THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.26433 of 2017 (O&M)
Date of decision: 29.11.2017

M/s Global Facilities

……Petitioner

Vs.

State of Punjab and others

…..Respondents

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

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.
Mr. Rajiv Kumar Saini, Advocate for Mr. U.K.Agnihotri, Advocate for the respondent-caveator.

Ajay Kumar Mittal,J.

1. The petitioner through the present petition under Articles 226/227 of the Constitution of India prays for quashing the order dated 10.11.2017, Annexure P.22 alongwith the communication dated 15.9.2017, Annexure P.18 vide which contract for providing house keeping and security services has been awarded to private respondent No.5-M/s Friend Associates. Further prayer has been made for staying the operation of the impugned order and the letter during the pendency of the petition and in the alternative, for staying the functioning of respondent No.5.

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. It came into existence in the name of M/s Global Facilities situated at H.No.272, V&PO Landran, Tehsil and District Sahibzada Ajit Singh Nagar, Punjab. The business of the firm is to provide facilities/utilities

and house keeping services. It has been providing these facilities to the respondents since long. Previously, the contract was awarded to the petitioner firm by the respondents in the year 2014 which expired on 15.9.2017. According to the petitioner, due to malafide intention of the Chairman, the contract was earlier cancelled vide letter dated 4.9.2015. The petitioner approached this court through CWP No.6965 of 2016. Vide order dated 16.8.2017, this court disposed of the writ petition and the contract was allowed to be continued upto three years i.e. 15.9.2017. Now again, the respondent Board floated the contract for the same purpose for the period from 16.9.2017 to 31.3.2018. The Central Vigilance Commission had already issued the guidelines that the terms and conditions of the tender notice coupled with form appended thereunder were required to be mandatorily filled up. One of the conditions was with regard to the fact that the information was to be submitted in excel file and certain terms and conditions were required to be completed which showed that the latest challan of deposit of EPF, ESI and GST was required to be submitted. The petitioner uploaded the requisite form and submitted the same on 12.9.2017 alongwith all the required information. In the form submitted by respondent No.5, against the deposit of EPF, ESI and GST, it was mentioned as ‘Yes’. The technical as well as financial bid was to be opened on 13.9.2017. Despite submitting all the documents, the petitioner was asked to submit the affidavit which it did. According to the petitioner, although respondent No.5 did not submit the copy of latest challan for deposit of EPF, ESI and GST, it was treated as qualified. The petitioner asserts that as per terms and conditions of the notice inviting tender, a committee is required to be constituted who shall first hold pre-bid meeting and shall take objections. However, no opportunity was given to the petitioner and to any other party.

The petitioner as well as other firms submitted their representations but no action was taken. On 15.9.2017, allotment of contract was made in favour of respondent No.5 without taking into account the fact that it was not even technically qualified. According to the petitioner, if some condition was required to be waived off by the committee or by the official respondents, then an order was required to be passed as to under what circumstances the requirement of the challan for GST was waived off. The petitioner had earlier filed CWP No.22125 of 2017 seeking quashing of impugned letter dated 15.9.2017. After the disposal of the said writ petition, the petitioner submitted various representations. The official respondents passed order dated 10.11.2017 rejecting the representations filed by the petitioner. Hence the instant writ petition by the petitioner.

3. We have heard learned counsel for the parties.

4. Admittedly, the respondent Board floated contract for providing house keeping and security services for the period from 16.9.2017 to 31.3.2018. Earlier also, the petitioner had been awarded such contract. This time, certain terms and conditions were laid down in the requisite form. The firms which applied for the contract were required to fulfil the said requirements. One of the condition was that the information was to be submitted in excel file and latest copy of challan of deposit of EPF, ESI and GST was also to be filed. The petitioner fulfilled all the requirements but respondent No.5 did not file the copy of the challan at the initial stage and only mentioned ‘yes’ against the requisite column. A perusal of the impugned order dated 10.11.2017 shows that after examining the matter, it was found that in the case of respondent No.5, last date of payment of GST was 20.9.2017 due to which it was asked to produce the copy of the challan later. By doing so, on technical ground, respondent No.5 was not ineligible

and it submitted the copy of the challan on 19.9.2017. It was also recorded that the GST had been implemented by the government with effect from 1.7.2017. The petitioner quoted ₹ 37,97,518.10 whereas respondent No.5 quoted ₹ 36,46,943.60. After examining the case of both the firms, the committee selected respondent No.5 for the contract. The bid given by respondent No.5 was found to be more beneficial and thus was accepted. Further, it is entirely within the domain of the authorities to accept or reject the offer keeping in view the overall interest of public unless the action is either arbitrary, malafide or discriminatory. In the present case, the decision has been taken by the official respondents after examining the entire facts and circumstances of the case, which could not be demonstrated to be arbitrary or unreasonable.

5. The scope of judicial review in the matters of award of contract and laying down conditions in the tender document was examined by the Apex Court in ***BSN Joshi v. Nair Coal Services Ltd. 2006(11) SCALE 526,*** wherein it was held that the employer is the best judge in the matters of contract and the court's interference in such matter should be minimal. The Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent. It was held as under:-

> "It may be true that a contract need not be given to the lowest tenderer but it is equally true that the employer is the best judge therefor, the same ordinarily being within its domain, court's interference in such matter should be minimal. The High Court's jurisdiction in such matters being limited in a case of this nature, the Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record."

6. 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 in such matters 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. The Court should exercise judicial restraint unless illegality or arbitrariness on the part of the Government in these matters is apparent.

7. The Apex Court in ***Maa Binda Express Carrier and another v. North East Frontier Railway and others'*** (2014) 2 CHN 96 (SCC) with regard to the scope of judicial review in contractual matters, inter alia, noticed that the State authorities are required to be conceded greater latitude in formulating conditions of a tender document and awarding a contract, and their action is not open to judicial review unless it can be demonstrated to be malicious, arbitrary, unreasonable or misuse of its statutory powers. The relevant observations recorded therein are extracted as under:-

> 10. The scope of judicial review in contractual matters was further examined by this Court in **Tata Cellular v. Union of India (1994) 6 SCC 651**, **Raunaq International Ltd.'s case (supra)** and in **Jagdish M andal v. State of Orissa and Ors. (2007) 14 SCC 517** besides several other decisions to which we need not refer.

11. **In Michigan Rubber (India) Ltd. v. State of Karnataka and Ors . (2012) 8 SCC 216** the legal position on the subject was summed up after a comprehensive review and principles of law applicable to the process for judicial review identified in the following words: (SCC p. 229 paras 19-20)

> "19. From the above decisions, the following principles emerge:
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> (a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;
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> (b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;
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> (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

20. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say:

"the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"; and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226."

12. As pointed out in the earlier part of this order the decision to cancel the tender process was in no way discriminatory or mala fide. On the contrary, if a contract had been awarded despite the deficiencies in the tender process serious questions touching the legality and propriety affecting the validity of the tender process would have arisen. In as much as the competent authority decided to cancel the tender process, it did not violate any fundamental right of the

> appellant nor could the action of the respondent be termed unreasonable so as to warrant any interference from this Court. The Division Bench of the High Court was, in that view, perfectly justified in setting aside the order passed by the Single Judge and dismissing the writ petition."

8. In view of the above, we do not find any ground to interfere with the impugned order dated 10.11.2017 (Annexure P.22) and also the award of contract to respondent No.5 vide Annexure P.18 dated 15.9.2017 in 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

November 29, 2017
'gs'

(Amit Rawal)
Judge

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