

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

Civil Writ Petition No.15410 of 2017
Date of Decision: July 17, 2017

M/s Rohtash Kumar & Company, 550/6, Patel Nagar, Kurukshetra

...Petitioner

Versus

Haryana State Warehousing Corporation, Panchkula & others

...Respondents

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

Present: Mr.Vijay Lath, Advocate,
for the petitioner.

AMIT RAWAL, J.

The petitioner has approached this Court seeking the following
relief:-

“Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of writ, order or direction especially in the nature of certiorari thereby quashing the office order dated 11.04.2017 (Annexure P-3) vide which the handling contract of Dharsul warehouse has been awarded in favour of private respondent no.3 without taking into consideration the mandate of law and without examining the fact that private respondent failed to comply with clause No.10 of Invitation to Tender i.e. Tenderer did not submit duly filled manual the entire pages and also did not append Appendix-1 on Judicial Stamp paper and further for the issuance of a writ in the nature of Prohibition thereby further staying the carrying out the contract by the private respondent OR issue any other direction which this Hon'ble Court may deem fit and proper in

the peculiar facts and circumstances of the case in the interest of justice.”

Mr.Vijay Lath, learned counsel representing the petitioner submitted that the petitioner is in the business of obtaining the contract for loading/unloading, handling of food-grains and allied items of Haryana State Warehousing Corporation under Guarantee Scheme. The terms and conditions of the contract are governed by the provisions contained in the Haryana P.W.D. Code. As per Para 13.18 of the aforementioned Code, top priority shall be given to decide the award of work, i.e., in essence the employer, prior to the expiry of validity of bid period (original or extended), shall notify the successful tenderer, by telegram or fax and confirmation by registered letter. The letter of allotment shall also constitute the formation of contract, subject to not only signing of the agreement, but furnishing of the prescribed performance security.

He further submitted that in pursuance to the Tender Notice (Annexure P-2), the petitioner applied for grant of contract for Dharsul Mandi. Clauses 8 and 10 of the aforementioned Tender Notice envisage that the tenderer must furnish all the information, i.e., precise and accurate details as asked for in Appendix-1b and the attachment of certain documents. Since the private respondent had not submitted the form as per Clauses 8 and 10 aforementioned, therefore was ineligible for being awarded the contract. The fact of not providing the documents is evident from Para 6 of the writ petition, i.e., CWP No.13815 of 2017 titled as “M/s Kulbir Singh & Company Versus Haryana State Warehousing Corporation and another” and the said writ petition is also pending adjudication in this Court. Though the petitioner has submitted the representation dated

22.6.2017 (Annexure P-4) regarding the awarding of contract, but of no

avail and, therefore, the action of the respondents is illegal and uncalled for and, thus, the tender notice is liable to be set-aside.

We have heard the learned counsel for the petitioner, appraised the paper book and of the view that the writ petition is devoid of merit and liable to be dismissed.

In order to appreciate the aforementioned controversy, it would be apt to reproduce Clauses 8 and 10 of the Invitation of Tender, which read thus:-

“8. The instructions to be followed for submitting the tender are set out below:

*(a) **Information about tenderer:-**The tenderer must furnish full, precise and accurate details in respect of information asked for in Appendix-1 attached to the form of tender.*

(b) Signing of Tenders:

(i) Person or persons signing the tender shall state in what capacity he or they are signing the tender e.g. as sole proprietor of a firm or as a Secretary/Manager/Director etc. of a Limited Company. In the case of partnership firm, the names of all the partners should be disclosed and the tender shall be signed by all the partners or their duly constituted attorney, having authority to bind all the partners in all matters pertaining to the contract. The original or an attested copy of the partnership deed should be furnished along with the tender. In case of a limited Company, the names of the Directors shall be mentioned and it shall be certified that the person signing the tender is empowered to do so on behalf of the company. A

copy of the Memorandum of Association and Articles of Association of the Company shall be attached to the tender. In case of Hindu undivided family, the names of the family-members should be disclosed and the Karta, who can bind the firm should sign the form and indicate his status below his signature.

(ii) The person signing the tender form or any document forming part of the tender on behalf of another or on behalf of a firm shall be responsible to produce a proper Power of Attorney duly executed in his favour, stating that he has authority to bind such other person or the firm, as the case may be, in all matters pertaining to the contract. If the person, so signing the tender, fails to produce the said Power of Attorney his tender shall be subject to summary rejection without prejudice to any other right of the Corporation under the law. The 'Power of Attorney' should be signed by all the partners in case of a partnership concern, by the proprietor in case of the propriety concern and by the person who by his signature can bind the company in the case of a limited concern. In the case of Hindu undivided family the 'Power of Attorney' should be signed by the Karta who by his signature can bind the family.”

10. Documents attached to tenders:- *The tenderer should submit the tender documents, including “Invitation to Tender” intact, without detaching any page, duly filled in and ink signed on each page of tender form including the schedule of rates. However, the tender form must be accompanied by the*

following documents, failing which the tender may be ignored.

- i) Certified copy of Partnership deed/Memorandum & Articles of association/Bye Laws etc. as applicable.*
- ii) Authorization letter for signing the tender form.*
- iii) One passport size photograph must be attached on the prescribed space of tender.*
- iv) Experience certificate of handling work for the last three years from the competent authority.*
- v) Bank statement for the last 6 months*
- vi) Net worth & Solvency certificate issued by any scheduled bank.*
- vii) Copy of registration deed of the property owned by the tenderer/partners.*
- viii) Detail of assets with proof.*
- ix) Income Tax Return for the last three years.*
- x) Copy of PAN card & Service Tax registration number.”*

The petitioner has failed to substantiate that respondent No.3 had not complied with the conditions of Notice Inviting Tender. No material/document has been shown so as to hold that an invalid tender form had been acted upon. In the absence of the same, the issue involved in the writ petition would not fall within the ambit of judicial review as the parameters of judicial review are conspicuously wanting. In fact, the petitioner has indulged into fishing enquiry by approaching this Court without placing on record any information or material.

Viewed from another angle, no prayer for challenging the rejection of the petitioners' tender has been made. The allegation of concessionaire of having not tendered the documents by extracting

paragraph 6 of the other writ petition also does not support the plea of the petitioner. For the sake of brevity, Para 6 of the other writ petition as extracted in the writ petition reads thus:-

“6. That on similar pattern the petitioner applied for contract and Dharsul Mandi along with Kaithal and for which petitioner was awarded contract. Copy of the award is appended herewith as Annexure P-2 and details along with table of comparison dated 11.4.2017 is appended herewith as Annexure P-3 for kind perusal.”

There is no admission on the part of the private respondent of having not submitted the documents, purportedly in defiance to the provisions of Clauses 8 and 10 of the Tender Notice.

For the reasons aforementioned, the writ petition is wholly misconceived and is accordingly dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

July 17, 2017
ramesh

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No