
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Writ Petition No.9622 of 2016
Date of decision: August 03, 2016

GNS Constructions (I) Computerised Hot Mix PlantPetitioner
versus

Chief Engineer (Civil), Directorate Local Government, Punjab and
others ...Respondents

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

Present: Mr. Karan Singla, Advocate for the petitioner.

Mr. Rajinder Goyal, Addl. A.G., Punjab.

AJAY KUMAR MITTAL, J. (Oral)

1. The challenge in this petition filed under Article 226 of the Constitution of India is to quash Clause 14 of the General terms and Conditions for Tenders under PUD Mission (Annexure P-3) affixed with Notice inviting e-tenders No.370/SE(D)/TIC dated 22.04.2016 and 371/SE(D)/TIC dated 25.04.2016 (Annexure P-2) (colly.) issued by respondent No.3.

2. It would be expedient to extract Clause 14 of the General Terms and Conditions for tenders under Punjab Urban Missions (Annexure P-3) which reads thus:

“14. For BM & PC work, tender should be quoted by owner of Hot Mix Plant located within 35 km from the centre of the city i.e. Jagraon Bridge and the agency shall upload & affidavit (duly attested) regarding the ownership and distance of the plant from Jagraon bridge. The tender quoted fro BM & PC works without HMP owner shall be rejected and action shall be taken against the contractor for misrepresentation.”

3. The ground raised for assailing Clause No.14 as mentioned in Annexure P-3 is that the respondent No.3 in the said clause has specifically prescribed that the applicant should be the owner of Hot Mix Plant located within 35 kms from the centre of the city i.e. Jagraon Bridge which is totally arbitrary and discriminatory. It was urged that prescribing of such a limit was irrational and thus violative of Article 14 of the Constitution of India. The *locus standi* of the petitioner to challenge the said Clause was maintained by contending that the distance from Jagraon Bridge to that of the plant site of the petitioner is approximately 41 kms (as per para No.5 of the reply filed on behalf of respondents No.2 and 3) and the petitioner has, thus, been ousted from applying under the said notice inviting tender. On the other hand, learned counsel for the State, supported the action of the respondents.

4. After hearing learned counsel for the parties, we do not find any merit in the petition.

5. The Apex Court in ***Maa Binda Express Carrier and another vs. North East Frontier Railway and others'* (2014) 2 CHN 96 (SC)** with regard to the scope of judicial review in contractual matters had, *inter alia*, noticed that for formulating conditions of a tender document and awarding a contract, the State authorities are required to be conceded greater latitude and their action is not open to judicial review unless it can be demonstrated to be malicious, arbitrary, unreasonable or misuse of its statutory powers. The relevant observation recorded therein are extracted as under:-

“10. The scope of judicial review in contractual matters was further examined by this Court in [Tata Cellular v. Union of India](#) Raunaq (1994) 6 SCC 651, Raunaq International Ltd.'s case (*supra*) and in [Jagdish Mandal v. State of Orissa and Ors.](#) (2007)

14 SCC 517 besides several other decisions to which we need not refer.

11. In Michigan Rubber (India) Ltd. v. State of Karnataka and Ors. (2012) 8 SCC 216 the legal position on the subject was summed up after a comprehensive review and principles of law applicable to the process for judicial review identified in the following words: (SCC p. 229, paras 23-24)

“23. From the above decisions, the following principles emerge:

(a) the basic requirement of [Article 14](#) is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

20. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"; and

(ii) Whether the public interest is affected.

If the answers to the above questions are in negative, then there should be no interference under Article 226."

(emphasis supplied)

12. As pointed out in the earlier part of this order, the decision to cancel the tender process was in no way discriminatory or mala fide. On the contrary, if a contract had been awarded despite the deficiencies in the tender process serious questions touching the legality and propriety affecting the validity of the tender process would have arisen. In as much as the competent authority decided to cancel the tender process, it did not violate any fundamental right of the appellant nor could the action of the respondent be termed unreasonable so as to warrant any interference from this Court. The Division Bench of the High Court was, in that view, perfectly justified in setting aside the order passed by the Single Judge and dismissing the writ petition."

6. For the failure of the petitioner to substantiate that fixation of 35 kms. was unreasonable, malicious or misuse of statutory powers of Government authorities., we do not find any ground to interfere with the impugned Clause 14 (Annexure P-3). Consequently, finding no merit in the petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

August 03, 2016
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Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No