IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23436 of 2017
Date of decision: 12.10.2017

M/s Jai Singh and Company, through its Partner Sh. Narender Kumar son of Sh. Jai Singh, aged 28 years, resident of Park Road, Gohana, District Sonepat.

……Petitioner

Vs.

State of Haryana and others

…..Respondents

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

Present: Mr. V.K. Jindal, Senior Advocate with
Mr. Amardeep Sheoran, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226 and 227 of the Constitution of India is for quashing the order dated 06.10.2017, Annexure P.11, whereby, the Tender Approval Committee has rejected the final bid of the petitioner vis-a-vis the notice/tender dated 07.07.2017/ 25.07.2017/ 10.08.2017 for collection of toll at TP-50 (Palwal-Jewar-Aligarh Road, KM 0.0000 to 15.600 in Palwal District). A direction has also been sought to the respondents to comply with the provisions of Section 8 of the Amended Toll Policy dated 13.01.2015 and call the petitioner for negotiation as per the reserve price already fixed.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a partnership firm working under the name and style of 'M/s Jai Singh and Company'. The firm is situated in District Sonepat. The State of Haryana issued a public tender

notice on 07.07.2017, Annexure P.2, regarding collection of toll at TP-50 (Palwal-Jewar-Aligarh Road, KM 0.0000 to 15.600 in Palwal District), for a period of 18 months. The last date of submission of tender was 27.07.2017. Only a single bid was received at the time of issuance of first notice dated 07.07.2017. The tender was again floated on 25.07.2017. Still no bid was submitted by any person. The respondents again issued public notice regarding the same tender on 10.08.2017, Annexure P.4. The petitioner submitted its application. It also submitted its technical bid as well as financial bid. The petitioner deposited the security amount/bank guarantee as per the conditions. The process of tendering was done through e-tendering. According to the petitioner, initially the toll collection in the State of Haryana was being managed by the department itself. Because of resistance on the part of road users/people in paying the toll, the respondents were compelled to start issuing tender for collection of toll. Respondent No.3 provided all the terms and conditions, rights and liabilities of the State as well as successful bidder in the DNIT (Annexure P.4). The Government of Haryana had also framed a toll policy in consonance with the policy of the Government of India dated 13.01.2015, Annexure P.8. The technical bid of the petitioner was accepted as per the norms. Its financial bid was also found successful. To the utter surprise of the petitioner, the Superintendent Engineer wrote a letter to the Engineer-in-Chief respondent No.2, pointing out that the reserve price of the toll plaza was ₹ 35,99,06,500/- whereas the financial bid which had been received was ₹ 23,51,12,000/-. It was further pointed out that the rates were on the lower side. Superintendent Engineer, respondent No.3, requested respondent No.2, that the negotiation be held at the head office in compliance with the provisions of Section 8 of the Amended Toll Policy, Annexure P.8, and clause 13 of DNIT, (Annexure P.4). Thereafter, the matter was placed before the Tender Approval

Committee headed by respondent No.2. On 06.10.2017, the Committee decided to reject the financial bid of the petitioner. The petitioner submitted a representation dated 07.10.2017 (Annexure P.12) to the Additional Chief Secretary Haryana PWD (B&R) but till date neither any reply has been received by the petitioner nor any action has been taken on the same. Hence the instant petition by the petitioner.

3. We have heard the learned counsel for the petitioner.

4. Admittedly, in the present case, the State of Haryana issued a public tender notice on 07.07.2017, regarding collection of toll at TP-50 (Palwal-Jewar-Aligarh Road, KM 0.0000 to 15.600 in Palwal District) for a period of 18 months. Initially, not even a single bid was received. Notice was again issued on 25.07.2017. Even then, no bid was received. On 24.08.2017, again public notice regarding tender was uploaded. The petitioner submitted its technical as well as financial bid. It deposited the requisite security/bank guarantee. After examining the matter by the respondents, it was found that the reserve price of the toll plaza was ₹ 35,99,06,500/- whereas the final bid which had been received from the petitioner was ₹ 23,51,12,000/- . It was subsequently pointed out that the rates were on the lower side. Thereafter, negotiations were held in compliance with the provisions of Section 8 of the Amended Toll Policy. Even the matter was placed before the Tender Approval Committee. It has categorically been recorded in the minutes of the meeting of the Committee dated 06.10.2017 that "the single bid of M/s Jai Singh & Company received amounting to ₹ 23,51,12,000/- is much below the reserve price amounting to ₹ 35,99,06,500/- and even the departmental collection of ₹ 26,64,14,595/- and recall without fixing revised reserve price on 3rd call". It was only thereafter that the Committee decided to reject the bid of the petitioner vide order dated 06.10.2017, Annexure P.11. Learned counsel for the

petitioner has not been able to point out any illegality or error in the findings recorded by the authorities below. Moreover, it is entirely within the domain of the competent authority to take a decision in such matters keeping in view the facts and circumstances of the case. In the present case, the decision has been taken by the respondents keeping in view the overall interest of the public. It has been authoritatively held that in tender or contract matters, interference by courts is very limited. Power of Judicial review will not be invoked to protect private interest at the cost of public interest or to decide contractual disputes. Interference is permissible if the process adopted or decision made is malafide or intended to favour someone or the same is so arbitrary and irrational that no responsible authority acting under the law could have arrived at it or it affected the public interest. Learned counsel for the petitioner has not been able to produce any material on record to show that the impugned action of the respondents is arbitrary, malafide or irrational.

5. In view of the above, we do not find any merit in the petition and the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

October 12, 2017 **(Amit Rawal)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**