

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-16918-2017

Date of Decision: 1.8.2017

M/s Citadal Security Services, New Delhi

....Petitioner.

Versus

The Chairman, Jind Central Cooperative Bank Ltd., Jind and others

...Respondents.

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

PRESENT: Mr. Sandeep Thakan, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has have prayed for issuance of a writ in the nature of mandamus directing respondents No.1 to 3 to allot the tender to the petitioner being the successful bidder as per the tender summary report prepared by the department. Further, a prayer has been made to refrain respondent No.2 from allotting the tender to respondent No.4.

2. Put shortly, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. Respondent No.2 floated a tender for providing manpower services on the contract basis under outsourcing policy and vide advertisement, Annexure P-1, invited tender online for providing the manpower services of Clerk, Computer Operator, Steno Typist, Daftri, Gunman and Peon for a period of one year. As per the terms and conditions, Annexure P-2, the closing date for submitting the technical and financial bid along with the requisite documents and opening date of tender was 28.6.2017 at 12.30 PM. In response thereto, the petitioner

submitted its technical and financial bid online along with the requisite documents including the Licence under the Private Security Regulation Act, 2005 (in short “2005 Act”). In all, the total thirteen parties including the petitioner and respondent No.4 had applied for the said tender. As per Annexure P-3, the technical bid of the petitioner had secured 204 marks whereas respondent No.4 had secured 208 marks but respondent No.4 was not having the licence under the 2005 Act. The petitioner and other parties vide letter, Annexure P-4 and e-mail dated 19.7.2017 (Annexure P-5) informed respondent No.2 that respondent No.4 was not having the licence under the 2005 Act. As per the agenda and decision dated 19.7.2017 (Annexure P-6), it was resolved that the tender be allotted to respondent No.4. According to the petitioner, respondent No.4 was not the successful bidder as per the tender summary report prepared by respondent No.2. As per the licence report dated 24.7.2017 (Annexure P-7), respondent No.4 was not having the licence under the 2005 Act which was mandatory as per the terms and condition No.5 issued by respondent No.2. The petitioner was having the experience since 1997 which is clear from the experience certificate dated 3.9.2001 (Annexure P-8). The Director of respondent No.3 wrote a letter dated 19.7.2017 (Annexure P-9) to respondent No.1 that there was a lacuna in issuance of the tender as the same was allotted without proper technical bid report, without merit and the tender was issued to a company who was not having the licence under the 2005 Act. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. A perusal of narration of facts shows that respondent No.2 floated a tender for providing manpower services on contract basis under outsourcing policy and vide advertisement, Annexure P-1, invited tender online for providing the manpower services of Clerk, Computer Operator, Steno Typist, Daftri, Gunman and Peon for a period of one year. The thirteen agencies including the petitioner and respondent No.4 had applied for the said tender. As per Annexure P-3, the technical bid of the petitioner had secured 204 marks whereas respondent No.4 had secured 208 marks. As per the agenda and decision dated 19.7.2017 (Annexure P-6), it was resolved that the tender be allotted to respondent No.4. The petitioner claimed that respondent No.4 did not have licence under 2005 Act and, therefore, was ineligible. Support was drawn from Annexure P-9 appended along with the writ petition.

5. Learned counsel for the petitioner was unable to substantiate that condition No.5 of the tender notice was not complied with as respondent No.4 did not have licence under the 2005 Act. The technical bid of the applicants was evaluated by the official respondents. The technical bid report of 13 agencies who had submitted their tenders before 27.6.2017 has been appended as Annexure P-3 with the writ petition. The relevant portion relating to evaluation of the petitioner and respondent No.4 is reproduced below for ready reference:-

“THE JIND CENTRAL COOPERATIVE; JIND

Property Technical Bid Report of 13 agencies which have submitted their tenders before 27.06.2017 in the light of advertisement published in newspaper

Sl. No.	of	1	2	3	4	5	6	7	8	9	10	11	12	13	14
15		The agency should be registered with District Registrar of Firms and Societies for the purpose (Proof Attached)	The agency should be registered with Labour Department Haryana (Proof Attached)	The agency must be registered under Regional Provident Fund Commissioner of PF No. allotted (Proof Attached)	The agency must be registered with Employees State Insurance Corporation in Haryana (Proof of ESIC Attached)	The agency must have license to engage in the business of private Security Agency (Proof Attached)	The agency must have Service Tax Number and PAN Number (Proof Attached)	The agency must have five years experience (Proof of Experience Attached)	Audited Balance Sheet and Profit & Loss A/c for the last three financial years (Turn over proof attached)	Total turn over last 3 years	All documents of quotations must be duly attested by the authorized signatories of that agency and must be numbered with proper binding and all supporting documents should be properly flagged.	Earnest money of ` 20,000/- (Rupees Twenty Thousand Only) in the shape of demand draft in favour of General Manager, The Jind Central Cooperative Bank Limited payable at Jind.	The agency/firm should never be declared black listed (declaration attached)	An affidavit by the bidder duly notarised that the information, certified copies of the documents supplied with the bid and undertakings given/certificates attached are true and correct to the best of your knowledge and belief. Affidavit attached.	Total marks as per following formula (i) one mark for each one crore or turnover as per column no. 9(ii) 10 marks for experience of one year considering registration with PF as base year for the same.
1 and 2		XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
3.	Shivalik House Keeping Service Delhi	Yes	Yes	27.02.99	23.02.99	Yes	Yes	Yes	31.03.14 8.40 Cr 31.03.15 9.35 Cr 31.03.16 10.58 Cr	28.33 Cr	Yes	Yes	Yes	Yes	180+28= 208
4 to 10		XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
11.	Citadel Security	Yes	Yes	31.03.1998	09.01.1996	Yes	Yes	Yes	31.03.14 4.46 Cr 31.03.15 3.76 Cr	14.28 Cr	Yes	Yes	Yes	Yes	190+14 = 204

6. It was within the domain of respondent No.2 to have evaluated the technical bids of 13 applicants and decide comparative merit. The petitioner has not been able to demonstrate that the decision taken for the allotment of tender to respondent No.4 was not in the best interests of the Bank or was taken with malafide intention to favour any particular person. Thus, the decision taken by respondents No.1 to 3 has not been shown to be suffering from any arbitrariness or malafides. In such a situation, the allotment of tender by respondent No.2 cannot be faulted.

7. The Supreme Court in **Jagdish Mandal v. 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 relating to award of contract 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.

8. Learned counsel for the petitioner could not point out any illegality or perversity in the allotment of tender to respondent No.4 warranting interference by this Court under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 1, 2017

gbs

**Whether Speaking/Reasoned
Whether Reportable**

(AMIT RAWAL)
JUDGE

**Yes
Yes**