

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-26139-2016

Date of decision: 17.12.2016

M/s Sanna Enterprises

..... Petitioner

Versus

State of Punjab and another

..... Respondents

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

PRESENT: Mr. Suvineet Sharma, Advocate for the petitioner.

RAMENDRA JAIN, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has, *inter alia*, prayed for issuance of a writ of Certiorari for setting aside the eligibility criteria stipulated under Clause 11 of the terms and condition of E-tender Notice dated 30.11.2016 (Annexure P-2), being illegal, arbitrary and discriminatory in nature.

2. Put pithily, in pursuance to the E-tender Notice dated 30.11.2016 (Annexure P-2), the petitioner submitted its technical bid as well as the financial bid vide tender form (Annexure P-3 Colly) along with requisite documents. However, the technical bid of the petitioner was disqualified vide notice dated 13.12.2016 (Annexure P-4) received through e-mail, on account of non-fulfillment of terms and conditions of the tender

form as per Clause 11, without considering the audited balance sheet of the

petitioner for the current and latest financial year 2015-2016. Hence the present writ petition.

3. For brevity, Clause 11 of E-tender Notice Annexure P-2, reads thus:-

“11) The tenderers must have secured orders & supplied at least **3500 MTs** of pulses each year to Central Govt. / State Govt. or any Public Sector Undertaking in two out of last three financial years i.e. **2012-12, 2013-14 & 2014-15.**

However, supplies to cooperative societies/sectors will not be recognizable for this purpose.”

4. After hearing learned counsel for the petitioner and perusing the contents of the petition, we do not find any merit in the present writ petition, because there is no unreasonableness in the aforesaid Clause No. 11 of the tender notice Annexure P-2. In our considered opinion, such type of conditions are imposed to see the financial viability of the bidder as to whether the bidder would be able to complete the contract or not and consequently, Clause No. 11 in the tender notice (Annexure P-2) cannot be said to be unreasonable or unjustified. The petitioner has failed to fulfill the terms and conditions of the aforesaid clause. Moreover, the matter in dispute is contractual in nature. The power of judicial review cannot be invoked to decide the contractual disputes. Even otherwise, the Apex Court in **Jagdish Mandal Vs. State of Orissa and others, 2007(14) SCC 517** had held that the contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award

of contract is bona fide and is in public interest, courts will not in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

5. 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 writ petition, the same is hereby dismissed.

6. Registry is directed to bring this order to the notice of the respondents.

**(RAMENDRA JAIN)
JUDGE**

December 17, 2016
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**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No