

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 3508 of 2016
Date of Decision: 19.02.2016

M/s High Tech. Security Services

..Petitioner

Versus

State of Haryana and others

..Respondents

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

Present : Mr. Karan Singh, Advocate, for the petitioner.
Mr. Rahul Dev Singh, Deputy Advocate General, Haryana,
for respondent No.1.
Mr. Rajesh Gaur, Advocate, for respondent Nos.2 and 3.
Mr. Vivek Khatri, Advocate for private respondent i.e.
M/s Sawan Security Agency

S.J.VAZIFDAR, ACTING CHIEF JUSTICE (oral)

The petitioners have challenged the respondents' decision to terminate the contract entered into with them and to award the contract in favour of another private party, namely, M/s Sawan Security Agency. M/s Sawan Security Agency in fact appeared today although they are not impleaded as a party.

2. The respondents had issued a short term notice re-inviting e-tender. The e-tender was in respect of supply of certain personnel(s) such as Head Clerks, Data Entry Operator cum Clerks, Drivers, Chowkidars-cum-Security Guards, Helper-cum-Peons, Carpenter(s), Electricians, Plumbers etc. Clause 12 of the terms and conditions of short term notice re-inviting e-tender reads as under:-

“12. Service charges @ 2% or less quoted by any agency for providing manpower will be rejected.”

3. Petitioner's bid service charges at 3% whereas M/s Sawan Security Agency's bid service charges at 2.002%. The question is whether the bid submitted by M/s Sawan Security Agency ought to be considered as

having bid service charges at 2% as contended by the petitioners or at 2.002% as submitted by the respondents M/s Sawan Security Agency.

4. Initially the Tender Deciding Committee sought a clarification in this regard from the Government. The Government advised the Administrative Department to decide the matter itself. Accordingly, the competent authority considered M/s Sawan Security Agency as having bid service charges at 2% and accordingly rejected their bid as it was not in compliance with clause 12 set out earlier. Subsequently, the Government itself took a decision purportedly based on legal advice received by it and directed that the bid of 2.002% service charge was higher than 2% and therefore, considered M/s Sawan Security Agency's bid to be responsive.

5. The decision of the respondents suffers from no infirmity. Rounding off a fraction may be resorted to where it is not clear the rounded figure on which side of the fraction must be taken to ascertain whether the minimum qualifying mark has been obtained or not. We will presume that where the criteria stipulates a mark without indicating that it is the minimum mark rounding off may or even ought to be resorted to. Thus, for instance if the eligibility criterion requires 50% in the written test and a candidate secures 49.50%, he would be considered as having met the criterion by rounding off to the higher number viz. 50%. If on the other hand, the fraction is less than 0.50 it would be rounded off to the lower number of 49%. However, where it is possible with arithmetic precision to ascertain whether or not the stipulated criterion is met the question of rounding off does not arise. The percentage was in respect of the service charge. The service charges are qua the entire charges. The same can easily be computed with mathematical precision. Accordingly, there was no reason for having considered the bid of 2.002% to be only 2%. This is not a case where a

rounding off would be justified or even necessary. The monetary value of service charge at 2.002% is as easily computed as the monetary value of service charge at 2% or any other percentage. There is nothing in clause 12 that suggests that even a marginal amount over 2% towards the service charge cannot be considered to be a valid bid.

6. M/s Sawan Security Agency's bid was initially wrongly considered ineligible. We appreciate that there is no fault on the part of the petitioners. However, there is no reason why M/s Sawan Security Agency's bid should stand rejected although it is valid.

7. The petitioners, therefore, must be relegated to a claim for damages against the respondents. We are informed that there is an arbitration clause. The petitioners are always at liberty to invoke the same.

8. However, in the facts and circumstances of this case, it is only fair that the petitioners are permitted to continue till the end of this month so as to avoid administrative difficulties on the petitioners' part.

9. In the circumstances, the petition is dismissed. The petitioners would be entitled to adopt appropriate proceedings for claiming damages from the respondents. Needless to add that the contentions of the parties including regarding the maintainability of such a claim are kept open. The petitioners contract shall, however, be permitted to continue upto and including 29th February, 2016.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

19.02.2016
'ravinder'

(ARUN PALLI)
JUDGE

To be referred to the reporter	√Yes	No.
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