

Gurbax Singh
2017.10.26 10:17

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

**CWP No. 16710 of 2017
Decided on : 26.09.2017**

M/s M.L. Madaan

... Petitioner

Versus

State of Haryana and others

... Respondents

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

PRESENT: Mr. A.K. Jindal, Advocate
for the petitioner.

Mr. Sandeep Moudgil, Addl. AG, Haryana.

Ms. Nupur Chaudhary, Advocate
for respondents No.4 to 6.

Mr. Manjeet Singh, Advocate
for respondent No.7.

Ajay Kumar Mittal, J.

1. The petitioner has filed the instant petition under Articles 226/227 of the Constitution of India, for quashing the impugned orders dated 08.05.2017 and 16.05.2017, issued by respondents No.3 & 4, respectively, whereby, the tender/work order issued to it vide letter dated 31.03.2017 (Annexure P-4) has been cancelled. Further, prayer has been made for quashing the tender notice dated 22.06.2017 (Annexure P-17) and the order dated 12.07.2017 (Annexure P-19) issued by respondent No.5, whereby, the new tender/work order has been issued to respondent No.7. It has been further prayed for a direction to respondents No.1 to 6 to allow the petitioner to provide the services by restoring the work order dated 31.03.2017 (Annexure P-4) and to restrain the respondents from proceeding

with the new work order.

2. A few facts relevant for decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a proprietorship firm engaged in the business of Government Contractor for Civil and Sanitation works. It is located at Karnal. In February-March, 2017, respondent No.5 issued a public e-tender notice inviting tender forms for engaging 110 cleanliness workers under outsourcing policy for one year (01.04.2017 to 31.03.2018) for cleaning the main road, sewerage, drains and streets of main bazaar under the jurisdiction of Municipal Council, Kaithal. On 14.03.2017 (Annexure P-2) respondent No.5 requested respondent No.3 to ensure its presence for opening of the aforesaid tenders. Respondent No.3 appointed City Magistrate, Kaithal, as his representative for opening e-tenders and instructed respondent No.5 to ensure videography of the opening of the tenders. On 31.03.2017 (Annexure P-3), all the tenders, fulfilling the eligibility criteria were opened in the presence of City Magistrate, Kaithal, respondent No.5 and other concerned Officers. After opening and comparatively analyzing the technical bids, financial bids etc., the tender was issued in the name of the petitioner. A contract between the petitioner and respondent No.5 was also signed on 04.04.2017 (Annexure P.5), in which it was clearly stipulated that in case of work not being satisfactory, the Executive Officer/Secretary Municipal Council, Kaithal shall have the right to cancel the contract by giving one month advance notice. The petitioner immediately started providing 110 cleanliness workers to the respondents for the cleanliness of the Kaithal city by providing them all cleaning instruments as well. A letter was sent by

respondent No.3 to respondent No.5 on 18.04.2017 (Annexure P-9), for a clarification with regard to issuing the aforesaid tender to the petitioner. On 21.04.2017, (Annexure P-10), respondent No.5 replied to respondent No.3 explaining the whole positions. Respondent No.3 directed respondent No.5 on 08.05.2017 (Annexure P-11), to cancel the tender/work order issued to the petitioner. On 16.05.2017 (Annexure P-12), respondent No.4 cancelled the work order issued to the petitioner. The petitioner sent a representation on 19.05.2017 (Annexure P-13), to respondent No.3, explaining that all the tenders were opened under the videography in the presence of City Magistrate, Kaithal, Executive Officer and other officers of the Municipal Council. On 01.06.2017, the petitioner sent a legal notice to the respondents. The respondents again issued a short e-tender notice for the same work on 22.06.2017 (Annexure P-17), which the petitioner had been performing to the satisfaction of several Ward representatives. On 21.06.2017, the petitioner approached the Civil Court for declaration and permanent injunction as consequential relief against the respondents along with an application for restraining the defendants from floating new tender qua the work allotted to it. The said prayer was declined on 23.06.2017 by the Civil Court. Ultimately, the petitioner withdrew the said civil suit vide order dated 03.07.2017. The petitioner had been making various requests to the respondents for restoring the work order dated 31.03.2017. Having received no response, the petitioner approached this Court by filing Civil Writ Petition No. 15331 of 2017 on 17.07.2017. Thereafter, the petitioner came to know that new tender/work order had been issued to respondent No.7. Thus, the said writ petition was dismissed as withdrawn with liberty

to file a fresh writ petition on the same cause of action by impleading the person to whom the new contract had been awarded. On 12.07.2017 (Annexure P-19), respondent No.5 issued a fresh tender/work order to respondent No.7. Aggrieved thereby, the petitioner has approached before this Court through the present writ petition.

3. A written statement has been filed by Deputy Commissioner, Kaithal-respondent No. 3, on behalf of respondents No.1 to 3, wherein, it has been *inter alia* stated that the office of Deputy Commissioner, Kaithal, received complaint that while accepting the tender of the petitioner, the instructions issued by the Government of Haryana had not been followed. The documents attached by the petitioner were not complete. The bid given in the tender was not according to the Rules as there were discrepancies in the EPF, ESI, DC rates etc. Further, the rates were not quoted by the petitioner as per the terms and conditions given in the e-tender. The Accounts Officer calculated the feasibility of all the bids received in response to e-tender. He also prepared the comparison sheets of all the eligible firms, according to which the tender of the petitioner was not lowest. Consequently, the order issued to the petitioner was cancelled by the Secretary, Municipal Council, Kaithal. It was only after the cancellation of the work order issued to the petitioner that fresh e-tender was called and work order was issued to respondent No.7. On these premises, prayer for dismissal of the petition has been made.

4. A separate written statement has also been filed by respondent No.5 on behalf of respondents No.4 to 6, controverting the averments made in the writ petition.

5. We have heard learned counsel for the parties.
6. A perusal of the order dated 15.09.2017 (Annexure R-3/1) passed by the Deputy Commissioner, Kaithal shows that complaints were received in the office of Deputy Commissioner, Kaithal to the effect that the rates quoted by them were less than those quoted by the petitioner. Thereafter, the matter was referred to the Accounts Officer, who found that the bid tendered by the petitioner could not be accepted as per the outsourcing policy of the Haryana Government because the same was not lowest on the basis of comparison of rates given in BOQ Form. After examining the rates given by the Accounts Officer, the Deputy Commissioner, directed the Executive Officer, Municipal Council, Kaithal to cancel the tender/work order allotted to the petitioner. It was further recorded that the Municipal Council had clearly mentioned that "Entry of amount be made carefully in column No.13 without EPF+ESI+Service Tax meaning thereby only Minimum Wages/DC Rates & Service Charges of the bidder are to be mentioned in Sr. No. 1.01." The rates quoted by 14 firms were depicted. It was concluded after examining the matter that the rates of service charges of the petitioner were much higher being 20.11% and thus, the tender work order allotted to the petitioner was cancelled. The relevant findings recorded by the Deputy Commissioner, Kaithal reads thus:-

"As per BOQ summary detail of the E-tendering, M/s K.L. Madaan was at Sr. No. 13 and the rate awarded by M/s K.L. Madaan was Rs.1415280.9 which was L-7. After that the committee directly awarded the work order to M/s K.L. Madaan without giving any specific reasons. Two complaints in this

regard were received in the office of Deputy Commissioner, Kaithal. The complainants M/s Tanwar Security Services and M/s Balaji Security & Man Power Services, Kaithal mentioned in their complaints that the rates quoted by them were less than those quoted by M/s K.L. Madaan and this firm has been allotted the work whereas its rates were on higher side.

After these discrepancies, the then Deputy Commissioner, Kaithal referred the matter to Account Officer O/o Deputy Commissioner, Kaithal, who found that the bid tendered by M/s K.L. Madaan could not have been accepted as per out sourcing policy of Haryana Govt. because the same was not lowest on the basis of comparison of rates given in BOQ form. After going through the report of Accounts Officer, the then Deputy Commissioner, Kaithal directed the Executive Officer, Municipal Council, Kaithal to cancel the tender/work order and in this way the tender was cancelled.

After that the Municipal Council, Kaithal again invited fresh E-tender on 22-06-2017. In this process, the Swami Labour & construction Coop. Society, Gohana was L-1 and the tender was awarded to M/s Swami Labour & Construction Coop. Society, Gohana with the approval of Deputy Commissioner, Kaithal as per out sourcing policy of Haryana Govt.

After careful perusal of the records and facts submitted by M/s K.L. Madaan and other relevant documents, it

is clear that M/s K.L. Madaan was not lowest bidder at any point of time. The Municipal Council in its BOQ has clearly mentioned that “*the entry of amount be made carefully in Column no.13 without EPF+ESI+Service Tax meaning thereby only Minimum Wages/DC rate and Service Charges of the bidder are to be mentioned in Sr. No. 1.01.*” As per norms bids having service charges below 2% are/were not valid. The rates quoted by 14 firms are depicted as under:-

BOQ Summery Details

Tender title: Supply Of 110 Safai Karamchaari in MC, Kaithal
Tender Id: 2017_HRY_41351_1

Sheet Name	Sr. No.	Bidder Name	Amount	Percentage of Service Charges	Bid Rank
BoQ1	1	Ding Manpower and Securities Services Pvt. Ltd.	221.1	Wrongly quoted	L1
	2	Supream Enterprises	1190090.00	1	L2
	3	M/s Gold Enterprises (Regd.)	1201886.4	2	L3
	4	The Swami Cooperative L/C Society	1201887.5	2.0001	L4
	5	Platoon Securities Private Limited	1201887.5	2.0001	L4
	6	The Radha Krishan Coop L/C Society Ltd.	1201887.5	2.0001	L4
	7	M/s Goyat Enterprises	1201887.5	2.0001	L4
	8	Tanwar Security Services	1202004.1	2.01	L5
	9	SM Enterprises	1202004.1	2.01	L5
	10	Krishan Kumar Contractor	1202004.1	2.01	L5
	11	K.B. Enterprises	1206835.3	2.41	L6
	12	M/s Bala Security & Manpower Service, Kaithal	1206835.3	2.41	L6
	13	M/s K.L. Madaan	1415280.9	20.11	L7

	14	M/s Bala Security & Labour Supplier	1415397.5	20.12	L8
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From the perusal of the above comparative statement, it is apparent that the rates of service charges of M/S K.L. Maddan were much higher being 20.11 percent and as such, the then Deputy Commissioner, Kaithal rightly cancelled his tender/work order after having report from Accounts Officer O/o Deputy Commissioner, Kaithal. Hence, the facts mentioned above clearly reveal that the cancellation of tender/work order issued to M/s K.L. Madaan was legal and justified.”

7. In the present case, column No. 13 filled by the petitioner showed that the rates of service charges of the petitioner were much higher as compared to other competitors. Therefore, the action taken by the respondents cannot be held to be illegal or arbitrary. Learned counsel for the petitioner has not been able to produce any material on record to controvert the findings recorded by the authorities below. Consequently, finding no merit in the petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

September 26, 2017
'gs'

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes