

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

CWP No. 23890 of 2017
Date of decision: 24.10.2017

**M/s Haryana Nav Yuvak Kala Sangam, Ishwar Sadan, Near
Chaubisee Ka Chbutra, Meham, District Rohtak**

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

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

Present: Mr. Vikas Bali, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the impugned order dated 14.09.2017, Annexure P-12, whereby respondent No. 2-Director Urban Local Bodies, State Urban Development Authority, Haryana, Panchkula did not consider the request in the representation dated 30.05.2017, made by the petitioner for grant of tender and rejected its plea without giving any reason, being contrary to the order dated 14.07.2017, Annexure P.11, passed by this Court. Further prayer has been made for quashing the impugned action taken by the respondents in not accepting the affidavit dated 08.03.2017, Annexure P.4, submitted by the petitioner stating that the word "State of Haryana" had not been mentioned specifically therein. A direction has also been sought to the respondents to consider and grant the tender to the petitioner for all the

four zones i.e. Ambala, Hisar, Rohtak and Gurugram being the lowest bidder.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a social association. It is carrying its business under the Societies Registration Act, 1860. Respondent No.2 invited tenders for consultancy services for survey of street vendors and preparation of street vending plan under the Scheme of Support for Street Vendors (SSUV) and National Urban Livelihood Mission (NULM) in different Municipal Corporations and Councils. The petitioner found itself fully eligible and submitted its bid for all four zones alongwith other four firms namely Yashi Consulting Services Private Limited, Rudrabishek Enterprises Private Limited, Design Point Consult Private Limited and HWITE Security. Confirmation letter showing that the petitioner alongwith firms submitted the requisite documents was issued. As per Request for Proposal (RFP), the instructions to the bidders had been mentioned in Clause 8.2 of the eligibility criteria. In Clause 8.3.2, it had been clearly mentioned that any time before submission of proposals, the client may amend the RFP by issuing an addendum in writing and shall upload the same by standard electronic means. According to the petitioner, it has been awarded best practice award and other achievement certificates for street vending plans under NULM. The technical bid was opened by the respondents on 17.03.2017. A meeting was convened for all the bidders on 26.04.2017 in which the respondents verbally informed the petitioner that it had not submitted the affidavit as per Sub Clause (3) of Clause 8.2, and thus it had violated eligibility criteria. The respondents raised objection that in the

affidavit, the word “State of Haryana” had not been mentioned. The petitioner on 04.05.2017 had submitted its fresh affidavit stating that it had not been blacklisted by any Ministry or Department of the Government of India or any State Government/ Haryana Government. The said affidavit had been duly accepted and the documents submitted by the petitioner were found to be in order. After submission of the affidavit on 04.05.2017, the respondents did not take any decision. The petitioner gave a representation to the respondents. Vide letter dated 16.06.2017, the petitioner was informed that its tender had been rejected as per RFP Clause 8.2 of the tender. Thereafter, the petitioner again approached the respondents department stating that it had itself accepted the fresh affidavit dated 25.04.2017 and as such, the rejection of its tender was not valid. According to the petitioner, on 05.07.2017 the respondents sent E-mails to the petitioner informing that it had been short-listed for price bidding opening of tender. The petitioner immediately on receiving the E-mails replied to the department on the same day asking for future course of action. The petitioner society had quoted lowest price of ₹ 234/- per vendor for all the four zones whereas the competitors of the petitioner society namely M/s Rudrabhishek Enterprises Private Limited quoted ₹ 307/-, 300 and 316 per vendor and M/s Yashi Consulting Services Private Limited had quoted ₹ 427/- per vendor. The petitioner was the lowest bidder who had quoted ₹ 234/- per vendor for all the four zones. The petitioner asserts that it being the lowest bidder was entitled to be considered for the grant of the present tender in question but it came to the knowledge of the petitioner that the respondent-department was heading for giving the work orders to one of the bidder who had quoted higher rate than that of the petitioner. The

petitioner had earlier filed CWP No.15112 of 2017. Vide order dated 14.07.2017, this court had directed respondent No.2 to take decision on the representation dated 30.05.2017 filed by the petitioner by passing a speaking order and after affording an opportunity of hearing to the petitioner. Thereafter, respondent No.2 in compliance with the order passed by the Court examined the matter and rejected the representation filed by the petitioner vide impugned order dated 14.09.2017 holding that submission of correct affidavit was a material issue, which could not be altered at a later stage. According to the petitioner, till date the contract has not been awarded to any of the tenderer whereas, the respondents are inclined to allot the work order to M/s Rudrabhishek Enterprises Private Limited who had quoted the rates higher than the petitioner. Hence the instant petition by the petitioner.

3. Learned counsel for the petitioner submitted that the affidavit filed by the petitioner was already part of request for proposal which was considered in the meeting dated 04.05.2017 and, thus, the impugned order dated 14.09.2017 was illegal. Learned counsel relied upon Clause 5.4.4 of the notice dated 30.03.2017 issued by the Government of India, Ministry of Finance department to expenditure, public procurement division, wherein it had been provided that during the preliminary examination, some minor infirmity and/or irregularity and/or non conformity may be found in some tenders. It was further provided that such minor issues may be waived provided they do not constitute any material deviation. Thus, it was submitted that due to clerical mistake, the word "State of Haryana" was left in the affidavit filed by the petitioner and the petitioner had filed the fresh affidavit which was duly accepted by the respondents. Thus, the action of the

respondents in rejecting the allotment of work order to the petitioner is not legal and valid.

4. Admittedly, respondent No.2 invited tenders for consultancy services for survey of street vendors and preparation of street vending plan under the Scheme of Support for street vendors and National Urban Livelihood Mission in different Municipal Corporations and Councils. The petitioner alongwith four other firms as mentioned above submitted its bid for all the four zones. The technical bid was opened by the respondents on 17.3.2017. In the meeting dated 26.04.2017, the petitioner was verbally informed by the respondents that it had not submitted the affidavit as per Sub Clause (3) of Clause 8.2 of RFP and, thus, violated the eligibility criteria. Sub Clause (3) of Clause 8.2 of the eligibility criteria reads as under:-

“The firm which has not been delisted/black listed/debarred/by govt. of India/ any other State Govt./Haryana Govt. or its Departments/agencies.”

An objection was raised by the respondents that in the affidavit submitted by the petitioner, the word “State of Haryana” had not been mentioned. On 04.05.2017, the petitioner again submitted fresh affidavit stating that it had not been black-listed by any Ministry or Department of the Government of India or any State Government/Haryana Government or any agency and department in India. The matter was examined by the Director General, Urban Local Bodies, Haryana, Panchkula. Vide order dated 14.09.2017, Annexure P.12, it has been categorically recorded that hiding of a material fact during technical evaluation cannot be treated as a minor error on the part of the vendor. Thus, the request of the petitioner for accepting the

revised affidavit could not have been considered. Regarding the submission of undertaking on non judicial stamp paper of ₹ 1000/-, all the three technically qualified bidders had submitted affidavit on the said stamp paper whereas the petitioner had submitted affidavit on a stamp of ₹ 20/-. Thus, the affidavit was not held to be filed on the requisite paper. The representation dated 30.05.2017 of the petitioner was filed by the department, in view of the fact that the affidavit being a material issue could not be altered at a later stage. Thus, it was concluded that the technical bid of the petitioner was not evaluated being non-responsive. As a result, the representation filed by the petitioner was rejected. The relevant findings recorded by the Director General read thus:-

“AMD, SUDA informed that all the five bidders were called for meeting on 04.05.2017 vide letter No. SUDA/NULMS/SUSV/199-203, dated 02.05.2017 to give their clarifications, if any, about their eligibility, wherein Dr. Parveen Chaudhary, C.E.O., HNYKS specifically admitted that due to clerical mistake the word “State of Haryana” was left in their affidavit(s) and further requested to consider their fresh affidavit(s). Whereas, it has clearly been mentioned in the RFP document under clause 5 (xi-A) that “Those physically submitted documents will be acceptable and considered, if, same are uploaded on the website alongwith tender offer. Cognizance of other physically submitted documents (if any) shall not be taken”. Thus, the representation, dated 30.05.2017 of the firm was filed by the department in view of the fact that the affidavit being a material issue, cannot be altered at a later stage. Therefore, the technical bid of the firm was not evaluated being non-responsive and the firm was informed vide letter No. SUDA/SSUV-NULM/2017-18/1469, dated 16.06.2017 (through email dated 17.06.2017).

9. Regarding submission of undertaking on a non-judicial stamp paper of ₹ 1000/-, all the three technical qualified bidders (M/s Yashi Consulting Service (P) Ltd., M/s Design Point Consult (P) Ltd, and M/s Rudrabhishek (P) Ltd. have submitted affidavit on non judicial stamp paper of ₹ 1000/- each, whereas, M/s HNYKS has submitted affidavit on a stamp of ₹ 20/-. Thus, the submission regarding this of M/s HNYKS was found factually incorrect.

10. As regards criteria defined for technical evaluation, the Street Vendor Plans/City Development plan/Slum Free City Plan of Action (SFCPOA)/Housing for all plan of Action (HFAPOA), Socio-Economic survey, computerization of data etc. are similar kind of projects. The technical evaluation also involves the evaluation of bidders strength on manpower, turnover and work plan etc. Thus, it covers major scope of the work not only 30-35% as submitted by M/s HNYKS. However, M/s HNYKS ought to have raised this issue during pre-bid meet held on 24.1.2017 in which they were present. Rather, none of the agency raised this issue during pre-bid meet as evident from the minutes of the meeting of the pre-bid. As such, raising this issue at this stage by the M/s HNYKS in its defence is not tenable.

11. After hearing Dr. Parveen Chaudhary, C.E.O., Haryana Nav Yuvak Kala Sangam, Meham, Rohtak and gone through the record, it is amply clear that the submission of correct affidavit is a material issue, which cannot be altered at a later stage. Hiding of a material fact during the technical evaluation cannot be treated as a minor error on the part of the vendor. As such, the request M/s Haryana Nav Yuvak Kala Sangam for accepting the revised affidavit(s) could not have been considered. Moreover, the above issue has already been considered and decided at the government level. The undersigned does not find any reasons for differing with the earlier decision taken by the

government. In pursuance of the order dated 14.07.2017 of the Hon'ble High Court of Haryana and Punjab, the undersigned has examined the issues raised in the representation, dated 30.05.2017 of Dr. Parveen Chaudhary, C.E.O. Haryana Nav Yuvak Kala Sangam, Meham, Rohtak, and finds it devoid of merit."

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

(Ajay Kumar Mittal)
Judge

October 24, 2017
'gs'

(Amit Rawal)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes