

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

CWP No. 18330 of 2016  
DATE OF DECISION : 05.09.2016

Jai Durga Trading Co. and another .... PETITIONERS

Versus

State of Punjab and others ..... RESPONDENTS

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

Present: Mr. Sanjeev Goyal, Advocate, for the petitioners.

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**RAMENDRA JAIN , J.**

1. Jai Durga Trading Company, Patiala Road, Sunam, District Sangrur; and R.R. Traders, Metal Merchants and Commission Agents, Burla Gate, Jagadhari, claiming themselves to be running the whole sale business of supplying the utensils, have filed this petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the tender dated 22.08.2016 (Annexure P-8) worth ₹ 100 Crores for supplying the utensil kits to the Panchayats/Clubs of the State of Punjab, floated by the respondents.

2. The impugned tender has been sought to be quashed on the ground that it has been floated by ignoring the recommendation dated 01.08.2016 made by the Purchase Committee, consisting of five members, whereby it was recommended that the tender be re-floated after removing the harsh condition of purchasing utensils of 304 grade sheet and “*Parant*” of stainless steel having 34 inches dia, to enable more traders to apply for the tender.

the respondents floated online tenders worth ₹ 100 Crores for supply of utensil kits in the State of Punjab. They demanded the utensils of 304 Grade sheet and minimum dimension of “*Parant*” of stainless steel top dia 34 Inch, bottom dia 28 inch, internal height 4 inch, minimum weight 5000 gram (5 Kg.). Subsequently, on a representation dated 01.08.2016 (Annexure P-6) submitted by the petitioners and three other firms, to the respondents alleging embezzlement in the tenders, a meeting of the Purchase Committee consisting of five members was called by respondent No.2, wherein it was recommended that the tender be re-floated after removing the harsh condition of purchasing utensils of 304 grade sheet and “*Parant*” of stainless steel having 34 inches dia, so that more traders can apply for the tender and department can get the benefit of competition for supply of utensils at cheaper rates. Thereafter, on 05.08.2016, respondent No.2 constituted a committee, consisting of three members, to get the survey done regarding the availability of utensils of 304 grade sheet and “*Parant*” of stainless steel having 34 inch dia. Accordingly, the said committee submitted its report to the effect that the said utensils are not available in the market. Thereafter, after reducing the minimum qualification of supplying 2000 utensil kits to 1000 utensil kits, the respondents floated the impugned tender dated 05.09.2016 (Annexure P-8). The grouse of the petitioners is that in spite of the aforesaid recommendation and the report, instead of removing the harsh condition of purchasing utensils of 304 grade sheet and “*Parant*” of stainless steel having 34 inches dia, the respondents again floated the tender dated 22.08.2016 (Annexure P-8) with the same specification.

4. Learned counsel for the petitioners argued that the impugned

tender dated 22.08.2016 (Annexure P-8) is liable to be quashed, as it has been floated arbitrarily with the same specification, as mentioned in the earlier tender dated 30.05.2016 (Annexure P-1), despite the recommendation of a Purchase Committee that the tender be re-floated after removing the harsh condition of purchasing utensils of 304 grade sheet and “*Parant*” of stainless steel having 34 inches dia. Even as per the report submitted by a committee, constituted by respondent No.2, the utensils sought to be purchased by way of the impugned tender were not available in the market. The impugned tender is contrary to the Punjab Financial Rules, Volume-II Appendix 8.

5. After hearing learned counsel for the petitioners, we do not find any merit in the instant petition.

6. Admittedly, after receiving representation from the petitioners and other traders against the initial tender notice dated 30.05.2016 (Annexure P-1), a meeting of the Purchase Committee was called and in view of recommendation of the said Purchase Committee, the impugned tender dated 22.08.2016 (Annexure P-8) has been re-floated by the respondents, though with the same specification, but by reducing the minimum qualification of supplying 2000 utensil kits to 1000 utensil kits. It is needless to mention here that fixing the criteria and specifications of the utensils sought to be purchased by way of tender was the sole discretion of the respondents and falls within their exclusive domain. The scope of judicial review in such matters relates to those actions of the respondents which are actuated with mala fide or are arbitrary. Nothing was shown that the process adopted by the respondents at the time of re-floating the tender was mala fide, unreasonable or unfair. It was in public interest, as the same

has been re-floated by reducing the minimum qualification, so that more traders may apply to fetch the competitive race. It is pertinent to mention here that the respondents had invited the tenders for purchase of utensils of good quality and grade. The scope of judicial review in contractual matters has been examined by the Supreme Court in Jagdish Mandal Vs. State of Orissa and others, 2007 (14) SCC 517 and in Maa Binda Express Carrier and another Vs. Northeast Frontier Railway and others, 2014 (3) SCC 760, and it has been laid down that a court shall not interfere in tender or contractual matters in exercise of power of judicial review unless it is found that :

*(i) Process adopted or decision made by authority is mala fide or intended to favour someone or process adopted or decision made is so arbitrary and irrational that no responsible authority acting reasonably and in accordance with relevant law could have reached.*

*(ii) Public interest is affected.*

As discussed above, there is no irrationality or arbitrariness in the action of the respondents in re-floating the tender for supply of good quality material. Therefore, their action cannot be termed as unreasonable which warrants interference by this Court.

7. Petition is, accordingly, dismissed.

( RAMENDRA JAIN )  
JUDGE

September 05, 2016  
ndj

( AJAY KUMAR MITTAL )  
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes