

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

213

CWP-9601-2016

Date of Decision:02.06.2016

M/s Yadav Builders

....petitioner

Versus

State of Punjab and others

.....respondents

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

- 1. Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Navdeep Chhbara, Advocate
for the petitioner

Mr.Alok Jain, Addl.AG Punjab

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

The petitioner has challenged the rejection of the bid on the ground that it is non-responsive. It is not necessary to consider all the submissions on behalf of the respondents as the petition is liable to be dismissed on the basis of one infirmity alone.

2. The notice inviting tenders contained the following provisions:

4.2 All bidders shall attach the following information and documents with their online Technical Bid along with the information required as per Section 2:

xx xx xx xx xx xx

B. For Works above Rs.5.00 crores:

xx xx xx x x xx xx xx

(b) List of similar works completed during previous years duly supported with performance certificate from authority for whom work has been completed and information shall include name of work, estimated cost, date of start and date of completion.

4.3 *To qualify for award of the contract, each bidder in its name should have:*

xx xx xx xx xx xx xx xx

B. For Works above Rs. 5.00 crores:

xx xx xx xx xx xx xx

(b) satisfactorily completed in the last five(5) years ending last day of month previous to the one in which bids are invited as a prime Contractor (or as a nominated sub Contractor, where the sub contract involved execution of all main items of work described in the bid document, provided further that all other qualification criteria are satisfied)

One similar work (as defined in the Bid Data Sheet) of value not less than 80% of the estimated cost of work.

3. The petitioner claims to have completed one similar work in the last five years. Under Clause 4.2 (b), the petitioner was bound to furnish the list of similar works completed during the previous years duly supported by a performance certificate from the authority for whom the work had been completed. In other words, the clause did not permit self certification. The petitioner had relied upon a certificate issued by the respondents themselves in respect of two works. The works referred to in the certificates are Earth Work, GSB, Wet Mix, Tack Coat and SDBC. The question is whether

these works fall within the expression “*similar works*” in the above clause.

4. The expression “similar works” is defined in the bid documents to be “CC flooring”. The certificate relied upon by the petitioner does not describe the work to be CC flooring. The petitioner contends that a major portion of the work pertains to CC flooring. The respondents contend otherwise. Admittedly, the contract in respect of which the certificate is given is not of CC flooring. It is not possible therefore in this writ petition to accept the petitioner's contention that the certificate pertains to the work of CC flooring.

5. The petitioner then relies upon Clause 22.3 (ii) of the notice inviting tender, which entitles the respondents to seek a clarification. The respondents are not bound to seek a clarification. This is clear from the words “if necessary” in the clause.

6. If the petitioner contends that the certificate in fact involves CC work of the requisite value, evidence would be required to establish the same. The petitioner, in that event, may adopt appropriate proceedings for compensation or damages.

7. The petition is accordingly disposed of.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

June 02, 2016
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