

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

CWP No. 13848 of 2017

Date of decision: 03.7.2017

Abdul Rashid

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. H.S. Dhandi, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for setting aside the order dated 08.06.2017, Annexure P.2, passed by the respondent Corporation, vide which tender for lot strip No. PHL-MAH-G 5948, PHL-MAH-G 5949 & PHL-MAH-G 5950 has been allotted to respondent No.3 at the reserve price without calling public tender and giving due opportunity to other tenderers, causing huge loss to the State Exchequer. Direction has also been sought to respondent Nos. 1 and 2 to re-auction the above said lots by giving due notice and opportunity to all interested tenderers. Further prayer has been made for restraining respondent Nos. 1 and 2 from allowing respondent No.3 to cut the trees.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a partner of M/s Thind Enterprises, Malerkotla. The petitioner's firm is a small time timber, timber product and fire wood dealer. It takes small lots from Government or Government agencies for cutting the trees and in public auction. This firm is dully registered with Excise and Taxation Officer, Sangrur. When the trees are auctioned, the petitioner and similarly situated persons who deal in timber trade participate in such auctions and take tender for cutting the trees. The State of Punjab is widening various roads in the State and for that purpose, tenders are allotted to different companies and firms for different strips of roads. Respondent No.3 who is also a construction company got allotted tender for construction of National Highway No.344-A from Nawanshahr to Balachaur. Respondent Nos. 1 and 2 gave an advertisement in Ajit Daily calling e-tender for emergency allotment of lots for cutting the trees. The e-tender was to be submitted on 06.06.2017 upto 11:00 AM and the bid was to be opened at 4:30 PM on the same date and as per the other conditions, for tender of value less than ₹ 5 lakhs, EMD of 5 % and for tenders for value of more than ₹ 5 lakhs, EMD of ₹ 25,000 or 2% of the value whichever is more had to be deposited by RTGS. According to the petitioner, respondent No.3 in connivance with the official respondents, applied for e-tender for lots No. PHL-MAH-G 5948, PHL-MAH-G 5949 & PHL-MAH-G 5950 and deposited the requisite EMD with the tender. Three more persons i.e. Harminster Singh and Company, M.S. Trading Company and M/s Chaudhary Wood Company applied for different lots and deposited the earnest money of ₹ 25,000/- whereas the required earnest money was

much more. The petitioner asserts that official respondent No.2 in connivance with respondent No.3 opened the bid of the above said three persons and held that respondent No.3 was the highest bidder and allotted the work to the said respondent. At one stage, the official respondents realising that the tenders of these three applicants could not have been opened in view of the tender condition, granted time to three applicants to complete the EMD amount. The official respondents reached an understanding with these applicants that respondent No.3 will allot them those lots for cutting trees, whereupon these persons withdrew their application for tendering. The official respondent allotted the tender to the sole tenderer respondent No.3 at the reserve price fixed by the department. According to the petitioner, the value in all the strips mentioned in the order had been shown less than ₹ one crore which had been done just to deny the right of participation to the petitioner and other similarly situated persons. Aggrieved by the action of the official respondents, the petitioner is before this Court through the instant writ petition.

3. We have heard learned counsel for the petitioner.

4. After perusing the averments made in the petition and hearing learned counsel for the petitioner, we find that the petitioner has no locus standi to challenge the action of the official respondents in as much as petitioner was not a bidder in the e-auction held on 06.06.2017. The petitioner is only a partner in M/s Thind Enterprises Malerkotla and neither of them had participated in e-auction. No material has been produced on record by the petitioner on the basis of which his claim can

be stated to be substantiated. It has also not been shown that the action of the official respondents suffers from the vice of arbitrariness.

5. The scope of judicial review in the matters of award of contracts was examined by the Apex Court in ***BSN Joshi Vs. Nair Coal Services Limited*** 2006(11) SCALE 526, wherein it was held that the employer is the best judge to award contract and the court's interference in such matters should be minimal. The Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent. It was held as under:-

“It may be true that a contract need not be given to the lowest tenderer but it is equally true that the employer is the best judge therefor, the same ordinarily being within its domain, court's interference in such matter should be minimal. The High Court's jurisdiction in such matters being limited in a case of this nature, the Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record.”

The said view was reiterated by the Supreme Court in ***Jagdish Mandal Vs. State of Orissa and others*** 2007(14) SCC 517 wherein it was held that the contract is a commercial transaction and the court's indulgence under Article 226 of the Constitution of India in such matter should be minimal. Principles of equity and natural justice stay at a distance. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest or to decide contractual disputes.

6. Finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

July 03, 2017
‘gs’

(Amit Rawal)
Judge

Whether speaking/reasoned

Yes

Whether reportable

Yes