

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 5265 of 2016 (O&M)

Date of Decision: 30.05.2016

Rajowal Cooperative Labour & Construction Society Ltd. and others
..Petitioners

versus

Municipal Corporation, Ludhiana and others ..Respondents

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

Present : Mr. D.V.Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate for the petitioners.
Mr. Ashok Bajaj, Advocate, for Municipal Corporation, Ludhiana.
Mr. BBS Sobti, Advocate, for respondent Nos.3 to 29.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE:

The three petitioners are Labour and Construction Societies. They are primary societies and are members of the District Cooperative Labour & Construction Unions which in turn are the members of the Punjab State Federation of Cooperative Labour & Construction Union Ltd. Chandigarh. Respondent No.2 is the Superintending Engineer (B&R), Municipal Corporation of respondent No.1-Municipal Corporation, Ludhiana. The others are the private respondents.

2. The petitioners seek a writ of certiorari to quash the clubbing of various items of works and a writ of mandamus directing the official respondents to call the tenders without clubbing the works so as to increase the amount of tender over Rs. 40 lacs.

3. The State of Punjab issued a notification dated 02.10.2014, clause-1 whereof reads as under:-

“In continuation of Punjab Government Notification No. 76/52/79-C.1(5) 5024 dated 11.07.2011, the Governor of Punjab is pleased to extend the below noted concessions to Cooperative Labour and Construction Societies upto 13.08.2019.

1. All the unskilled works upto any amount and all the skilled works upto to the value of ₹ 40 lacs be given to only these societies at the ceiling rates fixed by the concerned Superintending Engineers of every branch of the PWD through tenders but the works be given to them upto their competency to undertake the work. In case, these societies do not give tenders and accept the work within the fixed ceiling rates, then such works be got done by inviting open tenders from the contractors and the societies. Tenders of skilled works upto the amount of Rs.40 lacs should be called through E-tendering system and in those tenders, the completion will be amongst Cooperative Labour and Construction Societies only.”

4. The petitioners contend that on account of clubbing of various works, the societies such as theirs are deprived the benefit of the notification dated 02.10.2014. If the works are not clubbed, they would get the preferential rights in respect of all the unskilled works upto any amount and all the skilled works upto the value of Rs. 40 lacs. The validity of the notification has been upheld. We proceed on the basis that the notification is valid.

5. The official respondents invited e-tenders on percentage basis on single bid system for construction of metalled roads and streets in various areas and localities. The estimated amount in respect of each road is

specified. Some of the estimates are over Rs. 40 lacs and some under Rs. 40 lacs.

6. The petitioners grievance is that by clubbing the works of the value less than Rs. 40 lacs, the value of the tender is over Rs. 40 lacs and on account thereof the societies such as the petitioners are deprived the benefit of the said notification. They contend that separate tenders ought to be invited in respect of each of the segments/portions of the roads to be constructed such that the value of each tender is less than Rs.40 lacs. Labour Federation Punjab i.e. Apex body by a letter dated 23.02.2016 addressed to the official respondents raised grievances to this effect and requested the official respondents to issue a direction to modify the tenders accordingly. A reminder to this effect dated 08.03.2016 was also addressed.

By a further letter dated 15.03.2016, Labour Federation, Punjab reiterated the above contentions and alleged that thousands of members of the societies such as those of the petitioners would be rendered unemployed.

7. It is for the party inviting tenders to stipulate the terms and conditions of the tender. Interference by the Courts in this regard is not warranted unless the terms and conditions are arbitrary or unreasonable. Further it is for the party inviting tenders to decide the mode and manner of carrying out the work. Decisions such as these involve commercial, financial and administrative considerations which are best left to the party inviting tenders. It is for them to decide the most desirable manner in which the work ought to be carried out. If the decision is arbitrary, unfair and malafide against a party or only with a view to benefiting a particular party without reference to the requirements of the parties inviting tenders, interference by the Court in its extra ordinary writ jurisdiction under Article

226 of the Constitution of India would be warranted. If the Court is satisfied that a decision to carry out the work in a particular manner is bonafide, it would not interfere with a decision and substitute it with what it perceives to be a better option.

8. Two questions, therefore, arise in this case. The first is whether in view of the said notification dated 02.10.2014 it was permissible for the official respondents to invite tenders by clubbing various items of works or not. If the answer to this question is in the affirmative, the next question would be whether in the facts and circumstances of the present case, the decision to club the works was bonafide or not.

9. The notification issued by the cooperative department of the Government of Punjab indeed confers benefits upon the labour and construction societies in respect of the unskilled works upto any amount and in respect of all the skilled works upto an amount of Rs. 40 lacs. The notification, however, does not curtail the power and discretion of all the agencies and instrumentalities of the State of Punjab as to the mode and manner of carrying out the works. It does not prohibit them from clubbing various items of works. The first sentence in paragraph-1 of the notification only stipulates the benefits in cases where unskilled works are to be carried out and the cases where skilled works upto the amount of Rs.40 lacs are to be carried out. A view to the contrary would require the State of Punjab and its agencies and instrumentalities to carry out all the works by splitting them into works of the value of less than Rs.40 lacs each and inviting tenders accordingly. The plain language of paragraph-1 does not indicate such an intention. It contemplates the works of different values above Rs.40 lacs and less than Rs.40 lacs. If the intention was as suggested on behalf of the

petitioners, the language of the notification and in particular paragraph-1 thereof would have been entirely different. It would have been provided expressly that the State of Punjab must enter into separate contracts each of the value of less than Rs.40 lacs.

10. The notification dated 02.10.2014, therefore, does not prohibit the official respondents from inviting tenders of the value of more than ₹ 40 lacs. It does not prevent the official respondents from clubbing the works.

11. The next question is whether in the present case the tender has been issued malafide with a view to benefiting certain contractors and/or with a view to depriving the petitioners and other such societies the benefit of the notification dated 02.10.2014.

12. The official respondents have filed an affidavit in reply justifying their having called for tenders in the manner in which they did. Their case is as follows:-

The said development works are to be executed under the “Punjab Urban Development Mission” and are funded by the Punjab Municipal Infrastructure Development Company (PMIDC). The Technical Advisor to the Government by a Memo dated 10th April, 2013 had recommended the consolidation of the works to the Department of the Local Government with a view to avoiding documentation being duplicated and the burden of separate supervision. It was recommended that all building and road related works to be executed in a ward may be clubbed together. The perception was that this would also increase the responsibility of the engineers, the Executive staff and the contractors. The city has 75 wards and for providing improved civic services, the Engineering wing has been divided into 16 sub divisions. An Assistant Engineer has been assigned the

responsibility of looking after the development and maintenance works of four or five wards. The assessment is that by clubbing the works at the ward level and the execution thereof by the same contractor instead of multiple contractors would ensure uniformity of the nature and quality of work in the entire ward. Upon a survey of the estimates for 357 different development works and the assessment of the estimates submitted to the Technical Advisor of the Government for verification, it was considered admissible to club similar nature of works at the ward level so that only contractors with requisite capacity would submit their tenders. This it was believed would also ensure timely completion of the work. It is in these circumstances that as per Government policy dated 10th April, 2013, the works of similar nature were clubbed at the wards level and the notice inviting the bids dated 04.02.2016 was issued.

13. The explanation for the decision to club these works appears to be reasonable and justifiable. The official respondents are the best judges of the manner in which the works would be most suitably and efficiently executed. They avoided the option to fragment these works into multiple contracts. It is obvious that the documentation would increase substantially. Separate documentation would have been entered into in respect of each contract. This would obviously multiply costs-legal and administrative. It is not unknown that in some, if not in many contracts disputes and differences arise between the parties. More the contracts the larger the number of proceedings. The pre-litigation efforts are also multiplied. Moreover, when one engineer officer is given the responsibility of supervising the works, it may well be more convenient and efficient for the organization itself. It would also be easier for the engineers/supervisors to deal with one

contractor rather than several contractors in respect of the same area. There are only some of the advantages in consolidating such works. There would be many more.

14. It is not possible to term the decision arbitrary or absurd. It is logical. Nor we do find any malafides in the decision.

15. Our attention has not been invited to any statutory provision or any policy, circular or notification that prevents the official respondents from taking this course of action.

16. The petition is, therefore, dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

30.05.2016
'ravinder'

(ARUN PALLI)
JUDGE