

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

CWP No. 9824 of 2016

DATE OF DECISION : 17.10.2016

The Hoshiarpur District Cooperative Labour Construction Union Ltd.

.... PETITIONER

Versus

State of Punjab and others

..... RESPONDENTS

CWP No. 12297 of 2016

DATE OF DECISION : 17.10.2016

The Saleempur Co-op. Labour & Construction Society Ltd.

.... PETITIONER

Versus

State of Punjab and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Arun Bansal, Advocate,
for the petitioners.

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

Mr. Vinish Singla, Advocate,
for respondent No.3.

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RAMENDRA JAIN, J.

1. By way of this common order, aforesaid two writ petitions are being disposed of, as common questions of facts are involved therein.

2. Municipal Corporation, Hoshiarpur (respondent No.3) issued E-tender notice No. LGMCORP/ 2016-17/32 dated 26.04.2016 (Annexure

works. The petitioners were interested in works shown at Serial Nos. 12 to 34 of the notice, regarding installation of new tube well or re-boring. The estimated cost of these works was ₹ 20,09,000/- for each of the work, which is less than the stipulated amount of ₹ 40,00,000/-. As per notification dated 02.10.2014 (Annexure P-3) issued by respondent No.2, unskilled works of any amount and skilled works costing upto ₹ 40,00,000/- were to be given to the Labour and Cooperative Societies. In case, the Societies would be unable to give tenders or to do works under the Ceiling rates, in that eventuality, for getting these works done, open tenders from other Contractors and Societies had to be called. It was further mentioned in para 1 of this notification that in the tenders for skilled works costing upto ₹ 40,00,000/-, which will be issued vide E-Tendering System, the competition shall only be made between the Labour and Cooperative Construction Societies.

3. It is the case of the petitioners that they were fully eligible and qualified for allotment of works shown at Serial No. 12 to 34 of the notice, but on account of condition No. (w) as imposed by the authorities vide Annexure P-2, they could not apply for the tender. As per the said condition, it was made compulsory by the authorities that the agency applying for the tender must have installed minimum two tube well within last one year. This condition was arbitrary and illegal because of the fact that during the last about 10 years, none of the department of the State of Punjab had allotted any such work of installation or re-boring of tube well to any of the Labour and Cooperative Construction Societies of District Hoshiarpur. As such, it was not possible for the petitioners to gain any experience of installing

minimum two tube well within last one year. According to the petitioners, the said condition was imposed just to defeat the rights and eligibilities of the petitioners and such like other Societies. Even otherwise, the aforesaid condition No. (w) was discriminatory, because Municipal Corporation, Jalandhar, while issuing E-tender notice dated 10.07.2015, as amended vide corrigendum dated 20.07.2015 (Annexure P-4), inviting tenders for the similar work, did not impose any such condition of having installed two tube well in the previous years. Hence, it was not understandable as to why such condition was imposed by respondent No.3. Since, condition No. (w) is illegal and arbitrary, therefore, it is liable to be struck down. Respondent No.3 had earlier also invited tenders in the year 2015, imposing condition No. (w), against which the petitioners had represented to the authorities with the request not to impose such condition upon the Labour and Cooperative Construction Societies, but no heed was paid to the same by respondent No.3, nor any reply was given.

4. By way of the present writ petitions, the petitioners have sought issuance of a writ of certiorari quashing condition No. (w) in Annexure P-2, as circulated along with E-tender notice dated 26.04.2016 (Annexure P-1). Further prayer has been made to issue a writ of mandamus directing the respondents to permit the members of the Petitioner Unions to apply and consider the bids for the works relating to boring of tube well under works at serial No. 12 to 34.

5. Upon notice, respondent No.3 in its reply submitted that there was lot of hue and cry among the public for installation of tube well and supply of water in the city. Thus, to get the work done from the experienced

hands, condition No. (w) that the agency applying for bid must have installed minimum two tube wells within last one year, was made compulsory. Since the petitioners had no experience of installing tube well, which work is technical in nature requiring special skill labour, therefore, those works could not have been allotted to them.

6. Before proceeding further, condition Nos. (k) and (w) which are relevant and necessary to be perused, which read as under :-

“(k) Preference will be given to the co-op. L/C Societies (Registered in State of Punjab) for the works up to 40.00 Lac. The tenders of the L/C Societies for the works up to 40.00 Lacs will be opened on the same day. Initially, only tenders of the L/C Societies (up to Rs. 40.00 Lacs) shall be opened and if in case after opening of tenders, the department observes that the tender quoted by L/C Societies do not qualify as per norms, only then, the tenders of contractors/agencies participated in tenders, if any, shall be opened.

(w) Only experienced Agencies can participate in tenders for the works relating to Installation/ Re-boring of Tube wells. Agency must have installed Minimum two Tube well within last one year. Proofs must be uploaded on website.”

7. Learned counsel for the petitioners contended that since the Government of Punjab or any of its subsidiary did not allot any work of installation or reboring of tube well during the last about 10 years to any of the Labour and Cooperative Construction Societies of District Hoshiarpur, therefore, no experience certificate could have been furnished by the petitioners in compliance with condition No. (w). He further contended that

the aforesaid condition No. (w) was illegal and arbitrary, in view of the fact that Municipal Corporation, Jalandhar, vide E-tender dated 10.07.2015, as amended vide corrigendum dated 20.07.2015 (Annexure P-4), had invited tenders for the similar work, without imposing any such condition. Municipal Corporation, Hoshiarpur (respondent No.3) and Municipal Corporation, Jalandhar, are the State organs. Thus, they cannot act arbitrarily and have to act in consonance with each other. Learned counsel also submitted that rates of the petitioners were 20% to 30% less than the rates at which the work has been allotted to the private contractors. Thus, respondents be directed to cancel the allotment of the works to the private contractors and to re-invite the tenders by deleting the arbitrary condition No. (w).

8. On the other hand, learned counsel for the respondents submitted that since the petitioners had no experience or special skill to install/re-bore tube well, which is a technical work, therefore, they were not eligible for allotment of such works.

9. After giving our thoughtful consideration to the rival contentions of learned counsel for the parties, we do not find any merit in both these petitions, because the matter in dispute is contractual in nature. The Apex Court in **Jagdish Mandal v. State of Haryana and others, (2007) 14 SCC 517** has held that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluation of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. Power of judicial review will not be

invoked to protect private interest at the cost of public interest, or to decide contractual disputes. Tenderer or contractor with a grievance can always seek damages in a civil court. The court should exercise judicial restraint unless illegality or arbitrariness on the part of the Government in these matters is apparent. Even otherwise, since the work of installation/re-boring of tube well requires special skill, therefore, in our opinion, allotment of such work to an inexperience agency would cause inconvenience to the general public. Nothing has been brought on record by the petitioners showing that the rates given by them were less than the rates at which the works have been allotted to the private contractors. Therefore, this argument, having no force, is turned down.

10. In view of the aforesaid settled proposition of law, and for the reasons recorded above, no ground for interference by this Court under Articles 226/227 of the Constitution of India is made out. Consequently, finding no merit in these writ petitions, the same are hereby dismissed.

(RAMENDRA JAIN)
JUDGE

October 17, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No