IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 18700 of 2016

Date of Decision: 8.9.2016

M/s Andy Solar Private Limited, Panchkula

....Petitioner.

Versus

State of Haryana and others

...Respondents.

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

PRESENT: Mr. Rahul Deswal, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition 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 order dated 26.8.2016 (Annexure P-17) passed by respondent No.1 rejecting the representation dated 16.5.2016 (Annexure P-13) moved by the petitioner. Further, a writ of mandamus has been sought directing the respondents to consider the second lab test report dated 16.2.2016 (Annexure P-11) of the petitioner from the list of the respondents' approved lab, i.e. Electronics Test and Development Centre (ETDC), Mohali and to start the bid process afresh.

2. Briefly stated, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. Vide Resolution dated 2.9.2016

(Annexure P-1), Shri Satwant Singh has been authorized to file the present writ petition. The petitioner is engaged in the business of supply, installation and commissioning of solar street lights, solar water heater, solar panel, grid connected/off grid, solar power plant, solar cookers, solar inverters, indoor and outdoor LED lights, solar charge controller, solar home lighting system, solar lantern and other solar appliances. Respondent No.2 issued a notice dated 18.11.2015 (Annexure P-2) inviting tenders for supply, installation and commissioning of solar chargers for existing inverters in the State of Haryana on annual rate contract under the scheme on 'Small Solar Power Packs'. Respondent No.2 issued corrigendum No.1 dated 9.12.2015 (Annexure P-3) wherein the technical parameters on Load Disconnect Voltage, Load re-connect Voltage, Battery Low Voltage Cut-off and self consumption at page 25 of the tender document were deleted. Another corrigendum No.2 dated 19.12.2015 (Annexure P-4) was issued by making modification at page 21 of the tender in the terms and condition No. 24(ii) by granting liberty to the bidder that the test report can be submitted till opening of the price bid subject to the condition that the bidder had submitted self attested scanned copy of the acknowledgment letter issued by the approved laboratory as receipt of their sample(s) for testing with bid and further modification with regard to page 26 was made modifying the parameters under indicators and that the controller should have indicators for showing solar charge and AC charging and mains through LCD display also. Thereafter, corrigendum No.3 dated 21.12.2015 (Annexure P-5) was issued by respondent No.2 extending the date and time for preparation and submission of online bids upto 1700 hours on 30.12.2015 and Part-I of the e-tenders was to be opened in the office of respondent No.2 on 31.12.2015 at 12.00 noon. The petitioner submitted its tender form (Annexure P-6) being eligible as they had also supplied the same items to respondent No.2 during the last purchase of the item in the financial year 2014-15 along with the acknowledgment receipt dated 29.12.2015 (Annexure P-7) in support of their claim that the petitioner had applied for testing of their item from the approved test laboratory as per the technical specifications of the tender, Annexure P-2. Respondent No.2 vide an email, Annexure P-8, asked the petitioner and other firms to submit the test report of Charge Controller on 10.2.2016 upto 9.30 AM as the meeting of the Standing Technical Committee was scheduled to be held on 10.2.2016 at 10.30 AM to evaluate the bids technically and to open the financial bid. In response thereto, the petitioner submitted its test report dated 12.1.2016 along with the letter (Annexure P-9 colly) of the item tested from National Institute of Solar Energy (NISE), an Autonomous Institute of Ministry of New & Renewable Energy, Gurgaon. The meeting of the Standing Technical Committee was held on 10.2.2016 and evaluated the bids of all the participants including the petitioner. An opportunity was given to all the participants to submit their latest test report as per the tender, Annexure P-2, upto 16.2.2016. The petitioner sent their item for second test report for testing self consumption to the ETDC, Mohali, an approved laboratory as per the tender notice. Thereafter, the petitioner submitted the test report vide an email dated 15.2.2016 (Annexure P-10) of their item for self consumption issued by the ETDC, Mohali along with the earlier test report dated 12.1.2016 issued by National Institute of Solar Energy, Gurgaon on 15.2.2016 at 7.40 PM to respondent No.2. Even the said report was submitted in hard copy along with a letter dated 16.2.2016 (Annexure P-11) to respondent No.2 on 17.2.2016 vide diary No. 5461. The petitioner had also submitted the earlier test report of ETDC, Mohali on 6.6.2013 in the shape of hard copy as per

DNIT Minimum Eligible Condition No. 5(ii)(a). Respondent No.2 vide email dated 18.2.2016 (Annexure P-12) informed the petitioner that the second meeting of the Standing Technical Committee was scheduled to be held on 19.2.2016 at 3.00 PM to evaluate the bid technically and to open the financial bid. On 19.2.2016, the second meeting of the Standing Technical Meeting was held and it was announced that if any bidder still have any supporting documents to submit, in support of their discrepancies as per the last meeting, they were granted time till 3.00 PM to complete the same. In the said meeting, it was found later that the petitioner's second lab test report was rejected on the ground that the same was from other lab and that on checking of the same, no such test report was found on e-procurement. The petitioner approached the respondents and apprised them that there was no such condition of submitting lab test report from the same lab, but to no effect. Accordingly, the petitioner moved a representation dated 16.5.2016 (Annexure P-13) to respondent No.1 with a copy to respondent No.2 for opening its financial bid for solar charge controller, however, no action was taken thereon. Thereafter, the petitioner filed CWP No. 15314 of 2016 and this Court vide order dated 1.8.2016 (Annexure P-14) disposed of the said writ petition with a direction to respondent No.2 to take a decision on the said writ petition within a period of seven days from the date of receipt of the certified copy of the order. The official respondents awarded rate contract to respondents No.3 to 5 on 8.8.2016 (Annexure P-15). When the order, Annexure P-14, was not complied with, the petitioner issued a contempt notice dated 16.8.2016 (Annexure P-16) to respondent No.2. Thereafter, respondent No.2 vide order dated 26.8.2016 (Annexure P-17) rejected the claim of the petitioner. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. Respondent No.2 while rejecting the representation of the petitioner vide order dated 26.8.2016 (Annexure P-17) had extensively dealt with each contention and has rejected the same with the following remarks:-

Sr. No.	The claim made by the representative of firm in the hearing and contentions of his representation dated 16.05.15	Office Replies
1.	M/s Andy Solar has participated in this tender being duly eligible as the firm has also supplied the same items to HAREDA during their last purchase during 2014-15 and this year their financial bid was not opened by HAREDA. The firm M/s Andy Solar had submitted the proof of this item under testing at NISE, Gurgaon as this year HAREDA has changed some technical requirements for solar charge controller tender. However, dated 21.12.15 (three days before last date) they have deleted all modifications done in the tender and issued corrigendum and allowed to submit test report before opening of financial bid with	The claim report of the firm that only difference from the year 2013-14 tender (not 2014-15 as claimed) as the ideal current should be less that 20 Amp is totally wrong. During 2013-14, HAREDA had floated tender for solar chargers of 225 watt capacity on 19.04.2013 whereas this tender was floated for different capacities of solar chargers i.e. of 300 watt and 500 watt having different technical specifications from 2013-14 tender in many respects, as detailed under:- "This tender of 300 watt and 500 watt has different specification in which efficiency of charge controller has been asked and it should be >95% @ 25C and self consumption current of charge controller should not be more than 20.0 mA. This tender also has additional operational parameters which were not in the 2013-14 tender."

	proof of sample submission in lab. The only difference remained for last year specification is that ideal current should be less than 20 Amp.	Again, the statement of the firm that the specifications were changed on 21.12.2015 three days before the last date is not correct. The fact is that the corrigendum for change of specification was issued on 09.12.15 not on 21.12.15. The corrigendum dated 21.12.2015 was for extension in submission of bids from 24.12.15 to 31.12.15. Vide corrigendum dated 09.12.15, the requirement of self consumption current of charge controller was relaxed from 4.0 mA to 20.0 mA (Not 20.0 Amp as alleged in the complaint.
2.	We have submitted the required test report before opening of financial bid from EDTC Mohali. But out financial bid was not opened and rejected on the ground that we had not submitted this report on line on partal of e-procurement and our first test report (whose proof was uploaded in tender) has more ideal current than required and we were told that our second test report would not be accepted. This is clear violation of terms and condition of this tender.	Initially in the tender document, it was required to upload the test report of the Charge Controller with the bid. Later on, on the request of the prospective bidders, extension in submission of test report was given through corrigendum dated 19.12.2015 up to opening of price and subject to the condition that bidder has submitted proof of receipt of sample with approved lab for testing. M/s Andy Solar had submitted scanned copy of acknowledgement receipt issued by NISE, Gwalpahari dated 29.12.15 at the time of submission of online bid and as such test report other than NISE lab was not acceptable. Accordingly, M/s Andy Solar Pvt. Ltd. on 08.02.2016 had submitted test

		report of its sample tested by NISE lab and test observation was that ideal current was 76.80 mA against tender specification of 20.0 mA (not 20.0 Amp as alleged in the complaint). Accordingly, to tender condition, the firm was eligible to submit test report and amendment/modification thereof issued by NISE lab only of the sample of which acknowledgement receipt was uploaded with the online bid. Therefore, any test report in whatsoever mode issued by another lab including ETDC Mohali has not relevance with this bid. Hence, the firm was considered technical ineligible due to not bring the clarification/self consumption current test report required from NISE. As such there was no violation of terms and conditions of tender and the charge is baseless.
3.	We have modified technical parameters of our product with changed specification of this year before the corrigendum for charge controller tender. Accordingly, submitted the tender with the proof of testing. We have submitted this latest test report of NISE, Gurgaon which have modified features. The matter discussed in 1st technical	The statement of the firm that "we had modified technical parameters of an product with changed specification of their product before the corrigendum" and be allowed to submit the test report with latest specifications is wrong and misleading since the corrigendum of change of specification was issued on 09.12.15 and M/s Andy Solar had submitted the sample in the NISE lab for testing on 29.12.15. Moreover, in this corrigendum the specification of idle

	committee meeting and it was informed that the ideal current is higher than the required ideal current required in the tender/ corrigendum. We have submitted that this test report is of charge controller have extra feature which was deleted by corrigendum. So we will submit test report as per latest specification of corrigendum. Accordingly, we are allowed to submit before 2nd meeting of Technical Committee.	current was relaxed from 4.0 mA to 20.0 mA. In the present tender, apart from above mentioned different technical specifications from the previous tender, vide corrigendum dated 09.12.15, the parameters of load disconnect voltage, load re-connect voltage, Battery low voltage, cut off were deleted and the cable size was amended from 2mm to 4mm. But, these changed parameters had absolutely no effect on self consumption current parameter of the charge controller because these features were related to inverters and battery. Moreover, out of the total fifteen firms participating in the tender, no one has raised any issue on the deleted parameters, as these were inelegant with the indented term. Hence, the allegations are factually wrong and misleading. Further, the representative of firm informed in the STC meeting held on 10.02.2016 that idle current and self consumption current are two different parameters. Though, the idle current and self consumption current parameters are the same even then the firm was given the opportunity to get the clarification/ test report from same lab i.e. NISE lab by 16.02.2016 in continuation of their

		previous test report issued by NISE lab. But the firm failed to submit any clarification from the NISE lab till opening of price bids in continuation to original test report issued by NISE lab and submitted by the firm on 08.02.2016 in which idle current was observed as 76.80 mA against required 20.0 mA (not 20.0 Amp as alleged in the complaint).
4.	Thereafter, we have submitted our last year test report from ETDC, Mohali. However, this report did not have ideal current measurement. For ideal current we have gone for testing from same lab i.e. ETDC lab as same was not asked last year and got test report as per corrigendum specification. Thereafter we had submitted the same to HAREDA before second STC. So we have submitted the test report (last year report and this year ideal current report) before 2nd technical committee meeting which was as per corrigendum specification and also on this test report we had supplied same item to HAREDA.	The statement of the firm is totally wrong and misleading since M/s Andy Solar had uploaded the proof to submission of sample in ISE, Gwalpahari lab dated 29.12.15 so the clarification/test report issued by NISE lab was only acceptable as per terms and conditions of DNIT. But, instead of clarification/test report from the NISE lab, the firm vide its mail dated 15.02.2016 had submitted the test report issued by ETDC lab dated 15.02.2016 for which the firm had submitted any proof for the testing of sample of the time of submission of online bid. The firm on 16.02.2016 also submitted old test report issued by ETDC lab dated 06.06.2016 (not relevant which was of 225 watt solar charger having different specification) to mislead the office. As it has already been clear above that test report of the sample submitted with NISE and issued by NISE lab,

		only could be considered as per the terms and conditions of DNIT, therefore, the test report of ETDC, Mohali submitted later on by the firm was totally irrelevant in the present tender. The said test report of ETDC lab was not accepted by STC in its meeting held on 19.02.2016 since it was not as per terms and conditions of DNIT and accordingly M/s Andy Solar was considered as technically ineligible.
5.	The other supplier M/s Su-Solar Tech submitted their last year test report from ETDC Mohali and got testing ideal current after rejection of this report in 1st meeting of technical committee. Their test report was combined and accepted in 2nd meeting.	The allegation of M/s Andy Solar for submission of last year test report is wrong and misleading. The fact is that M/s Su Solar Tech Systems Pvt. Ltd. Chandigarh had submitted proof for the sample submitted with the ETDC on 29.12.15 Mohali with his online bid. In reference to that, only the firm had submitted the test report on 09.02.2016 from the ETDC Mohali issued on 11.01.2016. In this test report, the measurement of self consumption current was not given. Accordingly, opportunity was given by STC to M/s Su-Solar Tech, as was given to M/s Andy Solar in the STC meeting held on 10.02.2016 to get the clarification/test report from same lab i.e. ETDC lab by 16.02.2016 in continuation of the previous test report. In response to above, M/s Su-Solar

		Tech had submitted the test report of charge controller on 15.02.2016 issued by ETDC Mohali lab dated 12.02.2016 for measurement of self consumption current (7.102 mA against the requirement of 20 mA) in continuation to their previous test report dated 09.02.2016 issued by ETDC Mohali lab. Since, this was as the terms and conditions of DNIT. Then, M/s Su Solar Tech was considered technical eligible by the STC.
6.	The test report submitted by M/s Andy Solar was not considered by HAREDA on the ground that firm has not submitted the test report on line. Whereas, other supplier M/s Ritika has also not submitted their document on line but their documents were accepted by hard copy.	As regard the documents of M/s Ritika Systems it is submitted that in the STC meeting held on 19.02.2016, the bidder M/s Ritika informed to the committee that they have uploaded the required documents i.e. Annual turnover, CST/VAT/TIN no supply capacity and bidder declaration etc. in commercial bid of portal and if these documents are not found there then his firm may be considered as ineligible. The request of the bidder was accepted by the committee. The committee, in the presence of all other bidders, in a transparent manner, opened his portal and found that the above said documents were uploaded and accordingly hard copies of documents are accepted. Simultaneously, the same opportunity was also given to M/s Andy Solar (as given to M/s Ritika) in the said meeting to show the uploaded

		document of test report of ETDC lab, as claimed by firm to be uploaded at the time of submission of bid also but the same was not found to be uploaded in his portal. Therefore, this statement of the firm is also wrong and misleading.

5. Respondent No.2 had considered each plea of the petitioner and had given detailed reasons for not accepting them as noticed above. The representative of the petitioner, Shri Satwant Singh (MD) was also given opportunity to rebut it but was unable to counter the said facts. Further, learned counsel for the petitioner could not point out any illegality or perversity in the order dated 26.8.2016 (Annexure P-17) passed by respondent No.2 warranting interference by this Court under Articles 226/227 of the Constitution of India.

6. Furthermore, the scope of judicial review in the matters of award of contracts was examined by the Apex Court in **BSN Joshi v. Nair Coal Services Ltd. 2006(11) SCALE 526**, wherein it was held the employer is the best judge to award contract and the court's interference in such matter should be minimal. The Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent. It was held as under:-

> "It may be true that a contract need not be given to the lowest tenderer but it is equally true that the employer is the best judge therefor, the same ordinarily being within its domain, court's interference in such matter should be minimal. The High Court's jurisdiction in such matters being limited in a case of this nature, the Court should

normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record."

7. The said view was reiterated by the Supreme Court in **Jagdish Mandal v. State of Orissa and others 2007(14) SCC 517.**

8. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

September 8, 2016 **(RAMENDRA JAIN)**
gbs **JUDGE**

Whether Speaking/Reasoned	**Yes/No**
Whether Reportable	**Yes**