IN THE HIGH COURT OF PUNJAB AND HARYANA, AT CHANDIGARH

RSA No. 1648 of 2016 (O&M)
Date of Decision: 24.10.2016.

Pt. B.D. Sharma, University of Health Sciences Rohtak through its Registrar

......Appellant

Vs.

Joginder Singh and another

.........Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Satyawan Ahlawat, Advocate,
for the appellant.

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AMOL RATTAN SINGH, J. (ORAL)

This is an appeal by the first defendant (hereinafter referred to as the University), in a suit filed by the first respondent herein (hereinafter referred to as plaintiff), seeking a decree of declaration holding him entitled to get the allotment of shop no. 8, in the shopping complex in the University, he being a successful tenderer, further seeking a decree of mandatory injunction, directing the University to issue an allotment letter in his favour.

As per the case of the plaintiff, the University invited sealed tenders for the licence of the aforesaid shop, from which implants and required consumable items were to be sold. The plaintiff being interested, applied in the tender from and submitted it in the requisite branch in the University, along with a demand draft of Rs. 96,000/- dated 09.01.2014, payable to the Controller of Finance of the University, by way of earnest money.

As per the terms and conditions of the tender, it was to be opened on 10..01.2014 at 3:30 p.m. in the office of the Director, in the presence of the tenderers or their authorized representatives. There were 08 applicants whose tenders were opened, with the plaintiffs' tender offering a 70% discount on implants and a 60% discount on consumable items, it being the second highest discount amongst all the applicants. The highest bidder/the person offering the highest discount (respondent-defendant no. 2), never appeared at the time of opening of the tender, in the absence of which the respondent-plaintiff was found eligible for allotment of the shop, with the University having accepted the tender, as per the plaintiff, and allegedly having assured the plaintiff that he would be sent an allotment letter within a week. He was also asked to pay Rs. 20,000,00/- immediately, “as security money for the shop”, by way of a fixed deposit in favour of the Registrar of the University. However, the allotment letter not having been issued to him and a publication having been issued on 14.02.2014 cancelling the tender due to 'administrative reasons', the plaintiff is stated to have approached the University for allotment of the shop but with no result.

Therefore, alleging that the appellant-University was only interested in allotting the tender to some favourite person, ignoring all norms, the suit was filed, alleging therein that one Raj Kumar was the person with whom officials of the University had colluded.

2. Upon notice issued, the appellant-University appeared and filed its written statement, raising usual preliminary objections with regard to *locus standi* etc. and further contended that the suit filed by the plaintiff was in collusion with the second defendant (Sanjay Kumar), as the plaintiff was

actually working in Sanjay Kumars' shop. Therefore, Sanjay Kumar had intentionally tendered higher rates, with the plaintiff having tender lower rates and thereafter Sanjay Kumar intentionally did not turn up, being a partner of the plaintiff, just to ensure that the tender of the plaintiff was accepted.

It was further contended that it was clearly mentioned in the conditions given in the notice inviting the tender, that the Vice Chancellor of the University reserves the right to reject "all/any offer without assigning any reason whatsoever".

It was still further stated that the tenders were submitted to the Executive Committee for approval but the Committee in its meeting held on 24.01.2014 did not approve acceptance of the tenders, they being based on unrealistic prices and for administrative reasons, recommended the inviting of fresh tenders. The said decision was approved by the Vice-Chancellor and consequently, a publication was issued on 14.02.2014, cancelling the tenders invited vide the advertisement dated 19.12.2013.

3. Defendant no. 2 did not appear and was proceeded against *ex parte.*

4. On the aforesaid pleadings, the following issues were framed by the learned Civil Judge (Junior Division), Rohtak:-

> "1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP
>
> 2. If issue no. 1 is decided in favour of the plaintiff, whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP

3. Whether the suit of the plaintiff is not maintainable? OPD

4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

5. Relief."

5. The plaintiff examined himself as PW-1 and tendered the following documents by way of evidence:-

"Ex. P1	:	General terms and conditions of tender;
Ex. P2	:	Copy of Advertisement dated 14.02.2014;
Ex. P3	:	Copy of tender notice;
Ex. P4	:	Tender form;
Ex. P5 and PX	:	Copy of proceedings of tender committee meeting held on 10.01.2014;
Mark-A	:	Copy of cheque;
Mark-X	:	Copy of order dated 04.01.2014;
Mark-Y	:	Copy of order dated 10.01.2014".

The appellant-University examined its Deputy Superintendent, Silak Ram, as DW-1 and tendered the following documents by way of evidence:-

"Ex. D1	:	Authority letter;
Ex. D2	:	Resolution dated 05.02.2014;
Ex. D3:	:	Copy of advertisement:
Ex. D4	:	Copy of letter dated 17.02.2014 regarding release of earnest money;
Ex. D5	:	Copy of cheque;

Ex. D6	:	Copy of letter no. MG-1/2010/6279 dated 23.07.2010 qua allotment of shop to defendant no. 1;
Ex. D7	:	Copy of letter no. MG-1/2010/5471 dated 08.07.2010 qua allotment of shop to defendant no. 1”.

6. Upon appraising the aforesaid evidence and the pleadings and arguments raised before him, the learned Civil Judge found that the plaintiff was, in fact, the second highest bidder for the tender and in cross-examination he had admitted that he was working as a pharmacist in the shop of defendant no. 2.

The condition of the tender with regard to the right of the Vice Chancellor to reject the tender was also admitted by the plaintiff.

Further, the learned Court found that as per Ex. P5, i.e. the copy of the proceedings of the tender committee meeting held on 10.01.2014, the tender of Sanjay Kumar, defendant no. 2 was accepted and thereafter the other tenderers were given opportunity with no specific acceptance of the tender of the plaintiff. It was further found that no contract was signed between the plaintiff and the first defendant for allotment of the shop and that the earnest money paid by the plaintiff had also been refunded to him.

Thus, holding that even as per the judgment cited by the plaintiff, of a Division Bench of this Court in **Bikramjeet Singh** vs. **Union of India and another** 2013 (4) RCR (Civil) 98, the competent authority was entitled to cancel or reject any tender if reasons were provided.

Thus, it was held that a reason having been given by the University, the action of the Vice-Chancellor in rejecting the tender could not be held to be bad.

(Though at this stage, the 'reason' had not been given by the Civil Judge but obviously, the reference is to the reasoning given in the written statement, wherein it was stated that the acceptance of tenders was not approved, it being based on unrealistic prices).

7. Consequently, the suit of the respondent-plaintiff was dismissed.

8. In the appeal filed before the learned first appellate court by the plaintiff, the learned District Judge, Rohtak, after noticing the facts and considering the judgment of the learned Civil Judge, found that as a matter of fact, the Vice-Chancellor had not rejected any offer and rather had approved the recommendations of the Tender Committee. The tender was cancelled by the Executive Council in its meeting held on 24.01.2014 without assigning any reason and thereafter, it was decided to call fresh tenders on the same terms and conditions.

The learned first appellate court further found that though in the tender notice, the Vice-Chancellor of the University had the final authority to reject any offer without assigning any reason, however, there was nothing contained in the tender notice, that after the approval of the Vice-Chancellor, of the recommendations made by the Tender Committee, further approval of the Executive Council of the University would also be required.

Hence, it was held that the Executive Council had no power to cancel the tender without assigning any reason, especially when the recommendations of the Committee had been approved by the Vice-Chancellor, who was the final authority.

9. On the issue of there being collusion between defendants no. 1 and 2, it was held that the tender was open for all and not limited to any group of persons, with any eligible person permitted to participate in it. Eight persons submitted their tenders, with the discounts offered by six persons being less than the discount offered by the plaintiff.

Thus, it was held that it not being the case of the University that though six persons also offered lesser discounts than the plaintiff, in collusion with him, simply because defendant no. 2 had tendered a discount less than the plaintiff, that did not prove any collusion between them.

Still further, it was held that the reason given by the University while rejecting the tender, was not that it was cancelled on account of any collusion between the plaintiff and defendant no. 2.

Consequently, citing a judgment of the hon'ble Supreme Court in **Union of India** vs. **Dinesh Engineering Corporation** (2001) 8 SCC 491, it was held that the cancellation by the Executive Council without any reasons given to the plaintiff, was bad in law.

10. It was further noticed by the learned lower appellate court that by the time the judgment of that court came to be delivered, in January 2016, a period of two years had elapsed since the tenders were invited, with the shop still lying vacant, thereby causing financial loss to the University and thereafter on 25.12.2015, tenders had been invited for the licence in the shop in question which process had been stayed by this Court.

11. Having held and noticed as above, the judgment and decree of the learned Civil Judge were set aside and the suit of the respondent-

plaintiff decreed in his favour, with a direction to the University to allot shop no. 8, in its shopping complex, to the plaintiff, strictly on the terms and conditions specified in the tender notice, within a period of one month.

12. When this appeal first came up for hearing before this Court on 26.04.2016, learned counsel for the appellant had informed this Court that the notice inviting tenders for the 'suit shop', dated 25.12.2015, was also subject matter of challenge by way of a writ petition filed before this Court, bearing CWP No. 17 of 2016. Consequently, the matter had been adjourned till the next date, with directions to inform this Court with regard to the orders passed by the Division Bench, as also to address arguments on other issues, arising in the appeal.

Now, as regards the status of the Division Bench order, it is seen that vide an order dated 05.01.2016, notice had been issued to the University with a direction that the "auction" if it had taken place, be not finalized. Thereafter, it is seen that no substantive order has been passed, with the respondents in the writ petition having sought time to file a reply with the matter now to be posted on 10.11.2016.

Thus, it is clear that presently the shop in question remains vacant as stated in the judgment of the learned lower appellate court, (in the present *lis),* with the subsequent tender process referred to by that court, also having been stayed by this court in the aforesaid writ petition.

13. Mr. Satyawan Ahlawat, Advocate, learned counsel for the appellant-University, submitted that though undoubtedly the respondent-plaintiff had given the second highest discounts of 70% and 60% on implants and consumable items respectively, i.e. lower than the ones given by defendant no. 2, at 80% and 90%, no letter of acceptance was

communicated to the plaintiff and as such, no valid contract in terms of Section 3 of the Indian Contract Act, 1872, came into being.

Learned counsel then relied upon a judgment of the hon'ble Supreme Court in **Uttar Pradesh Avas Evam Vikas Parishad and others** vs. **Om Parkash Sharma** (2013) 5 SCC 182, in support of his argument.

14. Mr. Ravinder Malik, learned counsel for the caveator-respondent no. 1 (plaintiff), on the other hand submitted that the competent authority once having approved the grant of the contract, to the person tendering the highest discounts, (after the person who had tendered higher discounts had backed out), a valid contract actually came into existence between the parties, regardless of any communication to the plaintiff.

To support his contention, learned counsel cited a judgment of a co-ordinate Bench of this Court in **Haryana State Electricity Board** vs. **Pankaj Kumar Neeraj Kumar** 1994 (1) RCR 594.

He further submitted that the learned lower appellate court having found that the Vice-Chancellor had actually accepted the recommendations of the tendering Committee, the Executive Council thereafter was not competent to reject the same and that too without assigning any plausible reason to the plaintiff.

He therefore, naturally, prayed for dismissal of the writ petition.

15. Having considered the aforesaid arguments and the judgments of the learned courts below, I find that there is no rebuttal to the factual position that as per the notice inviting tenders, i.e the advertisement by which tenders were invited, the final decision was to lie with the Vice-Chancellor of the appellant-University, with no reference to any action by the Executive Council of the University.

In **Om Parkash Sharmas' case** (supra), undoubtedly it was held that a bidder who has participated in the tendering process has no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons, in response to the notice inviting tenders.

The following passage from the judgment, citing another judgment of the Supreme Court in **Meerut Development Authority** vs. **Association of Management Studies** (2009) 6 SCC 171, was cited by their Lordships, reproducing the following:-

> *"27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.*
>
> *xxxx xxxx xxxx xxxx xxxx*
>
> *29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism."*

16. This position is reiterated in various decisions of the hon'ble

Supreme Court and obviously it is, thus, the law on the rights of an authority inviting tenders for a contract, vis-a-vis the rights of a person tendering for such contract, as regards the aspect of a valid contract having come into place or not before the final acceptance of the bid, by the competent authority.

16-A. However, in the present appeal, the issue is as to whether it was a valid rejection or acceptance of the tender of the plaintiff, by the competent authority.

The learned Civil Judge found that the tender had been put up to the Executive Council for approval, which did not approve the acceptance of tenders, on the ground that the prices quoted in the tenders were unrealistic. Though no elaboration has been given with regard thereto, the prices being unrealistic could either be on account of inflated prices, thereafter discounting them to the extent of 60% to 70% for different articles to be sold by the bidder, or with regard to the discount itself being unrealistic.

That finding of the learned Civil Judge has been reversed by the learned lower appellate court on the ground that as a matter of fact, the competent authority to accept or reject a tender was the Vice-Chancellor, who, it was found by that court, had actually accepted the recommendations of the tender committee. That recommendation, as discussed in paragraph 3 of the learned District Judge, was to accept the tender of defendant no. 2, who had quoted a discount of 90% on the maximum retail price in respect of implants, and an 80% discount on such prices in respect of consumable items. The Tender Committee further recommended that in case defendant no.2 did not fulfill the require formalities within the stipulated period, then the next tenderers who had quoted the maximum discount, upto 45% (of the MRP), be offered an opportunity turn by turn.

Hence, only the tender of such a person who had quoted a discount of less than 45% of the MRP was to be rejected, but as regards those who had quoted discounts of 45% and more, their tenders were recommended to be accepted, obviously with the person offering the higher discount to be given the contract.

This recommendation was actually approved by the Vice-Chancellor, as found by the learned first appellate court.

However, later, the Executive Council in its meeting held on 24.01.2014, decided to call for fresh tenders for the same shop, on the same terms and conditions, giving no reason for calling such fresh tenders and cancelling the previous once receipt.

This was found to be arbitrary by the learned District Judge, as no reasoning with regard to unrealistic prices was actually elaborated upon by the Executive Council, while overriding the Vice-Chancellor, who was the competent authority to inspect or reject the bids, as per the tender conditions.

17. Thus, the question in the present case is not as to whether the competent authority was within its jurisdiction to accept or reject a tender and in the event of non-acceptance there no valid contract having come into being between the appellant and respondent no. 1- plaintiff. That, of course, is a fact that no valid contract actually came into being.

Yet, the reasoning given by the lower appellate court is with regard to the rejection having come about on wholly unjustifiable parameters, with the tendering committed having made a logical recommendation and the competent authority, i.e. the Vice-Chancellor, having accepted that recommendation. Thereafter, the appellant-University simply in order to reject the recommendation, referred the matter to the Executive Council, which then came up with a new reasoning of the prices being unrealistic.

18. A Court would normally be loathe to interfere in an executive decision with regard to rejection of a contract on some reasoning given by the institution concerned, that the prices quoted were un-realistic.

However, with the learned first appellate court having actually found that the tendering Committee had made recommendations in favour of the plaintiff, on a logical basis, and the competent authority (the Vice-Chancellor), having accepted the recommendation, the subsequent action was uncalled for and unjustified, in the opinion of this Court also.

In **Dinesh Engineers'** case (supra), it was observed by their Lordships as follows:-

> "*But then as has been held by this Court in the very same judgment that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognized by courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law especially Article 14 of the Constitution.*

In the opinion of this Court, the aforesaid observations would apply squarely to the facts of the present case, in view of the fact that the Executive Council, as per the finding of the learned lower appellate court, had come to a wholly unreasoned decision, even while giving the reason of unrealistic prices, without assigning any reason as to how the prices were unrealistic and why the recommendation made by the tender committee, which was accepted by the Vice-Chancellor, was not a valid decision. It seems very obvious that the reasoning given of the prices being unrealistic, was simply to override the decision of the competent authority, i.e. the Vice-Chancellor, with no details given and elaboration made, as to how the acceptance by the Vice-Chancellor, was unreasonable with such decision (of the Vice-Chancellor), being actually based on the recommendation made by the tendering committee.

19. As regards the contention that there was connivance between the plaintiff and defendant no.2, the plaintiff being the employee of defendant no.2, whereas the chances of such collaboration cannot be ruled out at all, however, I do not see what difference that eventually makes to the merit of the tender bid of the respondent-plaintiff, inasmuch as, there were six other competitors whose bids were to be considered alongwith those of the plaintiff and defendant no.2. Thus, if any of the other six had tendered bids which were better than those of the plaintiff, then those would have been accepted even after defendant no.2 did not turn up to pursue his bid (after his bid had been declared to be the best bid).

The plaintiffs' bid being the next best, was therefore to be accepted, with a recommendation by the tendering committee that in case the plaintiff or anybody after him also did not go through with the entire tendering process, as per its terms and conditions, then the contract would go to the next tenderer and so on, uptill the level of those persons who had offered discounts of 45% and above.

It is nobodys' case that the other six persons who had tendered their bids, had offered discounts of less than 45%, or that there was any connivance between them and the plaintiff. This has also been specifically noticed by the learned first appellate Court.

Thus, I find absolutely no reason to interfere with that finding, nothing to the contrary having been pointed out.

20. Consequently, in view of what has been discussed heretofore, finding no merit in the appeal, it is dismissed in *limine* with costs of Rs. 10,000/-.

(AMOL RATTAN SINGH)
JUDGE

October 24, 2016
nitin/dinesh

Whether speaking/reasoned Yes

Whether Reportable Yes