in doubt.

10. Although the petitioner's eligibility is in doubt and he is not entitled to succeed in this writ petition, it is a matter where the petitioner's allegations of mala fides against the respondents ought to be enquired into by the higher authorities. The petitioner has agreed to pay a sum of ₹ 60000/- per month as against the 5th respondent's bid of ₹ 25,000/- per month. Indeed, if he cannot meet the eligibility criteria, he would not be entitled to submit the bid in first place. However, we are sure that the respondents themselves would be interested in ascertaining whether there were mala fides in awarding the contract in favour of respondent No.5 and as to whether the work has been awarded to respondent No.5 at a gross undervaluation deliberately. Thus while dismissing the writ petition we direct respondent No.1 to appoint any senior officer to enquire into this aspect of the matter and to forward a copy of the findings to the petitioner by 30.06.2016.

11. Petition is accordingly disposed of.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

25.02.2016
'ravinder'

(ARUN PALLI)
JUDGE