

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 1604 of 2016

Date of Decision: 27.01.2016

Nav Prayas

..Petitioner

versus

State of Punjab and others

..Respondents

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

Present : Mr. Mansur Ali, Advocate, for the petitioner.
Mr. J.S.Puri, Addl. Advocate General, Punjab
for respondent Nos.1 to 3.

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S.J.VAZIFDAR A.C.J.

The petitioner has challenged the fresh tender process undertaken by the respondents as well as a term of eligibility therein contending that the same is only to accommodate the private respondent No.4.

2. Respondent No.2 is a society for promotion of quality education for poor and meritorious students of Punjab. Respondent No.3 is the Deputy Commissioner, Bathinda, Punjab whereas respondent No.4 is 'Bagdanga Pachim Gheri Bishalakshmi Club', in whose favour the work order has been issued pursuant to the fresh tender process.

3 (A) On 08.12.2015, the official respondents invited tenders by a notice inviting tenders. Clause 'G' of the eligibility conditions read as under:-

"G. The contractor must have achieved minimum turnover Rs.4.5 crores (four crore fifty lacs only) from the similar type of work each of the last three years i.e. F/ Y 2012-13 to 2014-15. Certified copies of audited P&L Statement and balance sheets by practicing C.A. for the last 3 years i.e. FY 2012-13 to 2014-15 must be uploaded. Scanned copies uploaded without valid CA certification shall be rejected."

(B) On 15.12.2015, six bidders attended the pre-bid conference. On 23.12.2015, only the petitioner was declared eligible. The official respondents, however, opened its financial bid. They, however, abandoned the tender process and initiated a fresh tender process. Clause (G) of the eligibility condition set out earlier was altered by reducing the requirement of the minimum turnover to ` 3 Crores.

4. Mr. Mansur Ali, learned counsel appearing on behalf of the petitioner firstly challenged the reduction in the minimum turnover from ` 4.5 crores to ` 3 crores. He contended that this was done only to accommodate respondent No.4 who would not have been eligible had the minimum turnover been retained at ` 4.5 crores.

5. As we noted above, under the earlier tender process six parties had submitted their bids but only the petitioner's bid fulfilled the eligibility criteria. The official respondents understandably endeavored to obtain best possible price. This they could not have achieved with only one eligible bidder. Their desire to increase the competition is understandable and justified. It must be the endeavour of every party inviting tenders to obtain the best possible price as far as possible.

6. It was then contended that by reducing the eligibility criteria, the respondents compromised the quality of services and the quality of food to be supplied. The contract involves the supply of food for the students. Mr. Mansur Ali, relying upon an annexure to the tender documents titled "Detail of Costs", stated that the expected turnover is about ` 9 crores for two years i.e. ` 4.5 crores per year. He contended that the eligibility criteria that the

contractor must have achieved a minimum turnover of ` 4.5 crores per year was, therefore, necessary.

7. It is for the party inviting tenders to decide upon the terms and conditions including as to the eligibility. This, of course, is subject to the same being reasonable, rational and *bona fide*. It is not for the Court to sit in the judgment over the decision of the party inviting tenders. We do not find anything arbitrary absurd or irrational in the official respondents' requiring a minimum turnover of ` 3 crores merely because the expected turnover is ` 4.5 crores.

8. It was then contended that the official respondents by opening the petitioner's financial bid and then scrapping the tender process have been unfair to him as the other bidders now know the petitioner's bid.

9. There is we will presume a degree of prejudice to the petitioner on this count. However, the official respondents contended that they wanted to ascertain whether the price quoted by the only eligible tenderer i.e. the petitioner was reasonable or not. The reasonableness was judged on the basis of the assumptions contained in the said 'Detail of Costs' which assumed the rate per day per student at ` 140/-. The rate quoted by the petitioner under the first tender process was higher than ` 140/- per student. In these circumstances, it cannot be said that the official respondents' conduct was *mala fide* or unreasonable.

10. In the circumstances, the writ petition is dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

27.01. 2016
'ravinder'/parkash

(ARUN PALLI)
JUDGE