

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-21850-2016

Date of decision: 21.10.2016

Gurnam Singh and Company

..... Petitioner

Versus

The Union of India and others

..... Respondents

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

PRESENT: Mr. AS Sethi, Advocate for the petitioner.

RAMENDRA JAIN, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner-firm has, *inter alia*, prayed for issuance of a writ of Certiorari for setting aside order/notice dated 06.10.2016 (Annexure P-6) scrapping the tender NIET No. 20/2015-16/MMS dated 29.03.2016 (Annexure P-3) and fresh tender notice dated 07.10.2016 (Annexure P-7) issued by the respondents in arbitrary, capricious and illegal manner. Further a writ of mandamus has been sought directing the respondents to award tender Annexure P-3 in favour of the petitioner.

2. Put pithily, the petitioner in pursuance to the notice inviting e-tender Annexure P-3 for the construction of exploratory and observation wells in Punjab, Haryana and Rajasthan, submitted its tender bid on 26.04.2016 before the last date of submission of tender i.e. 27.04.2016. The

technical bids were to be opened on 28.04.2016. The petitioner was found to be duly qualified since it fulfilled all the requirements of the rigorous qualifications prescribed in the tender document. Hence, the financial bid of the petitioner was opened online on 24.06.2016 and it was found that bid of the petitioner was lower than the estimated cost of the project as per the tender documents. However, without any justifiable reason, the respondents could not have avoided awarding tender in favour of the petitioner. Even the rates quoted by the petitioner were also made public by the respondents and were exposed to all the competitors in the field. Thereafter, the respondents for some extraneous considerations or without any reason kept pending the matter for an inordinate long period of time and asked the petitioner to extend the validity of its bid whereupon the petitioner extended the validity of its bid till 01.11.2016 vide letter dated 20.08.2016 (Annexure P-5). However, to utter surprise of the petitioner, the respondents have scrapped the aforesaid e-tender notice Annexure P-3 vide cancellation notice dated 06.10.2016 (Annexure P-6). Now, the respondents after scrapping the above tender have issued fresh tender notice dated 07.10.2016 (Annexure P-7) by drastically reducing and relaxing the eligibility qualifications, so that even the ineligible competitors of the petitioner may also participate with *mala fide* intention of denying the contract to the petitioner and awarding the same in favour of another party, who the respondents may find convenient.

3. Learned counsel for the petitioner contended that in response to the tender notice Annexure P-3, the technical bid of the petitioner was found technically responsive. Even the financial bid of the petitioner was also found lower than the estimated cost of the project, therefore, there was

no reason for the respondents to scarp the said tender notice and fresh notice inviting tenders Annexure P-7 by relaxing the eligibility qualifications was issued to deny the contract to the petitioner and awarding the same in favour of another party of their convenience. The action of the respondents of exposing the rates quoted by the petitioner or making the same public was also unfair, illegal and arbitrary. No reason was assigned before scrapping the tender notice Annexure P-3 and, thus, the entire process adopted by the respondents is clearly capriciously designed to harm the interest of the petitioner.

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

5. The Apex Court in **Maa Binda Express Carrier and another Vs. 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 Vs. Union of India (1994) 6 SCC 651, Raunaq International Ltd.'s case (supra)** and in **Jagdish Mandal Vs. 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. Vs. 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.”

6. Since the petitioner has not been able to point out that the order/notice Annexure P-6 issued by the respondents cancelling the tender notice was in any way discriminatory or *mala fide*, therefore, the same is not open to judicial review unless and until it can be demonstrated to be malicious, arbitrary, unreasonable or misuse of its powers, inasmuch as, it did not violate any fundamental right of the petitioner, nor could the action of the respondents be termed to be unreasonable so as to warrant any interference by this Court. The petitioner well within its right and wisdom can submit its bid against the fresh tender Annexure P-7 and, thus, from

any angle, no prejudice is caused to it.

7. In view of the above, there is no illegality or perversity in the impugned order/notice dated 06.10.2016 (Annexure P-6) scrapping the tender notice dated 29.03.2016 (Annexure P-3) and inviting fresh tender vide notice dated 07.10.2016 (Annexure P-7) issued by the respondents warranting any 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.

**(RAMENDRA JAIN)
JUDGE**

October 21, 2016
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**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No