

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

C.W.P. No. 14162 of 2017 (O&M)

Date of decision: 14.9.2017

M/s Skipperseil Limited

.. Petitioner

vs

Haryana Vidyut Prasaran Nigam Limited

.. Respondent

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh Talwar, Advocate, for the petitioner.

Mr. Ankur Mittal, Advocate, for the respondent.

Rajesh Bindal, J.

The petitioner, who submitted his tender for grant of contract for construction of 220 KV GIS Sub-Station, Sector-107, Gurgaon (now Gurugram), has filed the present petition with two fold prayers, namely, directing the respondent to grant the contract to him and in the alternative directing the respondent to decide the representation filed by the petitioner after affording opportunity of hearing before taking any final action against the petitioner.

Briefly, learned counsel for the petitioner submitted that in terms of the conditions laid down in the tender documents, the bid was to be submitted in two parts i.e. technical and financial bid. The information was to be uploaded on the portal of the Haryana Vidyut Prasaran Nigam Limited (for short, 'the Nigam'). As required, the petitioner had furnished bank guarantee of ₹ 1 crore. As far as the technical bid is concerned, in addition

to the data uploaded on the portal, even hard copy was to be supplied, whereas for financial bid, the data was to be uploaded only on the web portal. The petitioner qualified the technical bid stage. The case of the petitioner is that while uploading the data on the portal of the Nigam for the financial bid in schedule 3, though correct data was uploaded, however, it was not correctly reflected on account of some technical error. Noticing error in that part, the petitioner immediately submitted hard copy to the Nigam along with a representation pointing out the technical error. However, without affording any opportunity of hearing to the petitioner to enable him to explain the technical error, his bank guarantee was sought to be encashed. It was at this stage that the petitioner approached this Court.

Learned counsel for the respondent submitted that in terms of the conditions laid down in the tender documents, in case of modification of the terms after expiry of last date for submission of bid, the security furnished is liable to be forfeited. In the case in hand, the petitioner having modified the terms of the offer submitted by him after the last date, its security was liable to be forfeited. He further submitted that regarding the issue raised by the petitioner regarding technical error, the matter was examined by a committee and it was found that there was no technical error in the system. However, he did not dispute the fact that the petitioner was not afforded any opportunity of hearing before taking any decision in the matter by the Committee in the meeting held on 13.6.2017. Award of the contract is yet to be finalized.

After hearing learned counsel for the parties and considering the submissions noticed above, in our opinion, at this stage before opining on the merits of the case, the present petition can be disposed of with a

direction to the respondent to afford an opportunity of hearing to the petitioner before concluding that it was a case of modification of the bid by the petitioner and not what is sought to be suggested by the petitioner, namely, technical error on account of which correct data could not be uploaded. The matter being technical, it would be appropriate that firstly the petitioner is afforded opportunity and a decision is taken by the authorities. In case any order adverse to the petitioner is passed, it shall be at liberty to avail appropriate remedy, in accordance with law.

The matter being urgent, namely, the contract being for construction of Sub-Station, it is expected that the authorities will afford opportunity to the petitioner and decide the matter within three weeks. Till such time the matter is decided by the authorities and the order is communicated to the petitioner and one week thereafter, the bank guarantee already furnished by the petitioner shall not be encashed.

The matter be decided being un-influenced by the decision already taken by the authorities, without affording opportunity of hearing.

The writ petition stands disposed of accordingly.

(Rajesh Bindal)
Judge

14.9.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No