

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

**CWP No.5517 of 2016
Date of Decision : 31.05.2016.**

M/s Ding Man Power and Securities Services Private Ltd.

.....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. Prateek Pandit, Advocate for the petitioner.

Mr. Deepak Balyan, Addl. A.G. Haryana.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE (ORAL):

The petitioner has challenged the fresh tender process initiated by a notice inviting tenders dated 20.11.2015 issued by respondent No.2, Municipal Corporation, Rohtak and the award of the work pursuant thereto, in favour of respondent No. 3 - M/s Parvati Enterprises.

2. Respondent No.2 had initially issued a notice inviting tenders dated 7.10.2015. That tender process however, was scrapped as only one bid was received. Therefore, a fresh tender process was initiated by a notice inviting tender dated 6.11.2015. There were two bidders-the petitioner and respondent No.3. The petitioner states that it bid ₹17.69 lacs per month. The third respondent's bid had not been disclosed. Respondent No.2 states that since there were only two bidders, they decided to scrap this tender

process as well and to invite fresh bids. Respondent No.2, therefore, did not open the financial bids.

3. Respondent No.2 states that on 19.11.2015, they recalled the second tender process and decided to invite fresh tenders. The petitioner was not informed the same. On 20.11.2015, a fresh notice inviting tenders was issued. There were three bidders. Respondent No.3, it is alleged being the lowest bidder, was awarded the contract for a sum of ₹39.90 lacs per month.

4. Respondent No.2 states in the affidavit in reply, that the second tender process was abandoned as there were only two bidders and that they “after considering the welfare of the public at large and also considering the interest of the Municipal Corporation, Rohtak” decided to invite fresh bids for the third time. Curiously, however, this endeavour would result in a loss to respondent No.2, to the extent of about ₹5.09 crores.

5. There is no explanation, whatsoever, as to why and how the decision was taken to scrap the second tender process. There is nothing to indicate that any financial implications were considered. There is no policy or circular which required respondent No.2 to call for fresh tenders if only two bids are received. The third respondent has neither appeared today nor filed any affidavit in reply/written statement. We have no hesitation, therefore, in setting aside the third tender process especially in view of the fact that the petitioner has agreed and undertaken to accept the contract if awarded to it at the rate quoted in the second tender process as that would involve a saving of over ₹5 crores for respondent No.2.

6. The official respondents shall now evaluate the tenders submitted by the petitioner and the third respondent pursuant to the second tender process and award the contract to the most competitive bidder latest by 7.6.2016. If the bids cannot be opened for any reason the petitioner's statement that it bid a sum of ₹17.69 lacs ought to be accepted. The probability is that the statement is correct for if the petitioner wanted to take advantage of the disclosure of the bids received in the third tender process it would have alleged that its bid was only marginally less than ₹39.90 lacs which is what respondent No.3 bid in the third tender process.

7. The petition is, therefore, disposed of by directing respondent No.3 to open the financial bids if the petitioner and respondent No.3 submitted in respect of the second tender process, evaluate the same and award the contract accordingly.

8. Copy of this order be furnished to the learned counsel for the petitioner under the signatures of Bench Secretary.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

31.05.2016
Manoj Bhutani

(ARUN PALLI)
JUDGE