

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.1109 of 2016 &
CM No.1712 of 2016 in/and
CWP No.22439 of 2015 (O&M)
Date of decision : 11.02.2016.

M/s Kulwinder Singh Sehmbey

.....Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr. Raman Sharma, Advocate for the applicant-petitioner.
Mr. Gurinder Pal Singh, Addl. Advocate General, Punjab.
Ms. Sonia Madan, Advocate for applicant-respondent No.4.

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

CM No.1712 of 2016

Application is allowed as prayed for. Counter affidavit along with annexures P-16 to P-21 to the affidavit dated 7.1.2016 filed by respondents is taken on record.

CM No.1109 of 2016

Application is allowed as prayed for. Reply on behalf of respondent No.4 is taken on record.

CWP No.22439 of 2015

The petitioner has challenged the decision of the official-respondents for awarding the contract work in favour of respondent No.4 in respect of the construction at the site. The petitioner contends that his bid

was most competitive and the bid capacity of the tender was to be calculated in terms of clause 4.4 which reads as under.

“4.4 Bid Capacity:

The bid capacity of the prospective bidders will be calculated as under:

Assessed Available Bid Capacity = $(A \times N \times 2 - B)$

Where

A= Maximum value of Civil Engineering works executed in any one year (year means Financial year) during the last five years **(updated to the price level of the Financial year in which bids are received at a rate per year as indicated in the BDS)** taking into account the completed as well as works in progress.

N= Number of years prescribed for completion of the Project/Works for which these bids are being invited. (e.g. 7 months = 7/12 years)

B= Value **(updated to the price level of the year indicated in BDS)** of existing commitments (only allotted works) on the last date of submission of bids as per bidding document and on-going works to be completed during the period of completion of the Project/Works for which these bids are being invited.

Note: The statement showing the value of existing commitments and on-going works as well as the stipulated period of completion remaining for each of the works listed should be attached along with certificates duly signed by the Engineer-in Charge, not below the rank of an Executive Engineer or equivalent.”

2. The petitioner's claim is restricted to calculation of variable 'B'.

The petitioner in his tender submitted a table indicating the name and location as well as the nature of the work in respect of the contract awarded to him. In the column i.e. “*Stipulated date of completion*” each of the dates mentioned are within the period of the contract which is the subject matter of this writ petition. In one of the columns, he furnishes the value of the outstanding work as 'nil' in respect of four works. The official respondents ascertained the correctness of this assertion from the departments which have awarded the contract in favour of the petitioner. While the petitioner has indicated the value of the outstanding work as nil in respect of all the

four works, the official respondents' assertion is that the value of the work was far greater, running into crores of rupees.

3. Faced with this, the petitioner contended that the stipulated date for completion of work had been extended. We will assume that it is the extended period that is to be taken into consideration while calculating variable 'B'. It would make no difference. The petitioner especially, in a tender matter, must be held to his assertion in the tender documents submitted by him. The tender documents do not indicate that the date was extended. The column relating to “estimated completion date” does not indicate that the period of completion was extended by the parties that had awarded the said work. It is merely a statement of fact viz the estimated date of completion of those contracts. Even assuming that the contracts were extended, the official respondents cannot be faulted for having assessed the petitioner's bid only on the basis of the documents submitted by him.

3. The petition is accordingly dismissed.

4. The challenge to variable 'N' on the ground that it is arbitrary, need not to be considered in this writ petition. In view of the result of the challenge considering variable 'B', it would make no difference.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

11.2.2016

Manoj Bhutani

(ARUN PALLI)
JUDGE