

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 23778 of 2016

DATE OF DECISION : 18.11.2016

Ashok Kumar Tayal

.... PETITIONER

Versus

State of Punjab and others

..... RESPONDENTS

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

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. K.B.S. Mann, Advocate,
for the petitioner.

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RAMENDRA JAIN, J.

1. Baba Farid University of Health Sciences, Faridkot (respondent No.2 herein) issued short term e-tender notice dated 01.07.2016 (Annexure P-1) inviting bids from the individuals/Professional Firms/Agencies for operation of Pharmacy Store at Advanced Cancer Institute, Industrial Growth Centre, Bathinda, for a period upto 31.12.2018. The last date and time of submission of e-tender documents was 13.07.2016 upto 1.30 PM and the e-tender documents so submitted were to be opened on 13.07.2016 at 1.30 PM. The petitioner being eligible submitted e-tender documents on 12.07.2016 along with requisite earnest money and tender fees for allotment of the operation of Pharmacy shop as specified in the tender notice. He also submitted his affidavit that he was the sole proprietor of Friends Medical Agencies, Mansa, and was not debarred or black listed by any department of Union/State Government. The said tender documents were received by

respondent No.2 on 12.07.2016, vide acknowledgment dated 12.07.2016 (Annexure P-3). However, on 16.09.2016, the petitioner received notice through e-mail (Annexure P-4) from respondent No.2 informing that his bid was disqualified on account of some administrative and legal reasons. On enquiry, the petitioner came to know that his bid was disqualified for the tender due to pendency of legal case against him and his firm. Accordingly, the petitioner submitted a representation dated 12.10.2016 (Annexure P-5) to respondent Nos.2 and 3 along with his duly sworn affidavit, clarifying that no civil or criminal case was filed or pending against him or his firm, but respondent Nos. 2 and 3 did not take any action on his representation.

2. Aggrieved by the said action of respondent Nos. 2 and 3, the petitioner has filed this writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the notice dated 16.09.2016 (Annexure P-4) disqualifying the petitioner to take part in the tender process. Further, issuance of a writ in the nature of mandamus has been sought to direct respondent Nos. 2 and 3 to allow the petitioner to take part in the tender process.

3. Learned counsel for the petitioner contended that the petitioner has been wrongly and illegally disqualified from participating in the tender process for operation of a Pharmacy store at Advanced Cancer Institute, Industrial Growth Centre, Bathinda, on administrative and legal reasons. Respondent Nos. 2 and 3 have turned deaf ears to the representation dated 12.10.2016 (Annexure P-5) submitted by the petitioner clarifying his stand that no civil or criminal case was pending against him.

4. After giving our thoughtful consideration to the contentions of

learned counsel for the petitioner, we do not find any merit in the instant writ petition, because the matter in dispute is contractual in nature. The Apex Court in **Jagdish Mandal v. State of Haryana and others, (2007) 14 SCC 517** has held that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluation of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. Tenderer or contractor with a grievance can always seek damages in a civil court. The court should exercise judicial restraint unless illegality or arbitrariness on the part of the Government in these matters is apparent.

5. In view of the aforesaid settled proposition of law, 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 instant petition, the same is hereby dismissed.

6. Registry is directed to bring this order to the notice of respondent Nos. 2 and 3, so as to avoid any concealment of this order by the petitioner.

(RAMENDRA JAIN)
JUDGE

November 18, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes