

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 2163 of 2016 (O&M)
Date of Decision: 05.04.2016

Pardeep Kumar

..Petitioner

versus

Postgraduate Institute of Medical Education & Research (PGIMER) and
others

..Respondents

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

Present : Mr. Rahul Sharma-I, Advocate, for the petitioner.
Mr. Saurabh Gulia, Advocate, for respondent Nos.1 and 2.
Mr. Arshdeep Bhullar, Advocate, for respondent No.3.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner seeks a writ restraining respondent Nos.1 and 2 from granting respondent No.3 a licence to run a canteen on the 4th floor of the first respondent's hospital.

2. The first respondent's hospital invited tenders for the grant of licence to run a canteen on the 4th floor of its building. Clause 5-g of the notice inviting tenders reads as follows:-

“Pre-Qualification Documents:-

“5. The following pre-qualification documents are to be submitted along with the tender form in a separate envelope from the envelope containing the commercial bid. However, the tenders received without any of the following documents, may render the tender invalid and the commercial bid would not be opened:-

(a) to (f) ...xx xx xx xx

(g) The tenderer should have minimum two years experience (as a licensee/contractor of successful running of Canteen/Cafeteria (i.e. experience in cooking/preparation of food/snacks etc. Only Tea and Snacks as per approved items) in a similar reputed institution.”

3. The first respondent considered all the bidders to be eligible and accordingly opened their price bids. The petitioner contends that the third respondent was ineligible to bid for the contract. Respondent No.3 submitted the following certificate from the Indira Public Higher Secondary School at Jammu which is recognized and affiliated to the J&K State Board of School Education:-

“TO WHOM IT MAY CONCERN

It is certified that Mr. Nitin Sethi s/o Sh. Chaman Lal Sethi, R/o H.No. 374, 41-A, Chandigarh has been running Canteen in this institution for the last 2 years. The Canteen Contractor Mr. Nitin Sethi is a familiar person. He has been very successful managing the canteen affairs for about 450 students and approx. 50 teaching and non-teaching staff. He has been maintaining the near and clean atmosphere and the management is quietly satisfied with his efforts to run the canteen successfully.”

4. The petitioner with a view to ascertaining the authenticity of the certificate applied to the said school. The school issued the following certificate:-

“TO WHOM IT MAY CONCERN

This is to certify that Nitin Sethi s/o Sh. Chaman Lal Sethi has issued certificate on 24th July, 2015. This certificate is not as experienced certificate regarding for running Catering type Business or others. This certificate is issued only that he was working here like running canteen for students and staff for a period of one and half year approximately. The school has no concern with the other type of stamps which are appearing in the latter paid nor any concern with him.”

5. The second certificate obtained by the petitioner does not support the petitioner’s contention. The second sentence states that it does not certify the third respondent to be experienced in running “catering type

business or others”. The notice inviting tenders was, however, not for a catering business but to operate the canteen. The third sentence of the certificate in fact states that respondent No.3 was running a canteen for students and staff for about a year and half. The petitioner by his letter dated 22.01.2016 stated that the experience certificate issued by respondent No.3 was not authentic and as per his information there was no canteen in the school. By a further letter dated 28.01.2016 addressed to the first respondent, the petitioner reiterated that the third respondent was not eligible to submit a bid. He referred to his conversation with the Principal of the school and forwarded a copy of the second certificate of the school obtained by him.

6. By an interim order dated 03.02.2016 we clarified that pendency of this petition will not prevent respondent No.1 from considering the representation made by the petitioner regarding the validity of the third respondent’s eligibility certificate. We further granted the first respondent liberty even during the pendency of the writ petition to take any such decision as it desired in respect of the tender process.

7. The first respondent has affirmed its decision regarding the third respondent’s bid being eligible. The first respondent’s Tender cum Technical Evaluation Committee approved the third respondent’s tender. Upon enquiries, the Tender cum Technical Evaluation Committee rightly found the certificate of the school submitted by the third respondent to be genuine. The second certificate in fact refers to the first certificate dated 24.03.2015 (month is wrongly mentioned as July).

8. The second certificate issued by the school at the petitioner’s instance does not affect the third respondent’s eligibility. It is not contrary to the first respondent’s certificate issued by the school at the third respondent’s instance. The second certificate does not state that the

petitioner was not running a canteen. There is no inconsistency between the two certificates. The second certificate does not state that the petitioner had not been managing the canteen for 450 students and approximately 50 teaching and non-teaching staff. It in fact confirms that the first certificate certifies that the third respondent was running a canteen for the students and school for about a year and half.

9. It was then contended on behalf of the petitioner that the certificates establish that respondent No.3 does not possess the requisite qualification stipulated in clause 5(g) which requires a tenderer to have experience of running a canteen/cafeteria “in a similar reputed institution”. It was contended that the school that issued the certificate is not a similar reputed institution within the meaning of that expression in Clause 5(g). The third respondent’s experience is in respect of a school. The similarity required was not in respect of the activities of the two institutions. Indeed the work of running a canteen/cafeteria has nothing to do with the nature of the activity of the first respondent. The similarity required was with respect to the nature of the work for which the tender was invited, namely, running a canteen/cafeteria and experience of cooking/preparation of food/snacks. It is the similarity of the requirement and not the similarity of the activities of the institutions that is relevant.

10. Nor does the expression “similar reputed institution” require the institution/organization in which the bidder had the requisite experience to be as reputed as the first respondent. In other words, it does not require the reputation of other institutions to match the reputation of first respondent. Indeed there may not be many organizations that would be able to match the first respondent’s reputation.

11. Nor do we think that the first respondent while drafting the term had this in mind. So long as the institution is a reputed one that is sufficient. A view to the contrary would require an evaluation of the extent of reputation of each institution an exercise we do not think the first respondent ever intended undertaking. Whether the institution in which the bidder had the requisite experience or not, was an issue for the first respondent to decide. It has decided the same in third respondent’s favour. There is nothing that warrants interference with that decision.

12. The petition is, therefore, dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

05.04.2016
‘ravinder’

(ARUN PALLI)
JUDGE

To be referred to the reporter	Yes	√No.
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