

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.15748 of 2017
Date of Decision: July 20, 2017

Jagat Suneha Publications situated at Anaj Mandi Road, Barnala

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr.Preetwinder Singh Dhaliwal, Advocate,
for the petitioner.

AMIT RAWAL, J.

Petitioner has, by invoking the extraordinary writ jurisdiction of this Court under Articles 226/227 of the Constitution of India, challenged the allotment of tender dated 29.5.2017 (Annexure P-7) in favour of respondent No.3 on the premise that the bid of the petitioner was lowest than that of respondent No.3.

Mr.Preetwinder Singh Dhaliwal, learned counsel representing the petitioner submitted that respondent No.2-Director, Haryana State Seed Certificate Agency, Panchkula invited the tender for supply of 80,00,000 certified tags (blue colour) and 5,00,000 certified tags of white colour as per the specifications to the agency, which was required to be downloaded from 12.5.2017 at 9.00 AM to 26.5.2017 upto 5.00 PM. The aforementioned tender indicated that the technical bid would be opened on 29.5.2017 at 11.00 AM. Condition No.3 of the terms and conditions of the tender envisages that the person must have a document showing experience of

supply of similar material, if any, valuing Rs.10,00,000/- or above in India at least to Government/Board/Corporation/Company/Society or Council in last three years. The petitioner fulfilled the aforementioned condition, which is reflected from the copy of the bills (Annexure P-2 Colly), performance certificate and affidavit (Annexures P-3 and P-4). The petitioner also complied with Condition No.5, where the tender was to be accompanied by at least 10 pieces as sample of each category of the material to be supplied. The bid of the petitioner was lower than that of respondent No.3, yet respondent No.3 has erroneously been awarded the work being old tenderer of respondent No.2 vide order dated 29.5.2017 (Annexure P-7).

He further submitted that the petitioner is stated to have submitted representations dated 18.6.2017 (Annexure P-9) to the Chief Secretary, Haryana Government, Chandigarh and 1.6.2017 (Annexure P-10) to the Chief Secretary, Department of Agriculture, Government of Haryana Phase 12, Sector-14, Panchkula, but no action has been taken and, thus, urged this Court for setting-aside the impugned order.

We have heard the learned counsel for the petitioner and appraised the paper book.

At the first blush, the argument of the learned counsel for the petitioner looked to be attractive, but on going through the averments, the writ petition is bereft of the malafides and arbitrariness except the bald averment that the bid of the petitioner was lowest than that of respondent No.3. It has not been shown that the action of respondent No.2 in awarding contract to respondent No.3 even when the rates quoted by the petitioner were the lowest suffers from the vice of arbitrariness or is discriminatory or is on account of malafides.

The scope of judicial review in the matters of award of contract was examined by the Apex Court in **BSN Joshi Versus Nair Coal Services Ltd., 2006 (11) SCALE 526**, wherein it was held that the employer is the best judge in the matters of contract and the court's interference in such matter 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 Supreme Court in **Jagdish Mandal Versus State of Orissa and others, 2007 (14) SCC 517**, had held that the contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision in such matters is bona fide and is in public interest, courts will not in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. 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. The Court should exercise judicial restraint unless illegality or arbitrariness on the part of the Government in these matters is apparent.

The Apex Court in **Maa Binda Express Carrier and another**

Versus North East Frontier Railway and others, (2014) 2 CHN 96

(SCC) with regard to the scope of judicial review in contractual matters, inter alia, noticed that the State authorities are required to be conceded greater latitude in formulating conditions of a tender document and awarding a contract, and their action is not open to judicial review unless it can be demonstrated to be malicious, arbitrary, unreasonable or misuse of its statutory powers.

For the reasons aforementioned, we do not find any illegality in awarding the contract in favour of respondent No.3 by respondent No.2. No ground for interference is made out under Articles 226/227 of the Constitution. Consequently, finding no merit in the writ petition, the same is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**July 20, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No