

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 19135 of 2016

Date of Decision: 16.9.2016

Garg Acrylics Ltd., Jugiana, Ludhiana and another

....Petitioners.

Versus

State of Punjab and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARI PAL VERMA.**

PRESENT: Mr. Shekhar Verma, Advocate for the petitioners.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of mandamus directing respondents No.1 and 2 to take a decision in terms of the decision taken by the Council of Ministers in the Cabinet Meeting dated 25.2.2016 (Annexure P-4) and to direct respondent No.4 to strictly process the tenders through E-tendering process and as per the guidelines (Annexure P-10) approved by the Government of Punjab. Further, a writ of certiorari has been sought for quashing the communication dated 6.7.2016 issued by respondent No.3.

2. Put shortly, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The Council of Ministers, Punjab took a decision on 20.5.2015 to invite tenders for the construction and development of Grain Storage Silo Complex on Design, Build, Finance,

Operate and Transfer (DEFOT) for storage of foodgrain on public private partnership. On 20.8.2015, respondent No.3-Punjab State Warehousing Corporation invited tenders, Annexure P-1, for the aforesaid purpose for seven locations, i.e. Machiwara, Banga, Ajnala, Nurmahal, Sirhind, Patran and Jalalabad. In pursuance thereto, petitioner No.1 applied for the tender. The technical bids were opened on 8.9.2015 whereas the financial bids were opened on 16.9.2015. Petitioner No.1 was declared L-1 for two locations, i.e. Nurmahal and Jalalabad and was declared L-2 for three locations, namely, Ajnala, Banga and Patran. The petitioners deposited the total earnest money of ₹ 88,50,000/- for the aforesaid five locations. Vide communication dated 8.1.2016 (Annexure P-2), petitioner No.1 was asked to renew/extend its price bids for the said five locations who vide communication dated 9.1.2016 (Annexure P-3) confirmed that its bids shall be valid for another 60 days. The Council of Ministers took a decision dated 25.2.2016 (Annexure P-4) that in future, the tenders for the works would be invited by respondent No.2 through respondent No.4 and regarding the tenders already invited, it was decided that the concerned Ministers would sit together and take a joint decision. As per news item, Annexure P-5, a dispute had arisen between the two concerned Ministers. On the basis of the complaints and representations made by various contractors, a detailed report dated 1.3.2016 (Annexure P-6) was prepared by respondent No.3 and was submitted to the State Government. Vide communication dated 5.7.2016 (Annexure P-7), the petitioner extended its bid for another three months and informed respondent No.3 that the bids are valid till October, 2016. However, respondent No.3 vide letter dated 6.7.2016 (Annexure P-8) cancelled the tender process. On 18.7.2016, petitioner No.1 received

information under the Right to Information Act, 2005 that respondent No.3 acted in violation of the decision taken by the Council of Ministers and had cancelled the tender process without there being any direction from the concerned Ministers. Accordingly, petitioner No.1 submitted a representation dated 25.7.2016 (Annexure P-9) against the cancellation of the tender, but to no effect. As per the approved guidelines (Annexure P-10) for E-tendering, any tender involving work order more than ₹ 5 lacs has to be invited only through E-tendering process. Respondent No.4 issued fresh tender process, Annexure P-11 and the petitioner applied for the same vide communication dated 3.8.2016 (Annexure P-12) along with draft of ₹ 50,000/-. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that respondent No.3 had cancelled the tender process vide communication dated 6.7.2016 (Annexure P-8) in violation of the decision taken by the Council of Ministers on 25.2.2016 (Annexure P-4). It was further submitted that the cancellation of the tender process suffered from arbitrariness and malafides.

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

5. On 20.5.2015, the Council of Ministers, Punjab took a decision for inviting tenders for the construction and development of Grain Storage Silo Complex on Design, Build, Finance, Operate and Transfer (DEFOT) for storage of foodgrain on public private partnership. Accordingly, respondent No.3 invited tenders, Annexure P-1, for the aforesaid purpose for seven locations, i.e. Machiwara, Banga, Ajnala, Nurmahal, Sirhind, Patran and Jalalabad. Petitioner No.1 applied for the tender. The technical bids were opened on 8.9.2015 whereas the financial bids were opened on

16.9.2015. Petitioner No.1 was declared the lowest bidder (L-1) for Nurmahal and Jalalabad and was declared L-2 for three locations, namely, Ajnala, Banga and Patran. For the aforesaid five locations, the total earnest money of ₹ 88,50,000/- was deposited by the petitioners. In pursuance to the communication dated 8.1.2016 (Annexure P-2), petitioner No.1 renewed/extended its price bids for the said five locations for another 60 days. The Council of Ministers took a decision dated 25.2.2016 (Annexure P-4) that in future, the tenders for the works would be invited by respondent No.2 through respondent No.4 and regarding the tenders already invited, it was decided that the concerned Ministers would sit together and take a joint decision. The said decision is for the internal working of the department and no legally enforceable rights flow in favour of the petitioner therefrom. Petitioner No.1 further extended its price bid for another three months vide communication dated 5.7.2016 (Annexure P-7). However, respondent No.3 vide letter dated 6.7.2016 (Annexure P-8) cancelled the tender process. As per the approved guidelines (Annexure P-10) for E-tendering, any tender involving work order more than ₹ 5 lacs has to be invited only through E-tendering process. Respondent No.4 issued fresh tender process, Annexure P-11 and the petitioner applied for the same vide communication dated 3.8.2016 (Annexure P-12) along with draft of ₹ 50,000/-. Primarily, the cancellation of the earlier tender process has been questioned by the petitioner in this petition. It was within the domain of the respondents to have cancelled the tender process and to call the fresh tenders. No material was produced to show that there was any malafide in cancelling the tender process by the respondents or it was to benefit somebody. Once it is so, the cancellation of tender could not be faulted.

6. The Apex Court in **Maa Binda Express Carrier and another v. North East Frontier Railway and others'** (2014) 2 CHN 96 (SCC) with regard to the scope of judicial review in contractual matters, inter alia, noticed that the State authorities are required to be conceded greater latitude and their action is not open to judicial review unless it can be demonstrated to be malicious, arbitrary, unreasonable or misuse of its statutory powers. The relevant observations recorded therein are extracted as under:-

10. The scope of judicial review in contractual matters was further examined by this Court in **Tata Cellular v. Union of India (1994) 6 SCC 651**, **Raunaq International Ltd.'s case (supra)** and in **Jagdish Mandal v. State of Orissa and Ors. (2007) 14 SCC 517** besides several other decisions to which we need not refer.

11. In Michigan Rubber (India) Ltd. v. State of Karnataka and Ors. (2012) 8 SCC 216 the legal position on the subject was summed up after a comprehensive review and principles of law applicable to the process for judicial review identified in the following words: (SCC p. 229 paras 19-20)

“19. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the

State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no

person can claim fundamental right to carry on business with the Government.

20. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

- (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"; and
- (ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226."

12. As pointed out in the earlier part of this order the decision to cancel the tender process was in no way discriminatory or mala fide. On the contrary, if a contract had been awarded despite the deficiencies in the tender process serious questions touching the legality and propriety affecting the validity of the tender process would have arisen. In as much as the competent authority decided to cancel the tender process, it did not violate

any fundamental right of the appellant nor could the action of the respondent be termed unreasonable so as to warrant any interference from this Court. The Division Bench of the High Court was, in that view, perfectly justified in setting aside the order passed by the Single Judge and dismissing the writ petition.”

7. Learned counsel for the petitioner could not point out any illegality or perversity in the communication dated 6.7.2016 (Annexure P-8) issued by respondent No.3 cancelling the earlier bidding process so as to warrant interference by this Court under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

September 16, 2016
gbs

(HARI PAL VERMA)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes