IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 17090 of 2016

Date of Decision: 23.8.2016

M/s NBS Gurukul Institute of Competitions Pvt. Ltd., Jalandhar

....Petitioner.

Versus

State of Punjab and others

...Respondents.

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

PRESENT: Mr. Aditya Dassaur, 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 certiorari for quashing the letter, Annexure P-14, issued by respondent No.2 rejecting the extra coaching e-tender for Meritorious School, Jalandhar for the sessions 2016-17 and 2017-18; to quash the order dated 9.8.2016 (Annexure P-15) whereby a speaking order has been passed by respondent No.3 in violation of the order dated 23.7.2016 (Annexure P-13) passed by this Court by not giving an opportunity of hearing to the petitioner; to quash the public notice dated 11.8.2016 (Annexure P-16) inviting the fresh tender and to direct the official respondents to hand over the tender for extra coaching in Meritorious School, Jalandhar for the sessions 2016-17 and 2017-18 to the petitioner being the lowest bidder.

2. A few facts necessary for adjudication of the instant petition as narrated therein may be noticed. Respondent No.3 issued a public notice dated 27.5.2016 (Annexure P-1) inviting the short term e-tenders for providing extra teaching for meritorious students of Senior Secondary Residential School, Jalandhar for the sessions 2016-17 and 2017-18. Respondent No.3 issued a request for proposal (Annexure P-2) for the conduct of extra teaching for meritorious students of the said school for the sessions 2016 to 2018. Last date for submission of e-tenders was 10.6.2016. The technical bids were opened by the official respondents on 11.6.2016 and the three parties including the petitioner and respondent No.5 were acknowledged as being responsive bidders vide proceedings dated 11.6.2016 (Annexure P-3). The demo was conducted on 13.6.2016 and all the three bidders were acknowledged as responsive. As per the minutes of the meeting dated 13.6.2016 (Annexure P-4), the financial bid was opened on 13.6.2016. As per technical evaluation mark-sheet dated 13.6.2016 (Annexure P-5), the petitioner obtained marks higher than respondent No.5 in the technical evaluation. Prior to the opening of the financial bid, the authorities had asked all the three responsive bidders to put forth any objection to the qualification of any of the parties in the technical bid, but none of the parties raised any objection. Thereafter, the signatures of all the three responsive bidders who were present along with all the members of the tender committee were taken on the document dated 13.6.2016 (Annexure P-6). As per the minutes of the meeting dated 13.6.2016 (Annexure P-7), the financial bids were opened and the petitioner was the lowest bidder (L1) and respondent No.5 was the second lowest bidder. The tender committee requested the principal for awarding the tender in favour

of the petitioner being the lowest bidder. Thereafter, respondent No.4 uploaded a note dated 13.6.2016 (Annexure P-8) on the official website intimating all the bidders that the minutes and outcome of the financial bid concerning the extra coaching tender stand withdrawn and the final decision was yet to be taken. Respondent No.3 convened a meeting of the petitioner and respondent No.5 and sought clarification from them regarding the allegations levelled by respondent No.5. After hearing both the parties and perusing the documents put-forth by the parties, respondent No.3 vide minutes of meeting dated 16.6.2016 (Annexure P-9) declared that the petitioner being the L1 bidder had won the tender on technical and financial bid. Respondent No.5 objected to the qualification of the petitioner for the bid on the ground that the petitioner had not paid the service tax for the financial year 2014-15 whereas the petitioner has been a regular payee of the service tax right from its inception in the year 2002. As per the service audit documents (Annexure P-10 Colly), the records of the service tax paid by the petitioner had been regularly audited by the concerned authority. There was a dispute between the two directors of the petitioner company, namely, Professor Adarsh Bhatti and Sanjeev Nanda due to which the tax could not be paid in time. However, the dispute was solved and the entire share of the petitioner was bought by Professor Adarsh Bhatti and thereafter the petitioner paid the service tax amounting to ₹ 3,59,553/- including an interest of more than ₹ 1 lac and filed the revised return which is discernible from Annexure P-11 and the documents (Annexure P-12 Colly) relating to the resignation of the previous director. Respondent No.5 filed CWP No. 14469 of 2016 and this Court vide order dated 23.7.2016 (Annexure P-13) disposed of the said writ petition with a direction to respondent No.3 to decide its representation. Thereafter, respondent No.2 vide letter dated 29.7.2016 (Annexure P-14) rejected the extra coaching tender for meritorious school, Jalandhar due to technical reasons. In pursuance to the order, Annexure P-13, respondent No.3 vide order dated 9.8.2016 (Annexure P-15) without affording an opportunity of hearing disposed of the representation of respondent No.5 that no action can be taken on the tender as the tender already stands rejected by the competent authority. Thereafter, respondent No.3 vide a public notice dated 11.8.2016 (Annexure P-16) has invited fresh tender for extra coaching for the students of Senior Secondary Residential School for Meritorious Students, Jalandhar. As per the student list (Annexure P-17) and the balance sheets for the last ten years (Annexure P-18), the petitioner has been in the teaching business since the year 2002 and has regularly been paying the taxes. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that respondent No.2 had rejected the e-tender without affording an opportunity of hearing to the parties. It has further been submitted that the petitioner being the lowest bidder was entitled to the award of the extra coaching e-tender for meritorious school, Jalandhar for the sessions 2016-17 and 2017-18.

4. After hearing learned counsel for the petitioner, we do not find any merit in the submissions made by him.

5. A perusal of narration of facts shows that on 27.5.2016, respondent No.3 issued a public notice inviting the short term e-tenders for providing extra teaching for meritorious students of the Senior Secondary Residential School, Jalandhar for the sessions 2016 to 2018. The last date for the submission of e-tenders was 10.6.2016. The technical bids were

opened on 11.6.2016 and the three parties including the petitioner and respondent No.5 were found as responsive bidders. Thereafter, keeping in view the developments that had taken place due to allegations and counter allegations between the petitioner and respondent No.5, respondent No.2 vide letter dated 29.7.2016 (Annexure P-14) rejected/scrapped the tender for extra coaching for meritorious school, Jalandhar. Thereafter, respondent No.3 vide public notice dated 11.8.2016 (Annexure P-16) invited fresh tenders for extra coaching for meritorious school, Jalandhar. It was within the domain of the respondents to have rejected/scrapped the tender and to call for the fresh tender. Further, the respondents had taken the decision for fresh tenders in the best interests of the school. Moreover, no letter having been issued to the petitioner awarding contract in its favour, therefore, no legally enforceable right had accrued in favour of the petitioner.

6. The Supreme Court in **Jagdish Mandal v. State of Orissa and others 2007(14) SCC 517** 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.

7. In view of the above, learned counsel for the petitioner could not show anything on the basis of which it could be concluded that the action initiated by respondents No.1 to 4 is malafide. There is no illegality

or perversity in the letter dated 29.7.2016 (Annexure P-14) rejecting the e-tender and notice dated 11.8.2016 (Annexure P-16) inviting fresh tender. Thus, no interference by this Court under Articles 226/227 of the Constitution of India is made out. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

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

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes**