

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.1781 of 2016
Date of Decision : 06.04.2016.**

M/s Mahashiv Promoters Pvt. Ltd.

.....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. Tribhuvan Dahiya, Advocate for the petitioner.

Mr. Rahul Dev Singh, Deputy Advocate General, Haryana.

Mr. Rajinder Goyal, Advocate for respondent No.5.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE (ORAL):

The petitioner has challenged the decision of respondents No.1 to 4-official respondents rendering the petitioner's bid non-responsive for awarding the contract in favour of respondent No.5-private respondent.

2. The official respondents had invited tenders for the work of re-construction of the existing roads to the extent of about 16.5 kilometers. Eight parties including the petitioner and respondent No.5 submitted bids.

3. Under cover of a letter dated 3.11.2015, the official respondents forwarded an application of one Ramesh Dalal and called upon the petitioner to respond to the same. The enclosed letter alleged that the petitioner was disqualified by HUDA, Sonapat on account of false and fabricated documents and the petitioner having mis-represented the facts. It

is important to note that this letter was served upon the petitioner only on 17.11.2015. This is so stated at the foot of the petitioner's reply dated 18.11.2015, to which we will refer shortly. Moreover, this is so stated in paragraph 5 of the petition. In the reply on merits, the respondents stated that the contents of para No.5 are a matter of record. We, therefore, must proceed on the basis that the letter dated 3.11.2015 was served upon the petitioner only on 17.11.2015.

4. On the next date, the petitioner addressed a reply dated 18.11.2015. The petitioner specifically stated that the application does not mention the name of the work and that it had no relevance to the contract and consideration. The bids were opened on 17.11.2015 i.e. the date on which the petitioner received the said letter dated 3.11.2015. On 17.11.2015, the petitioner's bid was considered by the official respondents to be ineligible. The petitioner, therefore, did not even get an opportunity of presenting its case. Indeed, on that date, the official respondents could not have considered the petitioner's reply dated 18.11.2015.

5. In the reply, the respondents have relied upon the certificate issued by the petitioner regarding the competition of work in respect of another contract which it had entered into with the Haryana Urban Development Authority (HUDA) and the internal communication from the officer of HUDA in that case to the effect that they had not issued that certificate. Normally, it would have been necessary for the respondents to consider themselves the effect of the communication. Our attention has not been invited to anything further that may have transpired between the petitioner and HUDA in that case. It is not the respondents' case that

HUDA issued any show cause notice or took any action after receiving the response from its officer to the effect that they had not issued the certificate. It would be unfair to condemn the petitioner on the ground of having forged and fabricated documents on the basis of such allegations and certificate alone.

6. There is nothing on the record to indicate that these documents were ever brought to the notice of the petitioner. At the hearing before us, the learned counsel appearing on behalf of the official respondents stated that they had in fact forwarded the documents on 5.11.2015. Firstly, it would have been necessary to ascertain whether the petitioner could have been disqualified on the basis of what transpired between HUDA and itself in the other contracts. The respondents relied upon clauses 32.1, 37.1 and 4.5.10. *Prima facie* these clauses do not entitle the official respondents to render the petitioner ineligible for the tender in question. We however, do not intend expressing a final opinion in this regard in view of what follows.

7. The petitioner by a letter dated 23.11.2015 stated as under:-

“The tender for above said work had been Financial Bids opened so release refund my earnest money of Amt. of Rs.33,40,000/- and collect the DAC Mr. Narender Singh Authrised my company on behlf for the above said work” (sic).

It is apparent that what the petitioner actually intended was the refund of the earnest money deposited by it.

8. This letter indicates that the petitioner did not intend pursuing his claim for being awarded the contract. Whether the petitioner gave up

any of its other rights on account of a wrongful decision rendering it ineligible or not is also a matter we would keep open. It is also important to note that on 15.12.2015, the official respondents awarded the work to respondent No.5 who was L-I on account of the petitioner's claim having been rejected. Respondent No.5, commenced the work, received the advance payment therein and has already submitted its first running bill which has been paid. This petition was filed only on 25.01.2016 i.e. more than two months after the technical bids was rejected as being ineligible. Notice of motion was issued on 29.01.2016.

9. In these circumstances, even assuming that the petitioner's bid was wrongly rejected, it would not be possible to cancel the award of work in favour of respondent No.5 or to direct the official respondents to award the same in favour of the petitioner.

10. We wish to clarify, however, that this order does not affirm the official respondents' action rendering the petitioner's bid ineligible. We do not express a final opinion on the validity of the official respondents' action in this regard.

11. The petition is therefore, dismissed subject to the above clarification.

12. There is however, a possibility of the impugned action in this case affecting the petitioner's right in respect of other contracts. It is possible that in the other contracts the State or its instrumentalities including a term disqualifying the bidder if its bid had been earlier rejected in other contracts/tenders invited by the State or its instrumentalities. It is necessary, therefore, for the respondents to decide whether the petitioner's

bid was rightly rejected or not. The petitioner has submitted a reply on which no decision has been taken. The petitioner shall therefore, be entitled to submit a comprehensive reply and the respondents shall take a decision in respect thereof, after affording the petitioner an opportunity of being heard and by furnishing detailed reasons in respect of each of the defences taken by the petitioner. The impugned action is therefore, quashed with liberty to the official respondents to pass a fresh order, if they so desire. However, this order will not entitle the petitioner to seek an order cancelling the contract in favour of respondent No.5 and/or having the same awarded to it.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

06.042016

Manoj Bhutani

(ARUN PALLI)
JUDGE