IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23525 of 2017
Date of decision: 12.10.2017

M/s TDS Management Consultant Private Limited

……Petitioner

Vs.

Postgraduate Institute of Medical Education & Research & another

…..Respondents

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

Present: Mr. Vinish Singla, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition under Articles 226 and 227 of the Constitution of India is for issuance of a writ in the nature of mandamus directing respondent No.1 to allocate the work of the "Miscellaneous Services" tender 2016, Annexure P.1 and execute 'the Contract Agreement' with the petitioner, it being the L-1. Further prayer has been made for quashing the impugned proceedings dated 07.06.2017, Annexure P.15 whereby respondent No.1 has ordered registration of FIR against the petitioner and barred the allotment of pending new tenders to it, on the ground of filing of fake fidelity bonds. A direction has also been sought for quashing the letter dated 04.09.2017, Annexure P.16, vide which respondent No.1 has offered the tender work to be allotted to respondent No.2 being L.2 and further proceedings dated 07.09.2017, Annexure P.17, whereby respondent No.2 has accepted the offer of respondent No.1. Prayer has also been made for restraining respondent No.1 from executing the 'Contract Agreement' with respondent No.2.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a company registered under the Companies Act, 1956 having its registered office at Mohali. It has been serving the esteemed organization of PGI, Chandigarh for the last more than 7 years with full dedication and sincerity. Respondent No.1 i.e. PGI Chandigarh floated a tender for outsourcing of 'Miscellaneous Services' for a period of two years vide Notice Inviting Tender (NIT) 2016. The petitioner alongwith other contractors participated in the said tender. The petitioner had already been allotted the tender for outsourcing in the year 2013. Since then, it had been providing the services to the PGI, Chandigarh to its satisfaction. Respondent No.1 had been giving extensions of the previous tender to the petitioner till date. The present extension period is expiring on 31.10.2017. Since the petitioner fulfilled all the eligibility criteria of the tender conditions, the price and technical bid were duly submitted by the petitioner alongwith the earnest money deposit before the last date. As per the NIT, there was a requirement of 441 workmen/employees to be deployed in different departments of PGI, Chandigarh for miscellaneous services such as store keepers, drivers, receptionist, Data Entry Operator etc. After the petitioner was declared successful in the technical bids, the price bids of all the eligible parties/bidders were opened by respondent No.1 by one of its 'Price Bid Evaluation Committee'. The rate/bid of the petitioner was found to be lowest i.e. respondent No.1 was to pay 1.43 per cent of the rates payable to the workers as the service charges to the petitioner and it was recommended by the Committee that the work of 'Miscellaneous Services' may be allotted to the petitioner firm being L-1. Respondent No.2 which quoted the rate of 1.63 per cent was declared as L.2. There were only two parties whose price bids were opened and rest were declared non eligible. Subsequently, the petitioner gave

several reminders that since it had been declared as L-1 in the tender, the work may be allotted to it at the earliest. There was no communication from respondent No.1 in this regard. However, in the meantime, the petitioner came to know that respondent No.1 was offering the said tender to L-2 i.e. respondent No.2. The petitioner sought information through RTI regarding offering of the tender to L-2 and whether the same had been accepted by it. It also submitted representation dated 21.09.2017 before respondent No.1 to allot the tender to it and not to offer the same to L-2 as the petitioner was ready and willing to undertake the tender work. Vide letter 03.10.2017, Annexure P.5, the petitioner came to know through RTI that respondent No.1 had offered this tender to L-2 i.e. respondent No.2 and the same had been accepted by respondent No.2. The reasoning given in this letter was that the L-1 firm had submitted fake fidelity bonds. The petitioner asserts that it had been awarded another contract/tender relating to outsourcing of manpower for medical record technician by respondent No.1 in October 2016. In this running tender, the junior level officer/worker of the petitioner company submitted fake fidelity bonds dated 9.12.2016 and 17.1.2017. When this fact came to the knowledge of higher officials of the petitioner company, they immediately moved letter dated 28.1.2017 for withdrawal of the previous two fake fidelity bonds and submitted fresh single fidelity bond for ₹ 61,76,484/-. Respondent No.1 accepted the same and cancelled the previous fidelity bonds and sent the fresh bond for its verification. Vide letter dated 10.3.2017, it was averred that since the petitioner was to submit the fidelity bond within one month from the start of the contract i.e. by 20.11.2016 and it had not submitted the same within the stipulated time, a show cause notice dated 17.4.2017 was issued which was replied back by the petitioner. When the matter came up before the high power committee, it recommended that since the petitioner admitted its mistake, it was liable to be pardoned. Another committee constituted by the respondents recommended FIR against the petitioner for criminal offence of cheating and fraud for submitting fake fidelity bonds. According to the petitioner, since respondent No.1 has filed its complaint before the local police station on 15.6.2017, no FIR has been registered against it. Respondent No.1 has offered the present tender to L-2 vide impugned order dated 04.09.2017. Hence the instant petition by the petitioner.

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

4. Admittedly, respondent No.1 i.e. PGI, Chandigarh floated a tender for outsourcing of 'Miscellaneous Services' for a period of two years. Initially, the petitioner had been allotted the tender in question in the year 2013 which was extended from time to time and the present extension is expiring on 31.10.2017. On 10.12.2016 and 17.01.2017, the petitioner had been awarded another contract/tender relating to outsourcing of manpower for 'Medical Record Technician' by respondent No.1 in October, 2016. In this running tender, the junior level officer/worker of the petitioner company submitted the fake fidelity bond. It has been categorically recorded in the findings recorded by the inquiry committee constituted by Director PGIMER, Chandigarh vide order dated 29.05.2017 that the petitioner had submitted two fake fidelity bonds to the PGI on 09.12.2016 and it had no valid justification to prove its innocence in the matter as this kind of fraudulent act could not be committed by a junior level employee without the connivance of the senior management of the company. It was, thus, concluded that the petitioner had committed criminal offence of cheating and fraud against the PGI, Chandigarh. It was recommended vide inquiry report dated 07.06.2017 (Annexure P.15) that an FIR should be lodged against the petitioner. The relevant findings recorded in this regard read thus:-

> "After hearing the representatives of M/s TDS Management Consultants (P) Limited and after going through all the relevant documents on record, it is clear that M/s TDS Management Consultants (P) Limited have submitted two fake fidelity bonds to the PGI on 09.12.2016 and they had no valid justification to prove their innocence in the matter as this kind of fraudulent act cannot be committed by a junior level employee without the connivance of the senior management of the company.
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> Therefore, the Committee has reached the conclusion that M/s TDS Management Consultants (P) Limited, by submitting fake fidelity bonds to the PGI or MRT Tender, have committed a criminal offence of cheating and fraud against the PGI, for which they need to be held liable and an FIR should be lodged against them. Further, the Committee recommends that the decision regarding the award of any fresh tender in favour of the M/s TDS Management Consultants (P) Limited, needs to be reviewed in the light of these recommendations of the Committee regarding initiation of action for fixing criminal liability against the company. Further, the Committee found it appropriate that a caution should be issued to all the offices dealing with such kind of tender activities to forbid the lower level officials from dealing directly with the representatives of the bidding firms."

5. Learned counsel for the petitioner has not been able to point out any illegality or error in the impugned action taken by the respondents warranting interference by this Court in writ jurisdiction under Articles 226 and 227 of the Constitution of India. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

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

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