

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 24436 of 2015

Date of decision: 11.07.2016

The Badhani Co-operative L&C Society Ltd.

..... Petitioner

Versus

State of Punjab and others

..... Respondents

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

PRESENT: Mr. Daljeet Singh Kahlon, Advocate for the petitioner.

Mr. Alok Jain, Addl. A.G., Punjab.

Mr. Neeraj Sharma, Advocate for respondents No. 2 and 3.

Mr. Rajeev Dev Sharma, Advocate for respondents No. 4 and 5.

RAMENDRA JAIN, J.

1. On 16.09.2015, the Municipal Corporation, Pathankot issued a notice (Annexure P-1) inviting e-Tender No. etender/28/MC/Pathankot/2015-16, for the development of different works as mentioned in list Nos. 1 to 71 for ₹ 311.95 lacs (approximately). Pursuant thereto, the petitioner-Society had applied online for tender No. 1, 6, 11, 39 and 47 mentioned in the tender list along with requisite documents and fees, complying with the mandatory conditions. On 07.10.2015, respondent Nos. 2 and 3 opened the technical bids of various tenderers including that of respondent Nos. 4 and 5. Stand of the petitioner-Society is that as per clause (h) of the conditions mentioned in the tender notice, though respondent Nos. 4 and 5 were not eligible, despite that they were allotted works against tender

mentioned in list Nos. 1, 11 and 47 illegally and arbitrarily, without

applying the guidelines, while rejecting the claim of the petitioner-Society. Hence, by way of instant petition filed under Articles 226/227 of the Constitution of India, the petitioner-Society has prayed for issuance of a writ in the nature of certiorari for setting aside tender No. 1, 11 and 47 mentioned in the tender notice inviting e-Tender No. tender/28/MC/Pathankot/2015-16 dated 16.09.2015 (Annexure P-1) being allotted to respondent Nos. 4 and 5 without following the due procedure prescribed in the notification. Further, a writ in the nature of prohibition has been sought restraining respondent Nos. 2 and 3 to not to allot the aforesaid tender Nos. 1, 11 and 47 to respondents No. 4 and 5.

2. Upon notice of motion having been issued, separate written statements have been filed by respondent Nos. 2 and 3 and respondent Nos. 4 and 5. They have controverted the averments of the petitioner and prayed for the dismissal of the writ petition.

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

4. It would be expedient to reproduce clause (h) of the notice inviting e-Tender which is the bone of contention in the present petition. It reads thus:-

“(h) The agency should submit all the documents such as PAN No. VAT No. & EPF No. Enlistment Record, any other required document Photocopy be submitted before _____ upto _____PM, Ownership of Hot Mix plant & paver machine in sealed envelope in the office of Commissioner, Municipal Corporation Pathankot. All the above

said documents can be uploaded with tender, failing which the tender will not be entertained.”

5. The respondent Nos. 2 and 3 in their written statement have clearly spelt out that there was no violation of clause (h) of the e-tender while granting the tender No. 1, 11 and 47 to respondent Nos. 4 and 5. The relevant reply in para 10 is in the following terms:-

“10. That in reply to the contents of Para No. 10 of the petition, it is submitted that there is no violation of clause (h) of the E-Tender Notice while granting the tender No. 1, 11 and 47 to the respondents no. 4 & 5. The respondents No. 4 & 5 had attached the documents at the time of applying for the work No. 1, 11 & 47 to the effect Letter dated 17.06.2013 of The Jalandhar Distt. Cooperative Labour & Construction Union Ltd. addressed to Public Information Officer, Regional Provident Fund Commissioner, Jalandhar. The Employees Provident Fund Organization vide letter dated 17.07.2013 supplied the information regarding relaxation of EPF to the Cooperative Societies in view of Section 16 (1) (a) of the Employees Provident Fund and Miscellaneous Act, 1952. The extract of information regarding the applicability of Section is reproduced as under:-

16. Act not to apply to certain establishments.-4 (1)

This act shall not apply-

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or

However, it is made clear that the clause (h) of the condition mentioned in the tender notice regarding EPF shall be applicable upon the establishment not exempted under the EPF Act because condition cannot override the statute. The tenders of respondent No. 4 and 5 were according opened and declared eligible for the allotment of the e-tender mentioned in the list 1, 11 & 47. The copy of letter dated 17.06.2013 is attached herewith as Annexure R-2/1 and Letter dated 17.07.2013 issued by the EPF Authority is attached herewith as Annexure P-2/2.”

6. Additionally, the respondent Nos. 2 and 3 have given the comparative rate chart of the petitioner-Society and respondent Nos. 4 and 5. The rates quoted by respondent Nos. 4 and 5 were lower than those of the petitioner-Society as would be discernible from the reply given in para 11 of the written statement of respondent Nos. 2 and 3 which is as under:-

“11. That in reply to the contents of Para No. 11 of petition it is submitted that the tenders of respondent no. 4 & 5 were accepted because the rate quoted by the petitioner society in price bid for Group No. 1 for Rs.2.27 Lacs is

4% below and rate quoted by the respondent No. 5 is 5% below and rate of respondent No. 5 is less than the petitioner. Similarly for Group No. 11 the rate quoted by the petitioner society in price bid for Group No. 11 for Rs.2.90 Lacs is 1.5% below and rate quoted by the respondent No. 4 is 5% below and rate of respondent No. 4 is less than the petitioner same as, for Group No. 47 the rate quoted by the petitioner society in price bid for Group No. 47 for Rs. 3.63 Lacs is 4% below and rate quoted by the respondent No. 4 is 5% below and rate of respondent No. 4 is less than the petitioner. The rate quoted by the petitioner in price bid are on higher side than the rate quoted by respondent No. 4 & 5. Due to the less rate quoted by respondent No. 4 & 5 in price bid they are entitled for getting the work No. 1, 11 & 47. The Copy of price bids annexure R-2/3 to R-2/9 are attached herewith.”

7. In view of the above, no justification for quashing the award of contract to respondent Nos. 4 and 5 in respect of tender No. 1, 11 and 47 is made out. Consequently, the writ petition is dismissed.

**(RAMENDRA JAIN)
JUDGE**

July 11, 2016
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**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No