

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 21249 of 2016

Date of Decision: 7.10.2016

Stellar Farms Pvt. Ltd., Chandigarh

....Petitioner.

Versus

State of Haryana and others

...Respondents.

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

PRESENT: Mr. Suman Jain, 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 dated 16.8.2016 (Annexure P-1) for allotment of tender qua PVC Pipes dia 160, dia 200 mm and dia 80 mm and allot the said tender in favour of the petitioner.

2. Put shortly, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. Respondent No.2 sent a tender notice dated 9.3.2016 (Annexure P-2) of PVC Corrugated and Perforated Pipes and fittings, filter material and nylon socks. In response thereto, the petitioner applied for PVC Corrugated and Perforated Pipes and fittings.

The petitioner submitted its bid for 15 items as mentioned in para 3(ii) of the writ petition and at the rates as mentioned in list, Annexure P-3 whereas the second bidder, i.e., respondent No.3 submitted its bid for 11 items. Respondent No.2 had opened the financial bids and the petitioner was the lowest bidder L-1 for the items, i.e. PVC Pipes dia 160, PVC Pipe dia 200 mm., PVC Pipes 294 mm. dia and PVC Pipes 80 mm. dia as it quoted gross price of ₹ 264.25, ₹ 410.50, ₹ 889.40 and ₹ 62.30, respectively. Respondent No.3 had quoted higher rates than the rates of the petitioner for the said items. Respondent No.2 informed the petitioner to attend the meeting of High Powered Purchase Committee on 14.7.2016 and to further reduce the rates without informing the rates quoted by respondent No.3 despite being asked by the petitioner. The petitioner offered the gross price of the items, namely, PVC Pipes dia 160, PVC Pipe dia 200 mm., PVC Pipes 294 mm. dia and PVC Pipes 80 mm. dia as ₹ 253.01, ₹ 392.81, ₹ 351.72 and ₹ 56.70, respectively which is discernible from the list, Annexure P-4. However, respondent No.2 vide letter dated 16.8.2016 (Annexure P-5) confirmed the contract to the petitioner only for PVC Corrugated Pipes 294 mm. dia. and had not allotted the other three items to it despite it being the lowest bidder. Thereafter, the petitioner was informed by respondent No.2 that respondent No.3 had quoted ₹ 230/- for PVC Pipes dia 160, ₹ 380/- for PVC Pipes dia 200 mm. and ₹ 58/- for PVC Pipes 80 mm. dia and the said rates being lower than the petitioner, respondent No.3 was allotted the tender vide allotment letter dated 16.8.2016 (Annexure P-1) for the said items. According to the petitioner, respondent No.2 had allotted the tender to respondent No.3 against the policy guidelines dated 16.6.2014

14.9.2016 (Annexure P-7) upon respondent No.2 for withdrawal of the contract issued to respondent No.3 and to allot the same to the petitioner. The petitioner received email from respondent No.2 that the response to the legal notice, Annexure P-7, would be sent shortly. However, no response has been received till date. Hence, the present writ petition.

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

4. The primary grievance of the petitioner in the present writ petition is to the allotment of tender of three items to respondent No.3. Respondent No. 2 after appreciation of offers of each tenderer had allotted the tenders for PVC Pipes dia 160 mm., PVC Pipes dia 200 mm. and PVC Pipes 80 mm. dia to respondent No. 3. It was within the domain of respondent No.2 to have allotted the tender to respondent No.3 in its best interest. Learned counsel for the petitioner could not show that the said allotment was made maliciously or there was any illegality or perversity in the letter of allotment dated 16.8.2016 (Annexure P-1) allotting the tender in favour of respondent No.3.

5. The scope of judicial review in the matters of award of contract 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.”

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. The Court should exercise judicial restraint unless illegality or arbitrariness on the part of the Government in these matters is apparent.

7. 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."

In view of the above, no ground for 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

October 7, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes